

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 4th May, 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

Hon. Speaker: Order, Members! I wish to draw the attention of the House to the existence of a Supplementary Order Paper. It was necessitated by the amount of work that you transacted in the Morning Sitting which is commendable. We are just dealing with procedural issues.

MESSAGE

DIVISION OF REVENUE BILL/MEDIATED VERSION OF POLITICAL PARTIES BILL

Hon. Speaker: Hon. Members, including the Member for Emurua Dikirr, this is a Message from the Senate. This is Message No.009 of 2016, relating to the approval by the Senate of the Division of Revenue Bill and the Mediated Version of the Political Parties Bill.

Hon. Members, pursuant to the provisions of Standing Order 41(4), I wish to report to the House that I have received two Messages from the Senate regarding the approval, by the Senate, of the following two Bills:-

- (i) The Division of Revenue Bill (National Assembly Bill No.4 of 2016); and,
- (ii) The Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014).

The first Message reads in part, and I quote, “That the Division of Revenue Bill (National Assembly Bill No.4 of 2016) was passed by the Senate on Thursday, 28th April, 2016, without amendments.”

The second Message states, and I quote, “That the Senate, by way of a resolution passed on Thursday, 28th April, 2016, approved the Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014).”

Hon. Members, you may recall that the National Assembly passed the Division of Revenue Bill (National Assembly Bill No.4 of 2016) on 30th March, 2016. You may also recall that the House considered the Report of the Mediation Committee and approved the Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014) on 21st April, 2016.

In this regard, I will now proceed to present the two Bills for Assent to His Excellency the President in accordance with the provisions of Articles 110(5) and 113(3) of the Constitution respectively.

I thank you.

PETITION

REVIEW OF AFFA ACT TO ALLOW SALE OF RAW PRODUCE

Hon. Speaker: Hon. Members, there is a Petition by Hon. Peter Kamande Mwangi, the Member for Maragua Constituency.

Hon. Mwangi: Hon. Speaker, I, the undersigned, on behalf of concerned macadamia farmers, draw the attention of the House to the following:-

THAT, Section 43 of the Agriculture, Fisheries and Food Authority Act 2013 prohibits export of raw produce such as raw macadamia, raw cashew nuts, raw pyrethrum among other products except with written authority from the Cabinet Secretary or with the approval of the National Assembly.

THAT, due to the said prohibition, the macadamia farmers in the country are suffering and the macadamia industry is on the verge of collapsing.

THAT, with the collapse of coffee farming, macadamia has been the main source of income thereby ensuring financial stability of those farmers.

THAT, since 2004 macadamia farmers experienced a steady rise in macadamia prices from Kshs.10 to Kshs.50 per kilogramme and further that, the emergence of foreign investors in the year 2014 and 2015 led to rapid increase in prices to Kshs.130 per kilogramme.

THAT, the implementation of the Agriculture, Fisheries and Food Authority Act 2013, led to decrease in macadamia prices and deregistration of firms dealing with raw macadamia.

THAT, the implementation of the Act has led to loss of employment and closure of business.

THAT, efforts to resolve the matter with relevant authorities have been fruitless.

THAT, the issues in respect to which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Cooperatives, proposes amendments to the Agriculture, Fisheries and Food Authority (AFFA) Act 2013 to provide for the sale of raw produce, in particular raw macadamia, and make any other order or direction that it deems fit in the circumstances of the case.

Your petitioners will forever pray.

Hon. Speaker: Hon. Kathuri Murungi, do you want to comment on this Petition?

Hon. Murungi: Thank you, Hon. Speaker. I want to support my good friend, Hon. Kamande, on this Petition.

Macadamia grows very well in regions where coffee thrives. As at now, as a cash crop, coffee is on its knees. The only crop which has been assisting people where coffee is grown is macadamia. With what is happening in the market, a lot of intervention needs to be made through the Ministry of Agriculture. There was another petition on macadamia which was brought to the House by Hon. Mpuri Aburi and we made some decisions as a House. As I support my friend, Hon. Kamande, it is important that the Ministry of Agriculture, through the AFFA Act, intervenes on the macadamia issue.

Thank you, Hon. Speaker.

Hon. (Dr.) Simiyu: Hon. Speaker, I rise to support the Petition by Hon. Kamanda. I know people will wonder but in my constituency, we grow a lot of macadamia. I come from Makhanga Sub-location, Macadamia Village. The onset of this law has visited poverty among the people who grow macadamia in the sense that the returns have fallen so low that right now parents who solely relied on macadamia cannot get school fees for their children. I urge the Committee to quickly look at this Petition, so that we can review the injury that has been visited upon those farmers.

I support.

Hon. Speaker: Yes, Hon. Charles Njagagua.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker. I am using Hon. Charles Njagagua's card because I forgot mine at home.

I would like to take this opportunity to support the Petition.

Hon. (Ms.) Abdalla: Who are you?

Hon. Barua: For those who do not know me, my name is Njogu Barua, the Member of Parliament for Gichugu.

(Laughter)

Hon. Speaker, Hon. Amina Abdalla is harassing me. I am well known in this House and countrywide. I come from Gichugu Constituency where we grow a lot of macadamia. Of late, macadamia farmers have been harassed by the police for selling their own produce.

In Gichugu Constituency, it is more criminal to operate macadamia nuts business than *bhang* business. People were being arrested for selling their core produce between January and March. As we consider this Petition, I would call upon those concerned, including the Ministry of Agriculture, Livestock and Fisheries to ensure that farmers of macadamia are given full freedom to sell their produce whichever time they want because they depend on it for their livelihoods. I just want to call upon my constituents who deal in macadamia as their sole income earning activity to continue doing so. Harassment of my constituents by police should stop so that my people can be encouraged to continue farming macadamia.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mwaura.

Hon. Mwaura: Thank you, Hon. Speaker. I rise to support this Petition particularly because if you look at the growth of macadamia, there is a very clear pattern. It is a sector which is highly dominated by a few cartels of individuals who do not want a free market economy to thrive for farmers to benefit. Even before the 1980s, there were very many macadamia trees that coexisted with other plants in many farms across the Central Kenya region but we no longer see them. Even the macadamia nut has become an elite product. It is no longer available to the common *mwananchi*. It is important that this Petition addresses laws that not only seek to empower the farmer but also safeguard the interests of business people.

Hon. Speaker, I support.

Hon. Speaker: Hon. Members, the Petition stands committed to the Departmental Committee on Agriculture, Livestock and Cooperatives.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Paper on the Table:-

The Report of the Auditor-General on the Financial Statements in respect of Kenya Civil Aviation Authority, Public Complaints Committee on Environment, Technical University of Mombasa and Taita Taveta University College for the year ended 30th June, 2015 and the Certificates therein.

Thank you, Hon. Speaker.

Hon. Speaker: Next is Hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to lay the following Papers on the Table:-
Reports of the Select Committee on Regional Integration on its consideration of-

- (i) East Africa Legislative Assembly Reports and Bills; and,
- (ii) East Africa Legislative Assembly Reports and Resolutions.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Regional Integration, remind Members about the function that you have.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker for the opportunity. I wish to request Members of the National Assembly yet again, to kindly attend the Speaker's round table breakfast and lunch meeting where the Speaker will be our guest. The function will be hosted by the Ministry of East African Affairs. We have also invited the Committee of Defence, the Departmental Committee on Finance, Planning and Trade and the Committee on Regional Integration. We request Members to come. We have said that within the East African Community, we need to deepen and widen the integration process and get to understand much more how much we have done towards the implementation of the three pillars that form our integration process. Kindly, Members, tomorrow at 7.30 a.m., we will be at the Intercontinental Hotel up to 12.30 p.m. Kindly, be with us and share how we are going to grow the East African Community (EAC).

Thank you, Hon. Speaker.

Hon. Speaker: Yes, the Chairman of the Departmental Committee on Lands, Hon. Alex Mwiru.

Hon. Mwiru: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

Report on the Petition regarding ceding of 1,800 acres of Chebororwa Agricultural Training Centre to Chebororwa community;

Report on Petition by Mavoko Constituents regarding the alleged compulsory acquisition of Land Reference No.10029/2, in Mavoko Constituency.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, the Chairperson of the Departmental Committee on Environment and Natural Resources.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table:-

The Report of the Departmental Committee on Environment and Natural Resources and its consideration of the Senate Amendments to the Water Bill (National Assembly Bill No.7 of 2014).

(Several Members stood up in their places)

Hon. Speaker: Hon. Members, please take your seats.

(Hon. Ganya crossed the Floor without bowing to the Speaker)

Hon. Chachu Ganya, it is not done that way. You have to go up to the Bar and bow to the Speaker.

COMMUNICATION FROM THE CHAIR

EXAMINATION OF AUDITED REPORTS OF POLITICAL PARTIES

Hon. Speaker: Hon. Members, you recall that on Thursday, 21st April, 2016, the Leader of the Majority Party, Hon. Aden Duale rose on a point of order seeking guidance from the Speaker on the manner of consideration and examination of audited reports of political parties. This was after an observation that the Auditor-General has been submitting reports of political parties to the National Assembly but no examination has been done so far. This was noted as being of great concern as majority of Members are, indeed, affiliated to political parties. A number of Members contributed to the ensuing debate including Hon. Jakoyo Midiwo, Hon. Ababu Namwamba, Hon. Samuel Chepkong'a, Hon. Wesley Korir and Hon. James Nyikal among others.

Hon. Members, in most jurisdictions, the need for increased accountability and openness among political parties has grown in the recent past. This has been as a result of, among other things, increased public awareness as well as legal requirement on account of allocation of public monies to these institutions. Indeed, many countries, including Kenya have well established laws and practices that guide the funding and accounting by political parties.

Most countries have signed or ratified the 2005 United Nations Convention against Corruption (UNCAC) which states that all countries should consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.

In the African context, the overarching guidance comes from the African Union Convention on Preventing and Combating Corruption, which states in Article 10 that each state party shall adopt legislative and other measures to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties, and incorporate the principle of transparency into funding of political parties. More and more countries in Africa offer funding to political parties from the State.

Hon. Members, in the Federal Republic of Germany, political parties derive their existence through the Grundgesetz or the Basic Law. Article 21 of the Basic Law provides for the freedom to form political parties to participate in the formation of free will of the people. As a general rule, the political parties so formed are expected to function on the basis of democratic principles and publicly account for their assets and sources and use of their funds. However, a comprehensive legislation, the law on Political Parties, enacted in 1967 and amended in 1994, governs the structure, constitution and financial matters of the political parties. In this case, of interest would be the financial provisions of the law which include:-

The political parties are entitled for state funding to the tune of 0.70 Euros for each vote cast in the preceding Bundestag (House of Representatives) election subject to an annual limit of 133 million Euros as per Article 18.

The political parties have to submit an annual account to the President of the Bundestag giving details of the income, expenditure, assets and liabilities. The annual accounts are to be audited and certified by a registered chartered accountant as per Article 23.

If the President is not satisfied by the accounts submitted by a political party, he can get the accounts audited by an auditor nominated by him. For avoidance of doubt, the President of the Bundestag of Germany is the equivalent of the Speaker of the National Assembly of Kenya.

The President of the Bundestag shall report to the Bundestag regarding his finding on the accounts of political parties and the report shall be published as Bundestag's published paper for public scrutiny.

From the foregoing, it is observed that in the Federal Republic of Germany, the President of the Bundestag is required to receive the reports of political parties and convey the same to the Bundestag. Organisations that fail to conclusively account for their fund risk losing their legal status as political parties.

In the United Kingdom, the Political Parties Election and Referendum Act, 2000 governs political parties, their conduct and other related matters. There exists an independent body, the Electoral Commission, which oversees all the electoral processes. All political parties are required to register with the Electoral Commission with set financial structures which should be approved by the Commission. The Treasurer of the party is required to keep up-to-date accounting records showing the daily financial transactions. At the end of each financial year, the party is required to submit the annual accounts to the Commission. These accounts are then opened for public inspection and scrutiny.

In Denmark, there is no specific authority entrusted with monitoring the adherence to political financing rules by political parties, related entities or election of candidates. Further, there is no public authority established to check the relevant accounting records of such entities and persons. However, the General Audit Office, which is an independent institution under Parliament, examines the soundness of all state accounts, that is, checks that they are without significant errors and deficiencies and this office is in accordance with the Public Funding Act. The office is empowered to demand accounting records from the beneficiary parties that have received public funding in order to examine how such funding has been spent and in this context, may check the accounts of political parties.

Hon. Members, France has an elaborate legislation, the Electoral Code, which governs affairs of political parties particularly their finances. The Code works on three basic principles namely:-

- (i) that money should not decide the outcome of the ballot nor favour the richest candidate;
- (ii) that a candidate must not be dependent on a generous donor; and,
- (iii) that the State should reimburse the electoral expenses to offset the obligations put on the candidates.

The code allows for State funding of political parties as key contributors to public suffrage. The control and verification of books of accounts of political parties is done by the Electoral Commission which verifies that political parties respect their accounting and financial obligations, ensures that the parties' accounts are published in the official journal of France and brings any matter presenting possible penal violations before the public prosecutor.

Hon. Members, closer home in South Africa, political parties receive funding from the taxpayer according to the proportion of votes that they receive. This funding is regulated by the

Public Funding of Represented Political Parties Act 103 of 1997 and the amounts allocated to each party are publicly available through the Electoral Commission. Every political party to which monies are allocated from the Fund must keep, with a bank registered in the Republic of South Africa, a separate banking account into which all monies so allocated to the party must be deposited; and appoint an office-bearer or official of that party as its accounting officer with regard to all monies from time to time allocated to that party from the Fund. As soon as possible after the end of each financial year, the Electoral Commission prepares a report regarding its management and administration of the Fund during that financial year, the allocations made from the Fund to the respective political parties during that year, the amounts spent during that year by each political party in connection with prescribed purposes, and the balance of the Fund and any amounts owing to or by the Fund as at the end of that year.

This report is also submitted to the Auditor-General for auditing. Within 30 days after receipt of the Auditor-General's report, the Electoral Commission must submit that report to parliament together with the audited financial statements of the Fund and the audited Commission's report.

Hon. Members, our case is not different from those cited above. To begin with, public funding of political parties is provided for under the Political Parties Act, 2011. Specifically, Section 31 requires political parties to keep proper books and records of account of the income, expenditure, assets and liabilities related to their operations.

Further, political parties shall, within three months after the end of each financial year, submit to the Auditor-General their accounts in respect of that year for auditing and onward submission to the Registrar of Political Parties and tabling before the National Assembly. Notably, the Registrar of Political Parties may at any time request the Auditor-General to carry out an audit of the accounts of a political party.

Generally, all audited accounts of public funds are examined in the National Assembly by the Public Accounts Committee (PAC). However, as stated by some of the Members who spoke on 21st April, it is evident that the Committee is currently overwhelmed by the examination of all the other funds.

Hon. Members, during the 10th Parliament, a similar predicament was experienced. At the time, the examination of audited reports for all public funds appropriated was noted to be immense for the PAC. This was so considering that there were other entities, among them the local authorities and other devolved funds such as the Constituencies Development Fund (CDF), the Roads Maintenance Levy Fund, the Tourist Trust Fund, the Small and Micro Enterprise Fund and the Community Development Trust Fund that needed to be examined. This saw the establishment by the House, by way of amendment of the Standing Orders, of the Local Authorities and Funds Accounts Committee (LAFAC) during the Second Session of the 10th Parliament.

The Committee was mandated to examine accounts of expenditure in local authorities and all other funds laid on the Table of the House. This went a great way in easing the work of PAC and helped to fast-track examination of the audited accounts of those other funds and local authorities.

Hon. Members, the matter of consideration and examination of the audited accounts of political parties is an important issue for this House and, indeed, the democratic principles of this nation. It is, therefore, imperative that we approach issues raised clearly with a view of finding a

working formula, aware that the current PAC is undoubtedly overwhelmed by the amount of work before it.

As the Member for Seme observed during the short debate on the matter, we need, as a House, to look for what is practical in our case in dealing with the said reports. Indeed, several options have been fronted. Key among them are:-

(1) That the House establishes a Committee to exclusively deal with the audited reports of political parties. That Committee would likely be composed of equal Members from either coalition in the House with representation from independent Members. Notably, the Committee would likely be chaired by an Independent Member.

(2) That the PAC realigns its operations and establishes subcommittees to deal with designated sectors. To this end, there would be a subcommittee to specifically look into the audited accounts of political parties.

Hon. Members, Article 124 of the Constitution empowers a House of Parliament to establish committees and Standing Orders for the orderly conduct of its proceedings. It is, therefore, upon this House to determine which way the matter will go as it reflects on the issues raised. This is a matter I will more willingly encourage consultation and cooperation rather than issue direction on the way forward. For doing so, I would be assuming the role of this House, as mandated under Article 124 of the constitution.

In the meantime, PAC has a fiduciary duty to this House to see to it that the political parties' audited accounts are examined and reports thereof tabled in the National Assembly for consideration. Should there be need for declaration of interest when certain political parties' audited accounts are being examined, a concerned Member or Members must first declare that interest and the chair will determine whether continued participation in the proceedings is tenable.

I thank you.

Let us have the Leader of the Majority Party.

PERSONAL STATEMENT

FALSE ALLEGATIONS MADE BY HON. WALUKE

Hon. A.B. Duale: Hon. Speaker, I rise under Standing Order No.84 to make a personal statement on a serious allegation made by Hon. John Waluke, the Member for Sirisia, in *The Star* of Friday, 20th April, 2016 regarding Senator Moses Wetangula, the Leader of the Minority Party in the Senate. He alleged that the Jubilee Coalition is funding him, and I was seen with him on Thursday giving him the "budget" for the weekend.

(Laughter)

On Thursday, after the crucial Bill, votes and the heavy rains, I met Hon. Moses Wetangula at the car park. He is my friend. There were many other Members of Parliament. We stood with him for about 10 minutes.

In 2007, Hon. John Waluke vied against Hon. Wetangula. Because of their political differences, Hon. Waluke alleged that Hon. Wetangula was seen with me on Thursday night

within Parliament Buildings. On that same night, after we met with many other Members, I went and visited a patient at the Nairobi Hospital.

On my way to the Nation Television (NTV), I passed through the Members of Parliament bar, and there were over 20 Members of Parliament from all the political parties. I stayed there for about 10 minutes. Hon. Waluke is arguing that I was presenting Hon. Wetangula with the weekend “budget” ahead of his rallies in Western Kenya. Hon. Wetangula was my friend even before I joined Parliament. He is a respectable leader in this country. I am sure that the Standing Orders of both the Senate and the National Assembly do not say that a Member cannot engage with another Member from either side of the political divide.

Hon. Speaker, I want to categorically state that the Leader of the Minority Party in the Senate is my friend and colleague. I am at liberty to mingle and converse with any other Member without the permission of Hon. John Waluke. He cannot go round casting aspersions on things he is not sure about. I represent the Jubilee Coalition, and we have not appropriated any budget. As a Coalition, we have not appropriated any budget for not only Senator Wetangula or the former Prime Minister Raila Odinga or the former Vice President Kalonzo Musyoka but also for our own members who go to various functions over the weekend.

While one is looking for political mileage, they should not do so by maligning others. I advise Hon. Waluke to get his facts right before calling someone out for doing nothing wrong. He should not include me or other people in his political petty arguments with Senator Wetangula, the bigger Bukusu politics and the western politics for him to become relevant in western political circles. As the African proverb says, “the lion does not turn around when the small animals in the bush walk around”. I should not be distracted by the likes of Hon. Waluke. If he has any problem with Senator Wetangula, he should sort it out and face him like any other politician in his western backyard. Senator Wetangula, this weekend, received a Member of Parliament on his side. I hope Hon. Waluke will be the next one in his constituency.

I beg to rest my case.

Hon. (Dr.) Pukose: Hon. Speaker---

Hon. Speaker: Hon. Pukose, it is a Statement under Standing Order No.84. It is not available for seconding.

(Laughter)

Allow me to introduce, in the Speakers Gallery, students from ACK Mitunguu Boys, Imenti South Constituency, Meru County.

(Applause)

They are welcome to observe proceedings in the National Assembly.

COMMUNICATION FROM THE CHAIR

THE ANNUAL NATIONAL PRAYER BREAKFAST

Hon. Speaker: Hon. Members, this is a belated Communication because today is Wednesday and tomorrow you may have a lot of work. This regards the Annual National Prayer Breakfast which is scheduled for 26th May, 2016.

Hon. Members, the Kenya National Assembly Prayer Fellowship Group shall host the Annual National Prayer Breakfast on Thursday, 26th May, 2016 at the Safari Park Hotel, Nairobi. It is expected that over 2,000 guests shall be in attendance. This prayer breakfast shall be an interdenominational prayer meeting sponsored by Members of Parliament. All Members of Parliament shall soon be receiving invitations to this event, and are requested to confirm attendance in order to facilitate sitting arrangements.

Hon. Members are, therefore, requested to confirm attendance with the office of the Clerk, at least, by 15th May, 2016. You are kindly requested to make contribution towards the cause. You may contact the Chairman of the Prayer Breakfast Group, Hon. Clement Muchiri Wambugu, who is also the Member of Parliament for Mathioya Constituency for any further clarifications.

Hon. Members, I also wish to announce that Members should not feel scared because there is an appeal for contributions. Your Parliamentary Service Commission has made this a national event and, therefore, budgeted for it. So, do not get scared because Hon. Wambugu is saying that you make contributions. There is nothing wrong in the African context to appeal to your friends if they wish to bring *mandazi* or such like stuff for the breakfast.

I thank you.

Next Order!

BILLS

First Readings

THE WITNESS PROTECTION (AMENDMENT) BILL

THE CIVIL AVIATION (AMENDMENT) BILL

(Orders for First Readings read – Read the First Time and ordered to be referred to the relevant Departmental Committees)

Second Readings

THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL

(Hon. A.B. Duale on 27.5.2016)

(Resumption of Debate interrupted on 4.5.2016 – Morning Sitting)

Hon. Speaker: Order, Hon. Members! We are on the business appearing as Order No.10 on the Supplementary Order Paper. I hear that there are no sufficient copies. We have ordered that sufficient copies be provided. As I had said earlier on, the reason for the Supplementary Order Paper had been discussed by the House Business Committee and agreed to. As I had said,

I commend members because you dealt with a lot of business during the Morning Sitting. What remains is for the Question to be put, which I hereby do.

(Question put and agreed to)

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

THE MISCELLANEOUS FEES AND LEVIES BILL

(Hon. A.B. Duale on 4.5.2016)

(Resumption of Debate interrupted on 4.5.2016 – Morning Sitting)

Hon. Speaker: Hon. Members, once again, what remains on this Business is for me to put the Question.

(Question put and agreed to)

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

MOTION

ADOPTION OF REPORT OF SELECT COMMITTEE ON NATIONAL
GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND

Hon. Lessonet: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Select Committee on National Government Constituencies Development Fund on its consideration of one hundred and eighty two (182) Constituency Committees of the National Government Constituency Development Fund, laid on the Table of the House on Wednesday, May 04, 2016. (Morning Sitting).

Pursuant to Standing Order No.48, I beg to move this Motion in an amended form. This amendment is to replace “140” with “182”. This is about 182 constituencies whose nominees have been approved by the Board and, equally, the Committee which I chair. We are now seeking the approval of this House.

With those remarks, I beg to move and request the Vice-Chair to second.

Hon. Speaker: Hon. Esther Gathogo.

Hon. (Ms.) Gathogo: Thank you, Hon. Speaker. I second.

(Hon. Onyango walked into the Chamber while the Speaker was on his feet)

Hon. Speaker: Hon. Members, take your seats. Do not walk like that. You are in the National Assembly. It is never done that way, the Member for Kabondo-Kasipul, Hon. Osele. Now, you will have to remain there as I propose the Question.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Let me allow the Member for Kabondo-Kasipul and Hon. Kamoti to take their seats.

(Question put and agreed to)

(Applause)

Let us move on to the next Order.

SPECIAL MOTION

FORMULA FOR SHARING REVENUE ALLOCATION TO COUNTIES

THAT, pursuant to the provisions of Article 217 of the Constitution, as read together with Section 16 of the Sixth Schedule to the Constitution, this House concurs with the Senate and approves the following Second Basis for Equitable Sharing of National Revenue allocated to Counties:

No.	Parameter	Current Formula (First Basis)	Proposed Formula (Second Basis)
1.	Population	45%	45%
2.	Basic Equal Share	25%	26%
3.	Poverty	20%	18%
4.	Land Area	8%	8%
5.	Fiscal Responsibility	2%	2%
6.	Development Factor	-	1%
	TOTAL	100%	100%

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, with your permission, I want to withdraw this Motion. I have looked at the law and the National Assembly has 60 days. We have confirmed that the County Allocation of Revenue Bill from the Senate is already published. Now that we have a standing Budget and Appropriations Committee, I want them to go and study the formula and bring a report to the House. I want to give the chance to Hon. Mutava Musyimi's Committee. This is the advice of the Parliamentary Budget Office (PBO). So, I want to stand the Motion down.

Hon. Speaker: Does it have a bearing on the contents of the County Allocation of Revenue Bill?

Hon. A.B. Duale: No. I think the Senate has already used the formula for the previous year. The Bill is already published and the Senate is debating it. So, this Motion has no bearing on the Bill. I want the Motion to be referred to the Budget and Appropriations Committee.

Hon. Speaker: So, we stand it down?

Hon. A.B. Duale: Yes.

(Motion withdrawn)

Hon. Speaker: Let us move on to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Muturi) left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

THE LAND LAWS (AMENDMENT) BILL

(Resumption of consideration in Committee interrupted on 3.5.2016)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, let us have some order. The Chair of the Committee, are you ready?

Hon. Members, we are now in the Committee of the whole House to consider the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015). We are starting from Clause 13 because we had considered the Bill up to Clause 12.

Clause 13

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Chair.

(Loud consultations)

Hon. Mwiru: Hon. Temporary Deputy Chairlady, you need to protect me from the high level of consultations.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Those who are leaving the House, please do so quietly. The Chair needs silence for him to continue, so please indulge him.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 13 of the Bill be deleted.

The import of this amendment is to ensure that the boundaries function is left to the county governments as provided for in the Fourth Schedule to the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members who have their cards in, please ensure that you want to speak to this amendment and not to what was before the House earlier on.

I give the Floor to Hon. John Serut. Do you want to speak to this amendment?

Hon. Serut: No, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. ole Kenta.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Chairlady. I would like to support the Committee on this amendment because it is a constitutional power bestowed upon county governments.

I support.

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

(Clause 13 deleted)

Clause 14

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair, you have an amendment to this clause.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 14 of the Bill be deleted.

The gist of this amendment is the same as in Clause 13. The function of boundaries should be left to the county governments as per the Fourth Schedule to the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): On my left, I see Hon. Harrison Kombe.

Hon. Kombe: Not on this one, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Abdikadir, is it on this amendment?

Hon. Aden: Yes, Hon. Temporary Deputy Chairlady. I support the amendment. It is very encouraging to see that the Chair has started complying with the Constitution. It is different from yesterday.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Samuel Gichigi.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairlady. Clause 14 that the Chair seeks to delete, according to me, was requesting the authority, whether it is the county government or not, to notify the people who are the subjects of a boundary dispute before the

dispute is resolved. I listened to the Chair but I do not think I got why he is deleting such a good clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think the Chair explained. I will give opportunity to Hon. Sakuda to further explain the deletion.

Hon. ole Sakuda: Thank you very much, Hon. Temporary Deputy Chairlady. I just want to allay the fears of the Member. What is captured under Clause 14 has already been captured in the Schedule of the same Bill. So, it is more of a repetition.

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

(Clause 14 deleted)

Clause 15

Hon. Mwiru: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 15 of the Bill be deleted.

It is because it is not necessary to change the marginal note as it deals with the certificate of title as the conclusive evidence proprietorship.

The amendment will guard against titles acquired unprocedurally through corrupt schemes. It will guard against protecting corrupt officers who issue titles un-procedurally; in a corrupt manner.

We are safeguarding the sanctity of title deeds.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is Hon. Tonui in the House? Since he is not in the House, let us hear Hon. Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Chairlady. The amendment proposed under Clause 15 is misplaced. If you look at the original Act, you will find that Section 26 deals with a certificate of title and not a challenge to entries in the register. Therefore, it should be deleted.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Kangongo.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady.

I support the deletion because we have had many fraudulent title deeds acquired at the Ministry of Lands, Housing and Urban Development. This is attributed to fraudsters who collude with officials from the Ministry of Lands.

In deleting this clause, we will streamline the process of issuance of title deeds and uphold the sanctity of title deeds.

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

(Clause 15 deleted)

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two amendments on this one. One is by Hon. Jones Mlolwa and the other by the Chairman of the Departmental Committee on Lands. We will start with that of the Member for Voi. If we carry it, the one by the Chairman will fall.

Is Hon. Mlolwa not in the House? Since he is not present, his amendment is dropped.

(Proposed amendment by Hon. Mlolwa dropped)

Hon. Members, let us go to the amendment by the Chairman of the Departmental Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 16 of the Bill be amended—

(a) by deleting paragraph (b);

(b) in paragraph (c), by deleting the words “and substituting therefor the following”;

(c) by deleting paragraph (d); and

(d) by deleting paragraph (e).

The reason is that the matters listed as “overriding interest” should remain as they are because they qualify as overriding interest on land.

Secondly, deleting “overriding interest” from the Land Registration Act will be in conflict with Article 63(2)(d) and 63(3) of the Constitution of Kenya.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali Mulu, do you want to speak on this amendment?

Hon. Mulu: Hon. Temporary Deputy Chairlady, I support the amendment based on the explanation by the Chairman.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Member for Narok South, do you want to speak on this amendment?

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

(Clause 16 as amended agreed to)

Clause 17

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have an amendment by the Hon. Chairman of the Departmental Committee.

Hon. Mwiru: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 17 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by deleting the words “or a lease” and substituting therefor the words “whose name appears in the register or a lease”

The reason is that we are trying to add a leasee. In this section, there is an issue of certificate of title and certificate of lease. That is why we have to involve leasee.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Member for Baringo Central Constituency.

Hon. Mwaita: Thank you, Hon. Temporary Deputy Chairlady, I support the Chairman of the Committee because this amendment is very critical. The name and details of the land owner should appear on the register.

I support.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Member for Rangwe, it is only you from your side who has indicated willingness to contribute. Therefore, I have to give you the chance again.

Hon. Ogalo: I support, Hon. Temporary Deputy Speaker.

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

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

(Clause 17 as amended agreed to)

Clause 18

Hon. Mwiru: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 18 of the Bill be amended by deleting paragraph (c).

A damaged document is not a lost document. That is why we are saying the suggested insertion does not make sense. If a document is damaged and not lost, it only needs to be replaced because it is there.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): If Hon. Gumbo is not in the House, let us hear Hon. Pukose.

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairlady, I support the amendment because when you say a document is damaged, it does not mean it is not there. It gives ambiguity because somebody will say “this document is damaged” and yet it can be read. That way, you are denied the right to own the property.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Esther Murugi.

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Chairlady, I also support the Chairman's amendment because damaged and destroyed are completely different. The amendment should stand.

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

(Clause 18 as amended agreed to)

Clause 19

Hon. Mwiru: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 19 of the Bill be deleted.

Section 35 of the Land Registration Act is clear. The amendment proposed is unnecessary because that Act deals with this matter. It is not necessary to have Clause 19.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Abdikadir.

Hon. Aden: Hon. Temporary Deputy Chairlady, I support the Chairman's position. For lack of any other word, that clause is irrelevant. It is proper that it is deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Member for Ndaragwa.

Hon. Nderitu: I also support the amendment because it is good. Section 35 of the original Land Registration Act is very clear.

I support the Chairman's amendment.

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

(Clause 19 deleted)

Clause 20

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have four proposed amendments on this clause. We have one each from Hon. Mlolwa, Hon. Chairman of the Departmental Committee on Lands, Hon. Kisang and Hon. Priscilla Nyokabi.

We will start with the one by Hon. Mlolwa. Is he in the House?

Hon. Mlolwa, please move your amendment.

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you. Go ahead with your explanation.

Hon. Mlolwa: It should be left as it is in the Land Registration Act. The Cabinet Secretary (CS) should be given ample opportunity to come up with a framework for change in the course of registration. The Registrar's powers should be given in the clause beyond good governance in as far as land registration is concerned. Too much is left in the Registrar's hands. We propose that it should remain as it is in the Land Registration Act.

Thank you.

(Question of the amendment proposed)

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I oppose Hon. Mlolwa's amendment. As they were explained yesterday, we need to separate the functions of each entity. On issues to do with registration, we agreed that they are supposed to be in the national Government. The national Government is represented by Cabinet Secretary. Therefore, I do not see why we should mix the issues in this clause.

Hon. (Ms.) Khamisi: Hon. Temporary Deputy Chairlady, I want to support the amendment by Hon. Mlolwa because we need to have checks and balances. If we leave all the powers to be with the Registrar, he can manipulate or abuse those powers. We want even the CS to be given an opportunity so that he can have a framework for the charges.

Thank you. I support Hon. Mlolwa.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, you can now move your amendment.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended—

(a) in paragraph (a) —

(i) by deleting the expression “(3)” and substituting therefore the expression (4)”;

(ii) by deleting proviso (ii);

(b) in paragraph (b)–

(i) by deleting the proposed new subsection (5);

(ii) by deleting the proposed new subsection (6);

(iii) by deleting the proposed new subsection (7);

(iv) by deleting the proposed new subsection (10) and substituting therefor the following new subsection—

“(10) Where more than one instrument or application are presented on the same day such that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar shall reject the registration and shall inform the applicants of such rejection.”

(v) in the proposed new subsection (12), by inserting the following proviso—

“Provided that upon commencement of the Act, any instrument that shall not have been registered will be required to be so registered within three months”; and,

(vi) by deleting the proposed new sub-section (13).

The first amendment is a matter of numbering. It is not an issue of any change. Two, we are proposing in Sections 5 to 7 that the Registrar may not always be in a position to know all the dealings in land at every particular time. So, we cannot leave the matter on one person. He may not know all the dealings at any given time as an individual.

(Question of the amendment proposed)

Hon. Wangamati: Thank you, Hon. Temporary Deputy Chairlady. I support the Chairman of the Committee on this.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. William Kisang, you are now on the Floor with your amendment.

Hon. (Eng.) Gumbo: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kisang, give me a minute to take a point of order from Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I do not know what you meant by “further amended.” I thought if an amendment is lost, the only amendment to be carried is this one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): On which particular amendment?

Hon. (Eng.) Gumbo: On Clause 20. The earlier amendment was lost. If it is lost, then we revert to the clause as it is. When our records show that it is further amendment, it then tends to give the impression that there was an earlier amendment when the other one was negated. I thought it is just important to put it on record.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay, you have put it on record. Thank you for being particular. Hon. Kisang, move your amendment.

Hon. Kisang: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended in paragraph (a) of the proposed new Sub-section (3) by deleting the words “five times” and substituting therefor the words “two times” appearing in proviso (i).

On Clause 20(3)(i), when you are late in paying registration fee for your title, the law proposes that you pay five times the fine, which is very punitive. I am proposing that you pay double the fee instead of five times. It will be unfair to charge five times instead of the usual fee. I am proposing that we only pay double just like when you take a loan in the bank. There was a law that was passed in the Ninth Parliament where you cannot pay more than twice the loan. I

am proposing that even for that fee, you pay twice the fee that was prescribed by the Registrar of Lands.

(Question of the amendment proposed)

Hon. Mwaita: Thank you, Hon. Temporary Deputy Chairlady. I support this amendment because it is in compliance with the *in duplum* rule. There is no way you will be penalised five times even when you do not pay. It is in keeping with the practices in the financial sector.

I support.

Hon. Kombe: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. It is abnormal to go five times. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Onyango Oyoo. Do you want to speak on this amendment?

Hon. Oyoo: Sorry, Hon. Temporary Deputy Chairlady. I had intended to talk, but I have been cautioned that the day has been devoted to land barons like my friend Hon. John Serut, Hon. Mwaita and Hon. George Oner - that I should play no ball today.

Thank you.

Hon. (Ms.) Chepkwony: Hon. Temporary Deputy Chairlady, I support the amendment because you cannot demand more than what the person has taken. For example, you cannot multiple it five times. There is no such interest.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman of Committee, do you want to speak on this amendment by Hon. Kisang?

Hon. Mwiru: Hon. Temporary Deputy Chairlady, the logic has dawned in my mind. Therefore, I support Hon. Kisang's amendment.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The last amendment is by Hon. Priscilla Nyokabi. Is she in the House? She is not and so, we drop her amendment.

(Proposed amendment by Hon. (Ms.) Kanyua dropped)

(Clause 20 as amended to)

Clause 21

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 21 of the Bill be amended in paragraph (b) by deleting the expression "(a)" and substituting therefor the expression "(b)."

The amendment is seeking to ensure clarity in the section. Paragraph (a) is clearer than paragraph (b), therefore it is just a matter of clarity.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gumbo, you are the only one on the request list from that side. Do you want to speak to this?

Hon. (Eng.) Gumbo: I had wanted to contribute to Clause 20. Thank you.

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

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

(Clause 21 as amended agreed to)

Clause 22

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 22 of the Bill be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What is reason, for the sake of other Members?

Hon. Mlolwa: The reason is that the amendment is silent on the role of the National Land Commission which is a very important body when it comes to land matters. It means that the interest of the minority is not taken care of when this is left as it is. We want it to be left the way it is in the original Act.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us start with the Chairperson of the Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I oppose Hon. Mlolwa's amendment because the Supreme Court has already advised on the functions of the National Land Commission (NLC) and the Ministry of Land, Housing and Urban Development. We do not need to go back to the conflict between the two entities so that we have to define their specific functions every time.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me give a chance to the Member for Magarini.

Hon. Kombe: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the amendment. If we remove those powers from NLC, it would be better if we disbanded it. As it is now, it seems like the amendments are meant to interfere with the land rights of some regions. This amendment is not for the entire country, but for sections of the country. It is clear that the regions that are being targeted are the Coast, Rift Valley, North Eastern and Eastern. Let the clause remain as it is in the original Act.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me give the Floor to Hon. Janet Wanyama.

Hon. (Ms.) Wanyama: Thank you, Hon. Temporary Deputy Chairlady. I wish to support the Chair of the Departmental Committee on Lands. They discussed it because Mr. Mlolwa also belongs to---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, we are considering the amendment by Hon. Mlolwa and not by the Chairperson of the Committee. Hon. Mlolwa's amendment is deletion of the clause. Please, be sure about what we are doing.

Hon. (Ms.) Wanyama: Thank you, Hon. Temporary Deputy Chairlady. I oppose the amendment by Hon. Mlolwa because he also belongs to the Committee. As my colleague has said, we should not say that issues to do with land are just for the Members of the Committee alone. We all need to ventilate on the issue. I oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will listen to two more Members. Let us have Hon. Mwadime.

Hon. Mwadime: Hon. Temporary Deputy Chairlady, I support the amendment by Hon. Mlolwa simply because of the checks and balances. As it is, it will ignore the fact that the register should be the record by another authority. The idea of checks and balances is very important. It should be left as it is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The last Member I will give a chance to speak on this issue is Hon. Serut.

Hon. Serut: Thank you, Hon. Temporary Deputy Chairlady. I want to specifically speak to Clause 22 (a) which seeks to delete sub-section (2) of Section 39 of the Land Registration Act and substitute with a new sub-section which says: "No certificate shall be required under subsection (1) if the instrument relates to a sublease where the lease is by virtue of any law subject to full payment of the rent by the head-lessor." The certificate they are making reference to here is a certificate in terms of payment of rent by the head-lessor. This is the first registration. It has nothing to do with the certificate of title. It is a certificate issued by the land rates section. Deleting it means then that the head-lessor will not pay rent.

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

(Clause 22 deleted)

(Clauses 23, 24, 25 and 26 agreed to)

Clause 27

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There are amendments to this clause by Hon. Mlolwa and the Chair of the Committee. If the amendment by Hon. Mlolwa is carried, that of the Chair of the Committee will fall. Hon. Mlolwa, please, move your amendment to Clause 27

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 27 of the Bill be deleted.

In deleting the clause, we add another section which says that the Cabinet Secretary shall cause the---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mlolwa, you have just confused us. Did you say as proposed by the Committee?

Hon. Mlolwa: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Did you mean as per the Order Paper?

Hon. Mlolwa: As per the Order Paper.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So not by the Committee?

Hon. Mlolwa: I apologise. I meant as per the Order Paper.

Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 27 of the Bill be deleted.

This is so that we insert a new sub-section which says that the Cabinet Secretary shall cause the review of the Sectional Properties Act No.21 of 1987 for effective implementation of Section 56 of the Land Registration Act.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us start with the Hon. Member for Turkana Central. I apologise. Let me first give a chance to the Chairperson of the Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, there were quite a number of consultations going on around here and I could not hear his last justification. I really want to know whether I can carry his amendment or not.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, Members, let us pay attention to each other. Every time somebody moves an amendment and explains it, another person will say he has never heard it. Please, let us maintain some decorum. Hon. Mlolwa, for the sake of the Members and the Chair who did not hear your explanation, please, repeat it.

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, deleting what is on the Order Paper and substituting it with the new sub-clause will ensure that the new proposed amendment will be in line with Article 68 of the Constitution. Instead of having piecemeal amendments, the Cabinet Secretary will cause the whole Act to be reviewed.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you proposing deletion of the clause?

Hon. Mlolwa: Yes, the Sectional Properties Act No.21 of 1987.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, just give him time. I will guide him until we get it right. Hon. Mlolwa, are you proposing deletion of the entire Clause 27?

Hon. Mlolwa: No, I did not say that. I said deletion of what has been proposed in the Bill.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): In the Order Paper, you are proposing to delete the entire Clause 27.

Hon. Mlolwa: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you want to delete the entire Clause 27?

Hon. Mlolwa: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Give us the reasons so that Members can debate.

Hon. Mlolwa: This will be in line with Article 68 of the Constitution.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Which says? Maybe, you need the Constitution. Do you have a copy of it?

(Loud consultations)

Which Article of the Constitution are you referring to? Did you say Article 68? Please, quote it. Hon. Mlolwa, we are waiting for your explanation. Please give him the microphone.

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, what I am saying is that instead of dealing with this section piecemeal, we need to review the whole of it. So, we should give the Cabinet Secretary opportunity to come up with a new proposal which will amend everything and put it in order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, you have heard his explanation. Let us now open the Floor to debate.

(Loud consultations)

That is his explanation. So, it is open to debate. Hon. Member for Marakwet East, go ahead.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairlady. I plead with my fellow Members that the amendment on the Order Paper has been subjected to scrutiny by the Committee and we do not doubt the capacity of the Committee. When someone brings an amendment to a Bill, let him be sure because some of us are not Members of the Committee. You need to explain so that it becomes clear why you want to amend. Sometimes, we just say delete and then later, we make it worse than the law that exists. I plead with my colleagues to make laws for posterity, but not for regions or individuals.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. John Mbadi, do you want to speak to this amendment.

Hon. Ng'ongo: No, Hon. Temporary Deputy Chairlady. Actually, I have the Constitution in front of me. I thought we need to look at Article 68 of the Constitution and, maybe, have Hon. Mlolwa base his argument on what we have read. This Article talks about the minimum acreage and maximum land holding. That is a big thing under that Article: Reviewing the manner in which land may be converted from one category to another and to regulate the protection of matrimonial property and to protect, conserve and provide access to all public land. I am just highlighting what is in that Article. Then it is to enable the review of all grants or dispositions of public land. Based on that, Hon. Mlolwa could tie it with Clause 27 so that we see how it is contradicting the Constitution in which case then we will make a decision.

Thank you.

(Question, that the words to be left out be left out,

put and negatived)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, you can now move your amendment on the same clause.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 27 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.”

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please give the Chair time.

Hon. Mwiru: Thank you, Hon. Temporary Deputy Chairlady. The essence of this proposed amendment is to clearly set out conditions and structures for registering a charge. So, the root and the way we are supposed to register a charge is what we are trying to indicate here or put in a clearer way.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I will start with the Hon. Member for Bondo.

Hon. Ogolla: Hon. Temporary Deputy Chairlady, I support the Chair of the Committee because this will amount to double charges if it was in the original version.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member for Kajiado West. Is he in the House? Member for Turkana Central.

Hon. Nakara. Thank you, Hon. Temporary Deputy Chairlady. You cannot register land unless the outstanding rent is cleared. It has also to be certified that there is no rent owing in the rest of the land.

I support.

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

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

(Clause 27 as amended agreed to)

(Clauses 28, 29, 30 and 31 agreed to)

Clause 32

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Again, we have two amendments. The same follows that if Hon. Mlolwa's amendment is carried, that of the Chair of the Committee will fall. So, we will start with Hon. Mlolwa.

(Loud consultations)

Hon. Members, please, I do not want to call out names. Give the Member time.

Hon. Mlolwa: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 32 be deleted.

The reason is that the Land Registration Act can be amended in a more serious manner than we are rushing it now. We are rushing so many amendments today. We need to be serious. We are making laws for this country. We are not politicising this matter. I plead that we reason together so that we do the right thing for Kenya.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I start with the Chair of the Committee. He has explained. Go ahead.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I oppose profusely. Hon. Mlolwa has explained that we are doing politics. I am doing legislation and I am doing it for the posterity of the country. So, I have not found any reason at all that justifies the deletion of the clause. Indeed, the purpose of amending the National Land Commission Act, the National Registration Act and the Land Act, is informed by issues to do with functions or matters to do with the administration of land. They have to be very clear. That is what we are trying to do as a Parliament today, so that we can move forward and achieve reforms.

Hon. (Dr.) Pukose: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What is your point of order, Hon. Pukose?

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairlady, Hon. Kangogo talked of Hon. Mlolwa being a Member of the Departmental Committee on Lands. I do not know whether it is right for a Member of a Departmental Committee on Lands to bring amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Pukose has raised a fundamental issue.

(Hon. A.B. Duale consulted loudly)

I wish the Leader of the Majority Party would listen to what is being discussed here.

(Hon. (Eng.) Gumbo stood on the aisle)

Hon. Gumbo, when you are right in front of me, I cannot concentrate. Hon. Pukose has raised a valid question. It is the practice in this House that Members of a Committee are in agreement with the Committee. However, being also a Member who represents a constituency, he still has a right to bring amendments on the Floor of the House. It is just good practice that normally, if you are in the Committee, you support the Committee Report. But it does not mean that you cannot bring an amendment.

Let us move on. Have you put your card? You do not have a card and that is why I cannot find you. Speak from there Chief Whip of the Minority Party.

Hon. Mwadeghu: Hon. Temporary Deputy Chairlady, it is wrong to come to the Floor of the House and say a Member belongs to a Committee that he does not belong to. Hon. Mlolwa is not a member of the Departmental Committee on Lands. I want to correct that.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is clear to you, Hon. Pukose. He is not a Member of the Committee. So, he has every right to bring amendments. Hon. Gichigi.

Hon. Gichigi: Hon. Temporary Deputy Chairlady, I find it very difficult to understand why my very good friend, Hon. Mlolwa, is bringing these amendments. He has been given a chance to explain to us the basis of his amendments but he is not saying anything. When he says that we should not bring laws that are political, what has that got to do with his amendment?

The position is that the amendments that have been brought here by this law are in good order. They are tidying up issues of disputes, fraud and appeals. What does that have to do with politics? I completely oppose this amendment.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, you also have an amendment. Please, go ahead.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 32 of the Bill be amended—

(a) in paragraph (b), by inserting the following proviso at the end of the proposed new Subsection (2)(b)—

“Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration”;

(b) in paragraph (c), by deleting the words “deleting subsection (3) and substituting therefor the following subsection” appearing in the introductory statement and substituting therefor the words “inserting the following new subsection immediately after subsection (3)”;

(c) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) by deleting the introductory statement in subsection (4) and substituting therefor the following new introductory statement—

“(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this section and

without prejudice to the generality of the foregoing, the regulations may provide for—”

The purpose of the amendment is to seek and afford the proprietor of the land adequate notice of alteration. So, if there is supposed to be any alteration, the proprietor must be notified in good time and given ample time to know what the alternation is for.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is the Hon. Member for Cherengany in the House?

Hon. Korir: I am here. I support the amendment by the Chair. As everybody has said, the Bill and these amendments are going to clean up the mess that we have had for a long time. By bringing this, it helps a lot especially with errors such as the names that were not in good order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Mbadi.

Hon. Ng’ongo: I have difficulties supporting this amendment. First, knowing Kenya as it is, if you give so many days to people who own land or proprietors an opportunity for changes to be made, they will go to court and nothing will happen. They will always talk and block some amendments for changes to be made. So, I do not agree that this is something desirable.

Secondly, the Chair was a bit economical as he has only explained part of his amendments. However, there is part “d” that gives the Cabinet Secretary (CS) power to make regulations to prescribe the guidelines that the registrar shall follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing. I have difficulty giving the CS more power in terms of managing land because that is where we are coming from.

One reason why the Land Chapter became an issue in this Republic is because of the Executive’s interference and, more particularly, now. Initially, it was the President but now, you are bringing in the CS who has been fighting since the new land laws came into force to find its way in managing land; something we have been resisting. The people of Kenya took away that responsibility deliberately. So, for me, Clause 32 is not going to serve the interests of this county properly.

I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Hon. Member for Kitutu Chache.

Hon. Angwenyi: I rise to support the amendment by the Chair of the Committee. We are enacting these laws for posterity and not for our immediate use. These amendments that have been proposed by the Chair go down to clean up the Land Act and make it easier for Kenyans to transact business on land. I do not know why we want to say that the Executive should not take part in some decision making. The Executive is elected by the people of Kenya. Their existence is constitutional. This House is not a depository of knowledge. All the arms of Government have been given power to act on behalf of Kenyans. Therefore, the CS is entitled to serve the people of Kenya.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I give the Floor to Hon. Paul Otuoma.

Hon. (Dr.) Nyongesa: Thank you. I support that amendment by the Committee Chair. If you look at “d”, that amendment is not giving the CS some excessive power to do anything. It is only giving the CS power to make regulations in terms of registrations and to prescribe regulations on the functions of registration of title. We have already agreed on the fundamental issues on how to register a title? That is a function of the national Government and it is just natural that when you are making regulations on how to effect that, it can only be made by the CS. So, I do not think that it is the CS doing the job as Hon. Mbadi is trying to put it. He is just making regulations. We just passed a National Government Constituencies Development Fund (NGCDF) Bill and the regulations were made by the CS on how to effect that. How does that now give the CS power over NGCDF?

I want to plead with my Members that this amendment by the Committee Chair is completely in order. This is so that we do not leave a lot of ambiguities. What is wrong with giving the owner or the proprietor of land time to make an application? Why do you want to rush something because you think that somebody will go to court? We are the ones who create these laws. What is wrong when I am aggrieved and I go to court to seek relieve. Is there any harm in doing that? So, Hon. Temporary Deputy Chairlady, I support the amendment as proposed by the Chair of the Departmental Committee on Lands.

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

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

(Clause 32 as amended agreed to)

(Clauses 33 and 34 agreed to)

Clause 35

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two amendments by Hon. Mlolwa and the Hon. Chair of the Committee. We will start with that of Hon. Mlolwa, the Member for Voi. If carried, that of the Chair will fall.

Hon. Mlolwa: Thank you. I wish to withdraw this amendment because of the same reasons which I had given earlier on.

(Proposed amendment by Hon. Mlolwa withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. We, therefore, go to the amendment by the Chair of the Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 35 of the Bill be amended in paragraph (d) by deleting the proposed new subsection (8) and substituting therefor the following new subsection—

“(8) The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent”

It is a matter of correcting some grammatical error. So, there is no much to worry about it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. ole Ntutu.

Hon. ole Ntutu: There is nothing to comment about this because it is just a matter of correcting the grammatical mistakes.

So, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You are making it very hard for me on my left side because nobody is asking to speak. Hon. Gumbo is the only one whose card is in from this side.

So, I want to put the Question.

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

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

(Clause 35 as amended agreed to)

Clause 36

Hon. Mwiru: Hon Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 36 of the Bill be deleted and replaced by the following new clause—

Amendment of section 92 of No. 3 of 2012.	36. Section 92 of the Land Registration Act is amended by inserting the words “provided that a designated co-tenant shall be provided with the original title to the land.
---	--

The gist of this is that it is not practical to have several regional certificate of titles issued to each co-tenant. In terms of this amendment then, one co-tenant will be issued with the original certificate of title while the others will be issued with copies. It is not necessary to give each one of them an original certificate, especially where they are co-owning.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member for Bomet East.

Hon. B.K. Bett: Hon. Temporary Deputy Chairlady, I support because it is impossible for the two co-tenants to have original certificates of title. One of them will have an original and the other a copy.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member for Igembe North.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Chairlady. I rise to support this amendment. It is important for people co-owning a piece of land, for each of them to have a document to indicate so.

Hon. Serut: On a point of order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Unless you have a different opinion, Hon. Serut.

Hon. Serut: Hon. Temporary Deputy Chairlady, I have a different opinion. There must be a rider to the effect that there is concurrence of the rest of the membership. I say so because with one of the co-owners holding the original title in this era of forgeries, they might be tempted to go ahead and forge signatures of the other members and transfer the property. There must be concurrence of the other co-owners.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Serut, you are speaking like you are suggesting a further amendment, which can only be done through the Chair of the Committee.

Hon. Serut: Yes, I do. I am persuading the Chair to proceed and add that amendment. That is because I worked in that department and I saw that.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is something you can do quietly with the Chair and see whether he will agree to carry your further amendment. Let me give the Floor to Hon. Jacob Macharia.

Hon. Macharia: Thank you, Hon. Temporary Deputy Chairlady. I support the amendment by the Chair of the Departmental Committee on Lands. It is important that one tenant has the original title and co-tenant receives a copy.

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

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

(Clause 36 as amended agreed to)

Clause 37

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two amendments - one by Hon. Mishi and another by the Chair of the Committee. We start with that of Hon. Mishi Juma. If it carries the day, then that of the Chair will fall. Hon. Mishi.

Hon. (Ms.) Khamisi: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, clause 37 of the Bill be deleted.

That is because in the amendment Bill, it states “subject to any written law” to the contrary. If we go back to the Land Registration Act, it has already categorically said “subject to the law on matrimonial property”. Also in the Constitution, Article 68 (c)(iii) it states:-

“68(c)(iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home, during and on the termination of marriage”

And Article 60(f) of the Constitution states:-

“60(f) elimination of gender discrimination in law, customs and practices related to land and property in land.

I am afraid we can only say written law if there is no law on matrimonial property. We already have the matrimonial law and we need to stick to it. It is better the way it was rather than what we have right now. As women of this country, we have suffered a lot in terms of matrimonial property. I beg to amend by deleting.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay, Hon. Member.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I start with the Chair of the Committee.

Hon. Mwiru: I want to oppose Hon. Mishi’s amendment because we have already enacted an Act in this House dealing with matrimonial property. We have the Matrimonial Property Act and even in my own amendment which I am going to read thereafter, we are referring to the same. It may not work out the way she wants to put it.

It is important to realize that we are not operating in a vacuum of any other laws in this country. There are some areas that are supposed to be governed by a certain regime of laws. That is my thinking.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J. Kajwang’.

Hon. Kajwang’: Issues to deal with land laws sometimes can be very complicated and it is necessary also that we have a wholesome view. You can have a property and a spouse can obtain interest by virtue of Company Law that we passed the other day. A spouse can have a property by virtue of what used to be Transfer of Property Law or because of laws we have inherited. That is because under the Judicature Act, we have received laws that we are using. So, this is a technical area.

Yes, I can see my sister is struggling that we should have Matrimonial Property Act there, but she is actually defeating and limiting herself. A spouse can have rights from so many other laws that come to be in the way in which the court will construe that particular matter. When you say subject to any written law, it opens the gate to any written law that will be admissible in this country. If a spouse, therefore, has an interest in that matter, then it should be dealt with by Matrimonial Property Act. In other words, therefore, the property becomes a matrimonial property. If my sister was well persuaded, the amendment I see by the Chair is much better, to me, than if we left it without being very specific.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mishi, are you convinced or persuaded?

Hon. (Ms.) Khamisi: I am not persuaded. That is because in part (ii), we are deleting the words “joint tenants” appearing in paragraph (a) and substituting therefor the words “tenants in

common”. Joint tenant means 50-50 share. But if it is tenants in common, it means when you are together, you have ownership of that property. What if you divorce? What will happen to that property? If the Chair can give me a substantive reason why we have changed “joint tenants” to “tenants in common”, then maybe I can understand.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mishi is not persuaded. Hon. Mbadi, I have given you a chance before. Let me give Hon. Nassir who has just come in and then I will put the Question.

Hon. Nassir: Asante, Mhe. Naibu Mwenyekiti wa Muda. Ningependa tuweze kuelewa pale dada Mishi anatoka. Anazungumzia hii sheria kipengele ambacho Kamati inakataa na kukiuka. Inazungumzia maswala na mambo ya ndoa. Nakubaliana na dadangu na naomba hata kama kuna mambo mengine, haya ya dada zetu and kaka wetu wengine ambao wanaweza kuumia kwa sababu ya mambo kama haya, ningepomba sana waweze kuikubali hii njia ambayo dada Mishi anafuata.

Hon. Ng’ongo: On a point of order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): No, Hon. Mbadi.

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

Hon. Ngóngo: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, what is your point order? Remember, we are trying to move forward. This is a Committee of the whole House.

Hon. Ngóngo: Hon. Temporary Deputy Chairlady, I was just begging that, at times, when it comes to this sensitive matter, you allow a bit of time.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I have done so.

Hon. Ngóngo: Hon. Temporary Deputy Chairlady, I have looked at the original Act. Go to Section 93(2).

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have already done that and I gave enough opportunity to everybody on both sides of the House.

Hon. Ngóngo: Can I just raise my point and if it is not making sense, then you can leave it. This amendment has deleted subsection (ii), which says that if land is held in the name of one spouse but the other spouse has contributed---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Nothing was passed for it to be deleted. She was defeated.

Hon. Ngóngo: If you give us time---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, even your explanation is on deletion. It has not been deleted. We are now going to the second amendment by the Departmental Committee Chair. Please, listen carefully because you are getting agitated and yet, we did not pass what Hon. Mishi had proposed. Let us proceed.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 37 of the Bill be deleted and replaced by the following new clause—

Amendment of 37. Section 93 of the Land Registration Act is deleted and section 93 replaced by the following new section 93—
of No. 3 of 2012.

“Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act.”

As a Committee, we are trying to ensure that the law is applied even where there is joint ownership. It is important to realize that joint ownership does not mean equal shareholding. It is necessary to realize that there are things we call co-owning a property. We are amending Section 93 of the Land Registration Act and bringing in the new sentence that subject it to any written law.

(Loud consultations)

Hon. Temporary Deputy Chairlady, let me be listened to so that, at least, I can---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I cannot repeat this all the time. It is becoming too much!

Hon. Mwiru: Subject to any written law to the contrary, if a spouse obtains an interest during the subsistence of a marriage, for the co-ownership and use of both spouses, such property shall be deemed to be a matrimonial property and shall be dealt with under the Matrimonial Property Act. Therefore, we are introducing the activity and the regime of the matrimonial property so that such co-ownership can be dealt with under the Matrimonial Property Act. Therefore, we are introducing the activity and the regime of matrimonial property so that one spouse cannot deny the other the right of the property.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): For your information, there will be no contribution from my left side, except Hon. Gladys Wanga.

Hon. Members: She is not there!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): She is there! I have seen her.

Hon. (Ms.) Nyasuna: Thank you, Hon. Temporary Deputy Chairlady. As explained by the Departmental Committee Chair, this amendment begins to take care of what Hon. Mishi was raising. We are very keen to operate under the regime of the Matrimonial Property Act as passed by this House. That brings in a bit of comfort. There is just the question that Hon. Mishi asked, which Hon. Serut was very keen to answer. It is the difference between “tenants in common” and “joint tenants”. So, can we just get that explanation in the process? However, this is a step in the right direction.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Esther Murugi, you want to speak to this amendment?

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Chairlady, I just want to support the Chair and assure the House that we debated this clause at length and finally decided that this was the best amendment to this particular clause. I support the Chairman. I want to assure Hon. Mishi

that the interests of women are well taken care of. When we do it the way you have proposed, we shall be narrowing the gap for them. However, if we leave it as it is, we will be opening them to all the laws that are there.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, did you get the concern of Hon. Gladys Wanga? Are you able to respond to it?

Hon. Mwiru: The good thing is that Hon. Wanga has got the gist of what we were trying to do as a Committee, but she was referring to her friend, Hon. Serut, to explain to her.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Serut, are you able to explain or can I give the Floor to Hon. T.J. Kajwang', who would like to do so?

Hon. Serut: Hon. Temporary Deputy Chairlady, "joint tenancy" means you own the property together. There is no defined share. If it is 100 acres, all the parties own the 100 acres together. It is inseparable kind of share. Common tenancy varies. One party could own 25 per cent while the other could own 75 per cent. "Joint tenancy" means owning equal shares. Soon, you will be inviting me for a lecture on that one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J. Kajwang', please make it clear for us.

Hon. Kajwang': Hon. Temporary Deputy Chairlady, these things are just about the kind of tenure that we deal in. Previously, we used to have land which was owned under the Registration of Titles Act. They were divided with land which was owned under the Registration of Titles Act. This is where the problem is with definitions, but we have since brought all the laws together. We are trying to have one tenure system.

(Hon. A.B. Duale consulted loudly)

If the Leader of the Majority Party---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Order, Leader of the Majority Party!

Hon. Kajwang': Hon. Temporary Deputy Chairlady, this is a technical area. Hon. Members can only benefit if they just listened. I will not proceed until the Leader of the Majority Party sits down.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Leader of the Majority Party, please, listen to what Hon. Kajwang' is saying.

Hon. Kajwang': Leader of the Majority Party, this is a technical area that I am sure lawyers will help you understand. When you have joint tenancy, it is because it is indivisible shareholding. You cannot say that you have three acres out of ten acres. The whole 10 acres belong to you. If it falls in an estate, it will be decided who becomes the benefactor of that estate. On the other side, the shares are in common, in which case the registrar may define the shares. It has nothing to do with either person of those who are living together, or a person who is divorced. What it means is that if you went into a property and owned it with your husband; all of you own the 10 acres. You cannot say that your husband owns 10 per cent. You all own all of it. If it falls that it is in divorce, then the court will decide which of those parcels will belong to whom. It is about tenure. The English law relies on tenure, which we should not be worried or concerned about at this point.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What is it, Leader of the Majority Party? We have had discussions on this issue. The most important thing in the Committee of the whole House is to vote.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, you can put the Question, but we are dealing with the serious issue of land. The problem with this Bill is that Members should have had the principal Land Registration Act, so that they can see what is in Section 93 of the current law. I am not stopping it. Hon. Serut explained very well but I wanted the Chair to tell us what tenant ownership is.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I have heard explanations on that issue twice. Those of you who have the Bill – which is available to all Members – at the tail-end, are the sections of the parent Act that are being amended. We have all the information we need to make a decision.

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

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

(Clause 37 as amended agreed to)

Clause 38

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 38 of the Bill be deleted and replaced by the following new clause—

Amendment of
Section 94 of No. 3
of 2012.

38. Section 94 of the Land Registration Act is amended—

(a) in subsection (1), by deleting the words “certificate of land” and substituting therefor the words “certificate of title or certificate of lease”;

(b) by inserting the following new subsection immediately after subsection (4)—

“(5) Any co-tenant aggrieved by the decision of the Registrar may apply to the Court for a review of that decision.”

Hon. Temporary Deputy Chairlady, this is to ensure that once consent is given, an application for partition of land is made. It means any person aggrieved by the decision of the registrar may apply to court for review of the decision.

The amendment seeks to use the correct term, “certificate of title or lease” instead of “certificate of land.”

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairlady, I wanted to speak on the earlier clause, but I support the proposed amendment by the Committee because it clarifies the process of partition as listed in Section 94 of the Original Act.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. At last, you have recognised me.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I was looking for you on my right. I am used to seeing you here.

Hon. Chepkong'a: I am told this is a cold area and people are not seen here. I want to support the proposed amendment by the Chairman of the Committee. It clarifies the law by ensuring that the person who is aggrieved is given the right to apply to court.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Samburu North.

Hon. Lentoimaga: Hon. Temporary Deputy Chairlady, I support the amendment because it changes the name "certificate of land" to "certificate of title." This is very specific because Kenyans are conversant with titles than certificates.

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

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

(Clause 38 as amended agreed to)

Clause 39

Hon. Mwiru: Hon. Temporary Deputy Chairlady, allow me to consult my team for a minute.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Proceed, Hon. Mwiru.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, after consulting, I beg to drop my proposed amendment.

(Proposed amendment by Hon. Mwiru dropped)

(Clause 39 agreed to)

Clause 40

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 40 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

“(b) in sub-section (2) by deleting the word “public” appearing immediately after the word “unlawfully occupies”.

The amendment seeks to open up offences to unlawful occupation of classes of land. We have to open up for purposes of the law to apply where criminality might come in.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Marakwet East.

Hon. Bowen: Hon. Temporary Deputy Chairlady, I support the proposed amendment by the Committee because it provides for legal proceedings where there is an offence or public land has been taken away by individuals.

Hon. Ng'ongo: Hon. Temporary Deputy Chairlady, I support because the initial Bill intended to delete Sub-section 2 of Section 103 of the Land Registration Act which reads as follows:-

“A person who unlawfully occupies public land commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding one hundred shillings for every day during which the offence continues.”

If Sub-clause 2 is deleted, then it will not be easy to deal with those who unlawfully occupy public land. This amendment takes into consideration our land and not just public land. It is a good amendment.

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

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

(Clause 40 as amended agreed to)

(Clause 41 agreed to)

Clause 42

Hon. (Ms.) Khamisi: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 42 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, it purports to delete the definition of “board”. Section 2 of the National Land Commission (NLC) Act states:-

“2. Interpretation

(1) In this Act, unless the context otherwise requires—

“board” means a county land management board established pursuant to section 18;”

We should remember that we have the principle of devolution. If we delete the definition of the word “board”, there is Clause 45 which also deletes the “board”. That offends Article 6(3) of the Constitution which states:-

“A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

There was a proposal of having the county land management boards which are now operational. If we delete the definition and Clause 45, then we will not have that structure in the county.

(Question of the amendment proposed)

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I want to oppose that proposed amendment again. The county land management boards are not the property of the NLC at the moment. The county land management boards have been approved by the county assemblies and are answerable to them. We want the NLC to devolve itself directly, other than using those boards. The county land management boards are the ones which are manipulated by the governors and the county assemblies. They can afford to take the National Land Commission (NLC) to court because they have been approved by another body. They are not part of the NLC. That is what we are trying to say. We are giving the NLC room to devolve like the IEBC and other commissions, so that their officers in the counties can be answerable directly to the NLC rather than to another body.

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

Hon. (Ms.) Nyasuna: *(Off-record)*

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gladys Wanga, before I put the last Question let me hear you.

(Loud consultations)

Order, Hon. Members! Please, allow the Member to make his contribution.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, if we delete the definition of the word “board” as provided how do we redefine it? The Departmental Committee Chair has explained about the boards, but it is being disputed that the NLC has its boards.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wanga, we have already negated the proposal by Hon. Mishi. Her amendment has fallen.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, the deletion I am referring to is that proposed by Hon. Mishi. We are deleting the definition but we are not providing a new definition. When you delete a definition and you do not provide a new definition, what are we dealing with? What it means is that you are killing any board that is on the ground. The Departmental Committee Chair said that the NLC should have its own structure but can that be defined as a board?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Turkana Central, please do not catch my attention the way you have just done. It is disrespectful. Please, catch my eye by pressing the intervention button.

Hon. Gladys, my thinking is that maybe you have not followed that we did not pass the amendment by Hon. Mishi. Your fears have already been taken care of. Your fear is that we have done what Hon. Mishi wanted us to do, which we did not do. Do you get that?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, my understanding is that Hon. Mishi wanted us to delete Clause 42. What I was contributing on is what Clause 42, if left in place, will be doing. Clause 42 is deleting the definition of the word “board”. If that definition is deleted as it is indicated there, then what suffices? What is the new definition of “board”? That is my concern.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me give opportunity to the Chair of the Departmental Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, it is important that we look at the principal Act, the Constitution and what we are trying to amend. It is important that I explain to Hon. Wanga what we are trying to do. We are erasing the word “board”, which is in the Act, so that we can realign the NLC with Article 67 of the Constitution. That is the inconsistency we are trying to remove. This will enable the NLC to devolve itself directly to the counties other than involving the County Land Management Boards. That is why we are deleting this clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wanga, if you do not agree with the explanation given by the Departmental Committee Chair, you know what to do.

(Clause 42 agreed to)

Clause 43

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): This clause has two amendments. Member for Rabai, Hon. Mwamkale, you have an amendment. Are you in the House? Please, go ahead with your amendment. If it is carried, the amendment by the Chair will be dropped.

Hon. Mwamkale: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 43 of the Bill be deleted.

I am proposing that we retain Section 5 of the National Land Commission Act as it is. This clause talks about ensuring that public land and land under the management of designated State agencies is sustainably managed for the intended purpose. This is the amendment but Section 5 of the NLC Act has the additional wording “for future generations”. We are making laws. When you talk of land, you cannot afford to exclude future generations. What is being excluded here is the wording “future generations”. Section 5(a)(i)(c) is better than the amendments.

The Bill also proposes to delete the functions of the NLC, which are enshrined in the Constitution. Article 62 of the Constitution gives the Commission the powers to administer and manage public land. The sections that I have enumerated deal with administration of land and management. Therefore, we will be amending the Constitution. There is no point of deleting all these clauses when Article 62 of the Constitution is still intact.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, your point has been clearly made. Let us propose the Question and then open debate.

(Question of the amendment proposed)

What is your point of order, Member for Nyeri Town? Let us be serious about points of order. We have so much work which we need to complete.

Hon. Kangogo.

Hon. Bowen: Hon. Temporary Deputy Chairlady, with due respect to my friend, Hon. Kamoti, who is a member of the Departmental Committee on Lands---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Why do you keep confusing members of the Committee?

Hon. Bowen: It is just for clarity. I am getting information that he is a member of the Committee. If he is not, let him make it clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you a member of the Committee?

Hon. Mwamkale: I am not and I have never been one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I open up to other people. Please let us not keep confusing members of the Committee. Please be careful when you ask. Just ask the Committee Chair before you make a comment.

Member for Nyeri Town, I had given you the Floor.

Hon. (Ms.) Mathenge: I oppose the amendment because the person proposing it is not clear as to the mandate of the National Land Commission (NLC). That is what the amendment by the Committee Chair is trying to do.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Rangwe. Hon. Nassir, do you not have a card? Both of you do not have cards. I will give you a chance after I have given those who have already put in interventions.

Hon. Ogallo: Thank you, Hon. Temporary Deputy Chairlady. The intended purpose of Clause 43 of the amendment Bill is to conclude what we have been doing in the Land Registration Act. Clearly, this House has been properly advised that registration of title to land is a national Government function. It cannot be done by the Commission.

Parts (d), (e) and (f) are talking to the registration of title to land. We are saying that we delete those ones from the functions given in the original Act, the NLC Act. If we delete this as it has been proposed, it means we are still going to require the NLC to create a National Land Information Management System, which has not only public land but all land, including community and private land. This is not their mandate. They cannot be in charge of registration. They manage public land. So, anything which has public land and other things cannot be in their ambit. Removing this is cleaning and making sure that what we have passed in the amendments to the Land Registration Act are now in tandem with what is in the NLC Act.

If we allow the deletion to happen, then we are going to contradict all those we have passed in the Land Registration Act. I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Member for Kaloleni.

Hon. Chea: Hon. Temporary Deputy Chairlady, I support the amendments proposed by Hon. Kamoti. What is provided for under Section 5 of the National Lands Commission has basis in the Constitution. The question of future generations has been captured in the preamble of our Constitution. At times, it is difficult to talk about land and forget about the environment. So, that concept of future generations is there.

Secondly, Article 67(2)(f) talks about the issue of dispute resolution mechanisms which, I notice, the Committee intends to delete. These issues are in the Constitution. Basically, these functions have been lifted and given to the NLC under Section 5. That is why I support the retention of Section 5 of the NLC Act and the deletion of Clause 43.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. ole Kenta.

Hon. ole Kenta: I actually agree with Hon. Kamoti to the extent of the intended removal of the words “and for future generations”. This is a safeguard to ensure that land is maintained for future generations to avoid this rampant grabbing and allocation of land without thinking about future generations. It should be retained. Removal is not in good faith.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nassir.

Hon. Nassir: Thank you. Hon. Temporary Deputy Chairlady, I wish to remind the Hon. Members from the other side so that they do not contradict themselves. Just yesterday, they were here telling us that one of the functions of the NLC shall be to advise. Today, we are in the same section and they are now removing each and every power of the NLC. The first one that they want to delete is talking about “to advise the national Government on a comprehensive programme for the registration of title in land throughout Kenya”. It was just yesterday, less than 24 hours. The same Committee, in another amendment, argued that the role of the NLC should be advisory. Today, we are now listening to the same argument on their side that proposes to delete this whole thing. Article 67 of the Constitution of Kenya says that one of the functions of the NLC is to advise the national Government on a comprehensive programme for the registration of title in land throughout Kenya. This is the Constitution of Kenya. The Constitution can only work if there is law. Now, the same law that gives power and mileage to this Constitution is being deleted. Let what we are doing here not be a waste of time so that tomorrow we are declared a House which passed unconstitutional Bills.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Committee, Chair, move your amendment on the same clause.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 43 of the Bill be amended in paragraph (a) by deleting sub-paragraph (i) and substituting therefor the following new sub-paragraph-

“(i) deleting the words “and for future generations”

The amendment is to align the Act with Article 67 of the Constitution of Kenya. On the matter that has been raised by my friend, Hon. Nassir, yesterday we agreed on the fact that the Cabinet Secretary (CS) shall--- We used the word “shall”. That is to pick what is in Article 67 of the Constitution that the CS has to consult in terms of the advisory role of the NLC. So, I do not see why we are now getting back there. So, we are just aligning this matter with the Constitution and not the Act because the Act is subject to the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. T.J. Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, we need to understand where we are. I have the principal Act and have also considered the Bill and the amendment as intended in the Order Paper. It seems that having lost the amendment that we sought for, which was by my learned friend, Hon. Mwadime, we come to the amendment proposed by the Chair of the Committee, which seeks to delete the words “and for future generations”.

To satisfy myself that these words “and for future generations” are offensive, I looked at the Act. Section 5(2)(c) of the Act reads:-

“Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations.”

I hope I am right. The Chair needs to convince us that the words “future generations” are offensive either to the law or to ethical practice. If we want to preserve public land, or supposing there is a police station and we want to say that the police station will be used in a sustainable manner for the intended purpose and for the people who live after us, what harm is it that we have created? In my view, we are just buttressing that people who will live after us will also be interested in the police station. So, would the Chairman tell us what problem the Committee found the words “future generations” would portend before we can debate whether to pass the amendment or not?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair of the Committee, you can allow another member of the Committee to respond.

Hon. Mwiru: Not really, Hon. Temporary Deputy Chairlady. After having heard from Hon. Kajwang’, allow me one minute to consult with my team.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are considering your amendment to Clause 43. Do you want to consult?

Hon. Mwiru: I think, as the Chair, I am allowed to consult.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. I will give you a few minutes to consult. We can listen to Hon. Mbadi on the same amendment.

Hon. Ng’ongo: Thank you, Hon. Temporary Deputy Chairlady. I think that these amendments we are bringing to Clause 43 are completely unnecessary. This is because the parent Act enumerates the functions of the National Land Commission (NLC). The functions that we are trying to tamper with are uplifted from the Constitution to the Act. So, we are spending time as a House legislating in vain because whatever we are trying to do away with is safeguarded by the Constitution. You will end up satisfying yourself that you have amended the functions of the Commission, which we have no powers to do. Any amendment that this Bill proposes in Clause 43 is null and void. That is why I thought what Hon. Kamoti was doing was helping us to save the time we are spending in doing an illegality.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair of the Committee.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, having consulted, I think there is no harm in retaining the words “future generations” because the country and Parliament are progressive. In future, Parliament can afford to determine how such lands can be owned. Therefore, there is no harm in withdrawing the words “future generations” and retaining the rest of the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What are you doing? Are you withdrawing the amendment?

Hon. Mwiru: I have only withdrawn the words “future generations” and we revert to the original amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair, I need to go by the Order Paper. Just quote from the Order Paper what you are deleting.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I have withdrawn the amendment to Clause 43 as per the Order Paper.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, Clause 43 remains as it is in the Bill.

(Proposed amendment by Hon. Mwiru withdrawn)

(Loud consultations)

Hon. Members, screaming does not help in any way. What do you want to be clarified, Hon. Nassir?

Hon. Nassir: I just want to clarify on behalf of my colleagues that the amendment that Hon. Kamoti Mwamkale had proposed was to totally delete Clause 43, which sailed through.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): No, it did not. It was lost. Does that clarify it for you?

Hon. Nassir: Yes, thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Chair has also withdrawn his amendment. Therefore, Clause 43 remains as it is in the Bill.

(Clause 43 agreed to)

(Loud consultations)

You cannot scream. Do you want to go to a Division? I do not just listen to how loud you scream. I look at how many Members are voting one way or the other. If you want to go to a Division, you know what to do.

(Several Members stood in their places)

Hon. Members, you do not have the numbers to go to Division.

Clause 44

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mwamkale, you have an amendment to Clause 44. If it is carried, the amendment by the Chair of the Committee will fall.

Who is on a point of order?

Hon. Mwamkale: Hon. Temporary Deputy Chairlady, I thought when we vote by acclamation, sound is basically one of the crucial factors as opposed to numbers. I wish to have clarification. How do we take care of acclamation? How does it operate?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Acclamation is not how loud you shout but how many Members acclaim.

Hon. Members: How do you know?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is why I am seated here. If you want to clarify whether or not you have the numbers, simply ask for a Division. It makes

the work much easier. I asked you to claim for a Division because you believed you had won the acclamation, but you do not have the numbers for acclamation, so we move on.

Hon. Mwamkale, please move your amendment to Clause 44.

Hon. Mwamkale: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be deleted.

What is being deleted and substituted is Section 15 of the National Land Commission Act, 2012. This is what the section says—

“The Commission shall, within two years of its appointment, recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67(2)(e) of the Constitution.”

First, Clause 44 of the Bill is being pegged on Article 67(3) of the Constitution, which does not provide for investigation of claims on historical land injustices. The relevant Article in the Constitution is Article 62(2)(e). They were supposed to address historical land injustices in the law they were to suggest to Parliament. According to Article 67(3), this clause is unconstitutional because that is not what the law provides. Article 67(3) will be there for any other legislation requiring this. Why go for any other excuse when we have a specific Article in the Constitution which is meant to redress historical land injustices?

Hon. Temporary Deputy Chairlady, I happen to be among those who fought hard for the current Constitution. Article 67 is the one that endeared many Kenyans to vote for this Constitution; particularly in the Coast region, where land injustice was the order of the day. After that, we thought we would have good laws that would redress the ills of land grabbing. We have just one paragraph being included in Clause 44 to address all the historical land injustices. As Section 15 of the National Land Commission Act provides, the commission will come up with a substantive stand-alone law to address historical land injustices. It was supposed to be a law with a definition of what land injustice is – a law that will give powers to bodies to do proper investigation.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, you have made your point. I am being very accommodative of you because of the importance of it but you are taking a bit too long in your explanation.

Your point has been made. I want to propose the Question.

Hon. Mwamkale: Hon. Temporary Deputy Chairlady, to wind up, such a law will require public participation. You do not just plunge in an omnibus law. This will affect many Kenyans who have been robbed of their land.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us start with you, Hon. Chairman of the Committee. I will then give chance to the other Members.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I stand to oppose.

We are trying to do this because the mandate of the National Land Commission (NLC) is so well defined in Article 67 of the Constitution.

*[The Temporary Deputy Chairlady
(Hon.(Ms.) Shebesh) left the Chair]*

*[The Temporary Deputy Chairlady
(Hon.(Ms.) Mbalu) resumed the Chair]*

Article 68(1) of the Constitution envisaged the collapse of several other statutes that govern land so that we remain with fewer statutes. Even in future, I will bring a new substantive clause to take care of how the NLC is supposed to deal with historical land injustices.

I cannot afford to give my proposal or go in the same line with Hon. Mwamkale over one thing. This is because we are trying to amend an Act of Parliament and not the Constitution. We are trying to amend Section 15 of the National Land Commission Act. It looks like we are just trying. It is now over two years since the National Land Commission was constituted. It has not proposed what was envisaged in the Act. We are trying to cure this problem through amendments to make sure they do their work other than recommending other things.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you, Hon. Chairman.

Hon. Nicolas Gumbo, Member of Parliament for Rarieda Constituency. Are you talking on this?

Hon. (Eng.) Gumbo: No.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me give the Floor to Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Chairlady.

First of all, I want to disagree with the Chairman of the Committee. He said this section of the National Land Commission Act, 2015 is not consistent with the Constitution. The Constitution, under Article 63(3), says that the National Land Commission may perform any other functions prescribed by the National Assembly or national legislation. I had the privilege to sit in this House in the year 2012 to pass this provision into law. Under the National Land Commission Act, we decided, as a House, to give the commission power to recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices. That was for purposes of Article 67(2)(e) of the Constitution within two years of its appointment. We need to understand where these land laws came from.

Historical land injustices are one of the causes of the violence of 2007. As a country, we set in motion to actualise what we used to call Agenda 4. We expected the NLC to bring a legislation or Bill to Parliament. It is not an amendment like what the Committee is trying to do. I have information that the NLC had forwarded a draft Bill to the Cabinet Secretary (CS) and because historical land injustices are a thorn in the flesh of many people in this country, the Cabinet Secretary decided to sit on that legislation. They are now trying to use the Committee to bring some superfluous amendments to the Land laws.

(Applause)

We must be serious if we want to cure this country. We are taking it to a dangerous direction again. We made very serious attempts to correct historical land injustices in 2010. There is no reason for taking away a clearly defined legislation in which we expected the NLC to bring a draft Bill. We are doing that through an amendment to a section in the Land laws. That is to pretend and cheat Kenyans that we are addressing historical land injustices.

Therefore, I support Hon. Kamoti in proposing the deletion of Clause 44.

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

(Clause 44 deleted)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order, Hon. Members!

Hon. Member: On a point of order.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Nothing is out of order. For clarity and for the purpose of taking a vote, I need to put the Question again. You are not making laws for yourself.

Nothing is out of order; allow me to put the Question for clarity.

Hon. Members: Do not put the Question.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Members! I want to put the Question. You take a vote for clarity of the House.

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

(Clause 44 as amended agreed to)

Hon. Kajwang’: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. T.J. What is your point or order?

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, this is the National Assembly. We are legislating for the whole country. All of us depend on this country. We live here. Members, before you speak, will you just listen to each other so that we move on? We are handling a very emotive issue which is called “land.” Some of us may have not been in the Committee to discuss some of these issues.

(Hon. Gikaria consulted loudly)

Hon. Kajwang’: Order, Hon. Gikaria!

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members!

Hon. Kajwang’: I am begging that I am protected from David, Member for Nakuru. Some of us may not have been in the Departmental Committee on Lands. We want to hear what transpired in the Departmental Committee on Lands. You were there; we were not. We expect Members of that Committee to guide us in this process. You know that although your report was out---

(Hon. Gikaria consulted loudly)

Hon. Kajwang’: Member for Nakuru!

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kajwang’, what is out of order?

Hon. Kajwang’: Hon. Temporary Deputy Speaker, you know that some Members have not been able to interact with the Committee’s report. So, we are coming as Kenyans to favourably and fairly argue issues concerning land. My point of order is this: Is it in order for a group of Members who are not only Members of the Committee, in which we did not have a benefit of sitting, but are generally from one geographical region in the country, to influence the decision of this House at the expense of others?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you for your observation. Hon. Members, you know that we have passed this clause unless you want to recommit it, if you are dissatisfied. I proposed a Question and Hon. Mwiru explained the position of the Committee and this matter was put to vote. The first vote got it and for clarification purpose and because this is on HANSARD, I put the Question twice. In case you are dissatisfied, we have a procedure: you can recommit your clause.

Hon. Mwiru: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Chairman, what is out of order?

Hon. Mwiru: Thank you, Hon. Temporary Deputy Chairlady. I am very happy with whatever is going on now. We need to understand each other. If we are not going to listen to each other, it is going to become a problem. Why I raised that point of order is to know whether the House is aware that what we are doing now is going to cost the House in terms of constitutional deadline. All that said and done, would I be in order to seek for recommital on Clause 43 so that we are able to consult further? I am very genuine on this.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members!

(Hon. Ng’ongo consulted loudly)

Hon. Mbadi, you may have a valid point, but listen to the Hon. Chairman. You are not making laws for yourself or your house. Let us listen to the Hon. Chairman.

Hon. Mwiru: Hon. Temporary Deputy Chairlady, I am seeking guidance on another pertinent issue. Am I in order to raise the point that we do not have quorum in the House as we are doing this?

Hon. Bowen: Hon. Temporary Deputy Chairlady, there is no quorum.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Kangongo, you are out of order! Hon. Members, please allow me to make my ruling from where I am as the Chair. My direction is that if you are dissatisfied with any procedural process in the Committee of the whole House, you can always recommit a clause. I want to put this on HANSARD: In Clause 44, an amendment was proposed by Hon. Kamoti Mwamkale. The Chairman moved his part; Hon.

Mbadi made his comments; the Chairman talked on the position of the Committee; Hon. Mbadi made his comment on the same and the vote was taken. For the sake of the House, I put the Question for the second time. Hon. Chairman, you can always do a re-committal.

Clause 45

Hon. (Ms.) Khamisi: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 45 of the Bill be deleted.

This amendment purports to repeal Section 18 of the National Land Commission Act. The amendment in the Bill offends the constitutional principle of devolution. We are in the era of devolution and we need to have a structure at the county level. This amendment also offends the national value on inclusivity and participation under Article 10 of the Constitution. We need to know that under Article 62(2), public land rests in county government and the NLC administers on their behalf.

If we say that we are removing the County Land Management Board, it means the public will not have access to services of the NLC. I want to inform the Members that the NLC has already created the County Land Management Board which is at the county level at the moment. This Board is not answerable to the county; it is answerable to the NLC.

In its recent judgement, the Supreme Court upheld the County Land Management Board. Article 6(3) of the Constitution states:

“A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

We demand to have those structures because it is part of devolution. There is also public land in the county and we need to have that structure in place so that the public can access the services of the National Land Commission (NLC).

Hon. Members: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Before you rise on a point of order, allow me to propose the amendment. I will allow the point of order.

(Loud consultations)

I will not allow the point of order if you keep acting as you are. Take your seat. You will raise your point of order. Are you in order?

(Question of the amendment proposed)

I can now give you a chance to rise on a point of order.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, even as we vote, we do not have the requisite quorum to do so.

QUORUM

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Mbadi, you seem to be excited today.

Hon. Members, as is the procedure of the House, Hon. Kimaru has raised the point that we do not have quorum. I order that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Millie, you are out of order. You are not supposed to walk out when the Quorum Bell is ringing. It is only the Whips who can walk out. You can consult as the Quorum Bell is being rung.

Order, Members! We still do not have quorum.

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms) Shebesh) in the Chair]*

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, be seated. I call on the Chairperson to report progress.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Speaker, I beg to report to the House that pursuant to Standing Order No.35(2)(b), the House has failed to realise the requisite quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we are not properly constituted because we lack quorum.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 5.55 p.m., this House stands adjourned until Thursday, 5th May, 2016 at 9.30 a.m.

The House rose at 5.55 p.m.