

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 17<sup>th</sup> March, 2016

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I order that the Quorum Bell be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order, Member! I can confirm that we have the requisite number to start the business of the day.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) left the Chair]*

IN THE COMMITTEE

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

## THE FOREST CONSERVATION AND MANAGEMENT BILL

*(Resumption of consideration in Committee  
interrupted on 16.3.2016)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Order, Members! We are in the Committee of the whole House to consider the Forest Conservation Management Bill (National Assembly Bill No.49 of 2015). This is resumption of consideration of business

interrupted on Wednesday, 16<sup>th</sup> March 2016, in the afternoon sitting. We will commence with the Third Schedule.

**Hon. F. K. Wanyonyi:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): What is out of order?

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairlady, I am standing on a point of order regarding debate on the Third Schedule. The Third Schedule of the Forest Conservation Management Bill discusses the issue of gazetting some schemes, some of which are called settlement schemes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, I appreciate that you have been blessed with height. You are not being heard clearly through the microphone.

Secondly, we have not transacted any business as a House. Nothing is out of order. Nothing has been proposed yet in terms of your argument. Can you, please, allow us to start transacting business? You can share your sentiments at the appropriate time. You can only be on a point of order when something is out of order.

**Hon. F.K. Wanyonyi:** I just want to stop debate on this Schedule.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Please, get the right way of doing it. You are standing on a point of order. Get the right way of doing it in terms of our Parliamentary procedures. We have not even started transacting business. Allow us to begin and then you can prosecute your point of order.

We had done away with the amendments by Hon. Amina and Hon. Wario. We are now considering amendment by Hon. Pukose as indicated in the Order Paper.

### *Third Schedule*

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Third Schedule be amended by deleting the expressions –

- (a) “122 Kitalale L.N. No. 2/1977; and
- (b) “262 Makunga L.N. 23/2013.

‘Kitalale’ appears in the Third Schedule. This is land that people already live in. It was initially a forest. In 1992, the former President Moi, through the Settlement Fund Trustee, allocated the land to squatters who moved in, in 1992, 1995 and 1997. About 100 per cent of the land is occupied by squatters. Since it appears in the Schedule, it seems that Kitalale has not been degazetted. The land has been surveyed and the Government is in the process of issuing title deeds. It appearing in the Third Schedule means that it is a forest area and that disadvantages the people who would want to undertake development within that area.

I plead with the House to support this amendment because these are needy Kenyans. They also want to engage in meaningful activities. We even have public utilities such as schools within the area that people and the Government have invested in. There are secondary and primary schools within that area. There are also hospitals in the area. The people of Kitalale plead with this House to accept this amendment to have it removed from the Third Schedule.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I will give the first opportunity to the Chair of the Committee.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Temporary Deputy Chairlady. I plead with Hon. Pukose and all other Members who are proposing amendments to the Third Schedule to appreciate that it is true that the Government degazetted these public forests. However, the process of variance has been made easier by an amendment to Clause 33. Let them go through the right process of varying the boundaries of this forest rather than using a short-cut to degazette public forests.

The same Government that he claims degazetted the land had the power to omit it from this Schedule. The process will be made easier if this Bill sees the light of day. We should use the process under Clause 33 that is time-bound to deal with a formal process of varying boundaries or degazetting public forests. Doing it this way is tantamount to using our powers to degazette a forest illegally. Let us use the process that is set out.

**The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu):** Those are the sentiments of the Chair. Let us have Hon. Serut.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Chairlady. Given the sentiments of the Chair, I support her.

**The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu):** Hon. Amina opposed the amendment by Hon. Pukose. Are you opposing the amendment?

**Hon. Serut:** I am not opposing. Given what the Chair has explained, I support her sentiments. However, I want to plead with the House that whatever we resolved yesterday on the amendment by Hon. Wario be subject to recommittal, so that we rescind that decision. We cannot legislate selectively.

**The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu):** Hon. Serut, we have procedures. If you want to propose a recommittal, you can still do that. This is a House of procedures. We need to do the right thing and make the right laws. Let us have Hon. Neto.

**Hon. Oyugi:** Thank you very much, Hon. Temporary Deputy Chairlady. I listened very well to Hon. Pukose. I sympathise with the state of the residents of Kitalale. No one should be a squatter in this country. The Constitution gives every Kenyan the right to own property. I sympathise that after many years, people should still be squatters in a country where there is so much vast land.

Hon. Pukose says that the place the squatters currently inhabit was part of forested land. The purpose of this Bill is to increase the forest cover of this country. The Chair of the Departmental Committee on Environment and Natural Resources has spoken very well. We set a procedure yesterday thanks to Hon. Wario. We put in place a procedure in Clause 33 in terms of how, for example, residents of Sabaot and other places who live in forested areas have a procedure to degazette these forests. We should do it properly within the law. I appreciate that these people need to be given land, but I oppose doing it in this particular manner.

I oppose Hon. Pukose's amendment. It is not because I do not sympathise with the sentiments that he has raised, but we should do it procedurally, so that people do not sneak in amendments into Bills as has been done in the last two days. This should be done procedurally under Clause 33.

**The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu):** Member for Kwanza.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairlady, the Chairlady of the Committee has expressed my sentiments. We need public participation for us to degazette forest areas that have been gazetted. Secondly, I agree with Hon. (Dr.) Pukose that people in Kitalale have lived there for some time and there is even infrastructure there, but we need to do public

participation to degazette some of these areas. I agree and support what the Chairlady of the Departmental Committee has said.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Narok North.

**Hon. ole Kenta:** Hon. Temporary Deputy Chairlady, I would like to advise Members that the Third Schedule is notifying the House of gazetted forests. Removing any of the gazetted forests does not degazette it. It shows the degazetted areas. Clause 33 is supposed to be used and any Member who is purporting to remove this is acting in futility. It is actually showing the public that we do not know what we are doing. There is no way anyone can remove it from the Schedule.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): We are all sober this morning and I must appreciate you. Member for Makueni.

**Hon. Maanzo:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose Hon. (Dr.) Pukose's proposed amendments and I do it with respect because he is my friend. I would also like to bring to light that there is a way in which laws which have been framed work, so that we do not end up mixing them up. Clause 33 is the one to be followed. I agree with him that we should respect the human rights of people who have already been settled there by the Government.

While opposing this, we should have a formula of ensuring that these people are taken care of. We can do variance, so that we take care of the people as well as the forest. We need forest cover in the country. We can do it within the law and the right procedure, so that people living there are taken care of and we also comply with the law. We should not set a dangerous precedent such that when further requests are made, we end up degazetting or destroying forests instead of having a forest cover. That will be against the law that we are making.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Ndaragwa.

**Hon. Nderitu:** Thank you, Hon. Temporary Deputy Chairlady. I am Member of that Committee and we have visited so many places to investigate land issues. Munengi Forest in Naivasha had the same issue that Hon. (Dr.) Pukose has raised. I sympathise with what they are going through, but it will be bad to set a precedent whereby anyone with an issue concerning a forest brings its name to Parliament and we approve it. The clause that has been introduced would fit so well because I know there are many Members with similar problems. Initiation of the process from the Executive to this House is an honour. We should use the process to ensure that issues of squatters in forests are sorted out once and for all.

I oppose that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Tongi.

**Hon. Tongi:** Thank you, Hon. Temporary Deputy Chairlady for giving me the opportunity to speak to this Bill. From the outset, I appreciate the initiative, but I oppose the proposed amendment by Hon. (Dr.) Pukose. All of us have a role to protect our country by keeping it safe for the next generations. We should ensure that there is Kenya after our leadership. We should not set precedent where people who want to grab land easily will move into forests, stay there for a little while and 10 years down the line, they say that they are landless and need to be settled there. That would be a dangerous precedent to set.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Tongi, let us get a point of order from Hon. (Dr.) Pukose.

**Hon. (Dr.) Pukose:** Hon. Tongi is a friend of mine, but he is using the word “grab” which I find demeaning to the people of Kitalale. They did not grab that land, but were allocated the land by the Government.

*(Hon. Wamunyinyi consulted loudly)*

Hon. Temporary Deputy Chairlady, please, protect me from Hon. Wamunyinyi.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): You are protected.

**Hon. (Dr.) Pukose:** They were allocated that land and they live there legally. They even have allotment letters and, therefore, it is not grabbed land.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Tongi, these are not our laws, but we are making laws for the country.

**Hon. Tongi:** My good friend, Hon. (Dr.) Pukose, the surgeon, has good intentions for the country. He means well and cares for his people. It is nothing personal, but we will not do this because of him. We want to avoid a situation where we will set precedent where we will encounter a similar challenge in future that if I want to settle people, I will just look for an exit and apologise thereafter. We have had cases where land has been abused. The county governments are now allocating gazetted land to the so-called investors, but in actual sense, they are not investors. This is protected land and this law will go a long way in ensuring that, that does not happen in future. We need to ensure that land in the hands of the national Government and county governments is protected for the good of the country going forward.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Tongi, we just want to hear your comment on the Third Schedule. We are not debating.

*(Hon. Oyugi consulted loudly)*

Hon. Neto, you already made your contribution. So, please, allow the other Members to contribute.

**Hon. Tongi:** I am only preparing a preamble, so that I can explain my point.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Go ahead.

**Hon. Tongi:** Hon. Temporary Deputy Chairlady, some schools have been in existence for many years and since they are not gazetted and do not have title deeds, people have grabbed the land. We should be careful as we deal with these amendments because they deal with a sensitive issue and all of us have interest in it. We should not pass a law that will hurt our people.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Kitui Central.

**Hon. Mulu:** Hon. Temporary Deputy Chairlady, I sympathise with Hon. (Dr.) Pukose because he is raising a very genuine matter. These are Kenyans and more so, squatters, who have benefited from forests. At that same time, many Kenyans have grabbed public land for private benefit. We would allow Hon. (Dr.) Pukose to follow the law because his case is genuine and I am sure they will get that land. Individuals who have grabbed public land for private benefit should revert that land to the Government. That is why I oppose Hon. Pukose’s amendment and support the Committee Chair’s position. Hon. Pukose has a very genuine concern.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me give the chance to the Deputy Leader of the Minority Party.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose this amendment. Hon. Pukose is my friend and I plead with him. We will use the Floor of this House to degazette forest land, but 15 months to an election, any amendment to this issue of forest land may have bad effects. We are already seeing clashes all over the country. We ought to be a bit cautious. We have to be fair to Hon. Pukose. We should work with him to get a solution. However, to bring before this House an amendment meant to degazette forest land would be a serious thing. It requires discussion. The biggest thing is that it sets a very wrong precedent. I do not think it has ever happened. I plead with him to withdraw it, so that we can reconsider. Otherwise, I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, I must appreciate that this amendment is generating a lot of interest. We must remind ourselves that we are making laws for the country. They are not our laws. Let us listen to the Member for Tinderet.

**Hon. Melly:** Thank you, Hon. Temporary Deputy Chairlady.

*(Hon. Midiwo interjected)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Deputy Leader of the Minority Party, the Member for Tinderet is Hon. Julius Melly.

**Hon. Melly:** The Deputy Leader of the Minority Party is my neighbour and he does not know the Member of Parliament for Tinderet.

I rise to support Hon. Pukose's amendment. If you look at the history of Kitalale, you will find that it was formally a white settler farm. The people who bought that land paid 10 per cent. The Government erroneously degazetted it and made it a forest yet the European settler who was living there made it a forest. The people who live there have a right to own it and be given title deeds. As I speak, they have built schools and other social amenities. When we take a former European settler farm and put it under a Schedule dealing with forests, we are being unfair to the people living in Kitalale.

I support Hon. Pukose's amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, let us refer to Clause 33 about the variation of boundaries or revocation of public forests as described by the Committee Chair.

The last one to speak on this is the Member for Kanduyi.

**Hon. Wamunyinyi:** Thank you very much, Hon. Temporary Deputy Chairlady. First, I want to state that I oppose this proposed amendment for the following reasons: Firstly, it is not for Parliament to gazette or degazette forest land. If you want to degazette forest land, there is a procedure to be followed and secondly, this particular forest land has been under dispute. It has been contested. Some members of the community have even gone to court and the courts have ruled.

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

**Hon. Wamunyinyi:** Can you listen?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let him finish.

**Hon. Wamunyinyi:** Please, do not interfere. This matter has gone to court and the court has ruled over it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, give me one minute. Hon. Serut, what is not procedural?

**Hon. Serut:** Hon. Temporary Deputy Chairlady, is Hon. Wamunyinyi in order to refer to that particular piece of land, which is occupied by the Sabaots from Mount Elgon, as in dispute? Who is it in dispute with? People have lived in Kitalale from 1992. It is not in dispute. Hon. Wamunyinyi, be sincere to this House. Please, do not mislead the House.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairlady, you can see what I was talking about. This is exactly the dispute I have been referring to. This is gazetted forest land and if it is occupied, it has been occupied illegally. The point I am trying to raise is that this matter has even gone to court. The court has ruled that this is forest land.

*(Loud consultations)*

Let me conclude. Do not be intimidated by land grabbers.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is an intervention.

**Hon. Wamunyinyi:** The point I am trying to say is that there is a Petition even before the Committee. The Committee has not even--- Let me conclude.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, it is important that as you conclude, you can reserve your comments. They may be important in your conclusion. Hon. Pukose, what is out of order, so that Hon. Wamunyinyi can conclude?

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairlady, Hon. Wamunyinyi has stooped so low to mislead the House. Is he in order? The land in Kitalale is occupied by Luhyas, Sabaots, Turkanas and everybody. They have lived there from the year 1992. Nobody has ever gone to court. I want Hon. Wamunyinyi to produce court evidence in this House. If he does not have anything to show that anybody went to court, then he needs to apologise to this House because he is misleading the House.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, respond to this. Hon. Members, I remind you that we are making laws for the country. The proposed amendment is on the Third Schedule.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairlady, I do not want to be pushed into talking about the bringing of Ugandans into this country to register. I know that we have a problem with Migingo Island. We have Ugandans being brought into the country to register and be given some land in Trans Nzoia. I do not want to get myself into that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, be relevant.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairlady, Hon. Pukose is the major culprit of bringing people from Uganda.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, get to the point.

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

*(Loud consultations)*

**Hon. Wamunyinyi:** You have to get this right. He is a major culprit and what he is doing here---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Wamunyinyi, your point is taken.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Order, Hon. Pukose.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Nothing is out of order. I can confirm that. Let us exchange in a manner that can be accepted in the 11<sup>th</sup> Parliament. Hon. Members, let us not get personal. Hon. Wamunyinyi, you have already concluded.

Having listened to the contributions of the Members, I, therefore proceed to put the Question. I must remind you that the Chair has no vote. Hon. Members, you have listened to the contributions and gone through the amendments.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, let us put our temperatures down. Let us not go personal. We are making laws for this country and not for ourselves. We have an amendment by Hon. Kibunguchy. Is he in?

Hon. Kibunguchy has a similar amendment on the Third Schedule. Since he is not in the House, the amendment is dropped.

*(Proposed amendment by Hon. (Dr.) Kibunguchy dropped)*

*(Third Schedule as amended agreed to)*

## Clause 2

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

THAT, Clause 2 of the Bill be amended by—

(a) deleting the definition of the word “forest” and substituting therefor with the following new definition—

“forest” means land which is declared or registered as a forest, or woody vegetation growing in close proximity in an area of over 0.5 of a hectares including a forest in the process of establishment, woodlands, thickets”;

(b) deleting the definition of the word “forest manager” and substituting therefor with the following new definition—

“forest manager” means a person responsible for the management of a forest under his or her charge and implementation of this Act including—

- (i) in the case of a public forest, the Kenya Forest Service or the County Government as the case may be;
- (ii) in the case of a community forest the person responsible for the management of community land under the relevant law; and
- (iii) in the case of a private forest, the owner of the private forest;”

(c) deleting the definition of the word “public forest” and substituting therefor with the following new definition—

“public forest” means forests as classified under 29(2) and (3); and

(d) inserting the following new definitions in the proper alphabetical sequence—

“forest produce” includes bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fibre, firewood, frankincense, fruit, galls, grass, gum, honey, leaves, flowers, limestone, moss, murrum, soil, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, soil, seeds, spices, stones, timber, trees, water, wax, withies, and such other things as may be declared by the Cabinet Secretary to be forest produce for the purpose of this Act; and

“livestock” means domesticated animals such as cattle, goats, sheep, asses, poultry, horses, camels and pigs and includes their young thereof.”

Hon. Temporary Deputy Chairlady, the amendments are generally to clean up definitions, which is important for the application of the law.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for South Imenti.

**Hon. Murungi:** Thank you, Hon. Temporary Deputy Chairlady. I want to support this amendment because it gives the correct definition of the term ‘forest and forest manager’. It is procedural to give the right definition.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Are you not ready, Hon. Richard Tong’i? Do you not want to contribute on this clause? Let us have Hon. Nyikal.

**Hon. (Prof.) Nyikal:** I wanted to contribute to another clause.

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

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

*(Clause 2 as amended agreed to)*

*Long Title*

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

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title—

“AN ACT of Parliament to give effect to Article 69 of the Constitution with regard to forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country and for connected purposes.”

This amendment takes into account other provisions of the Constitution that give the KFS a broader mandate.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Kitui Central.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairlady. I support this Long Title, but it is important that we note one or two things. At times, people are required to quote some Acts of Parliament as they explain and describe things. When we have such a Long Title, it becomes very tricky to make reference to the Act. In future, it is important to think about what we learnt in Form Four on the rules of summarizing, so that we can come up with key words which will still capture the essence of the Act, but not a paragraph. This is more of a paragraph than a title. We need to come up with shorter titles in future for purposes of making quick references.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Gideon Ochanda.

**Hon. Ogolla:** Hon. Temporary Deputy Chairlady, I support the Long Title. Sometimes it gives people quite a bit of easy time in getting and gauging what exactly there is in a Bill or in law.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Abdalla, do you want to add something?

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Chairlady, I wanted to inform Hon. Makali Mulu that there is a short title. We are amending the Long Title because it is referring only to Article 69 of the Constitution as the reason for this Bill. This Bill deals with incentives and concessions, which are issues dealt with in other Articles of the Constitution. We thought that it would be erroneous for the Long Title to refer only to Article 69 of the Constitution.

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

**Hon. M'uthari:** Thank you, Hon. Temporary Deputy Chairlady. I support the Long Title because it makes clear what the Bill is about. For that reason, I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Abdul Dawood.

**Hon. Dawood:** Thank you, Hon. Temporary Deputy Chairlady. I support the Chairperson in the Long Title because it says exactly what the Bill is about.

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

**Hon. Lentoimaga:** Hon. Temporary Deputy Chairlady, I support the Long Title. It is quite in order because it quotes Article 69 of the Constitution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Nominated Member, Hon. Bishop Mutua.

**Hon. (Bishop) R. Mutua:** Thank you, Hon. Temporary Deputy Chairlady. I want to support the Long Title which has been proposed by the Chair of the Committee. It tells what the Bill is about. Therefore, anyone looking at it can easily realise the broad coverage of the Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Kaiti.

**Hon. Makenga:** Thank you, Hon. Temporary Deputy Chairlady. I support the Long Title as proposed by the Chairperson of the Departmental Committee. It gives effect to Article 69 (1)(a) of the Constitution, which provides that the State shall ensure exploitation, utilisation, management and conservation of the environment and natural resources and ensure equitable sharing of accruing benefits.

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

*put and agreed to)*

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

*(Long Title as amended agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Amina Abdalla, could you move reporting?

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Chairlady, on behalf of the Mover of this Bill, the Leader of the Majority Party, I beg to move that the Committee doth report to the House its consideration of the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, the Committee of the whole House will continue to consider the Community Land Bill.

#### THE COMMUNITY LAND BILL

*(Clause 3 agreed to)*

#### *Clause 4*

**Hon. Chea:** On a point of order.

**The Temporary Deputy Chairlady** (Hon.) (Ms.) Mbalu): What is your point of order?

**Hon. Chea:** Thank you, Hon. Temporary Deputy Chairlady for this opportunity. I am sorry it is a bit late, but yesterday we wrote to the Substantive Speaker requesting the deliberation of the Community Land Bill at this level to be postponed. The Speaker advised us to make the application on the Floor of the House. So, it is a humble request that Members from the coastal region wish to introduce amendments to this Bill and they have not had time to file the amendments. So, we are humbly requesting that deliberations at this level be postponed.

**The Temporary Deputy Chairlady** (Hon.) (Ms.) Mbalu): Hon. Member, this House cannot stop business because of the absence of Members who failed to make contributions or amendments. You must know the procedure. You should have made your amendments at the right time. The Committee has already done its work. I know it is the caucus from Mombasa. As per the letter, I even know the cause. Let me hear from the Chair, Hon. Alex Mwiru, Member for Tharaka. It is however, important to know that we cannot stop business.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. It is important that I notify the House that the greatest constituency I have in my Departmental Committee on Lands is the

membership from the Coast region. Seven out of the 29 Members are from the Coast. They have been participating in this debate and the consultations all along. I urge my colleague and friend that, at least, there has been some time for consultations including when we were doing the caucus with pastoralists. There has been a lot of consultations. Let them allow the House to proceed in the manner that it is at the moment. Where they feel they need to do any additions, we can afford to put them on board as we move ahead.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Thank you for that clarification. That is the message from the Chair and as I said, we cannot stop the business. You know when to put your amendments. I can see most of the amendments are also coming from the coastal areas as the Chair put it. We can give our proposals as we move on. You can also consult with the Chair who is readily available here. We have enough rooms in Parliament for consultations. So, I rule that we continue.

The Bill will go to the Senate and most of the things are going to be catered for. So, Hon. Member, please, be advised.

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

THAT, Clause 4 of the Bill be amended—

(a) in subsection (1), by deleting the words “vest in “ and substituting therefor the words “be owned by”;

(b) in subsection (2), by inserting the word “community” immediately after the words “the use of”; and

(c) in subsection (3), by deleting the words “vest in” and substituting therefor the words “be owned by”.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Please, give us your rationale.

**Hon. Mwiru:** It is an issue where we want to retrace the word “vest”. We have looked at the semantics of what is “vest” and with consultations, we have realised that it was a bit ambiguous in terms of interpretation. That is why we are amending this clause.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me have two Members. Member for Bondo Constituency.

**Hon. Ogolla:** I support the amendment even though it basically means the same thing. It is only that owning is more straightforward.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Balambala.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairlady. I am quite happy with that amendment. There is a lot of clarity with the words “be owned by” as opposed to “vest in”. So, I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. ole Sakuda.

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. I support this. We had a number of challenges in terms of what it means in British English, American English and Maasai English. So, we arrived at ownership, which is very important other than just “vest”. This is because you might vest some powers and interest, but you do not own them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Narok North, Hon. ole Kenta.

**Hon. ole Kenta:** Thank you, Hon. Temporary Deputy Chairlady. I also support that amendment because it is more meaningful to the ordinary person that they own that community land. So, I support the Committee.

*(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)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): We have an amendment by Hon. Mwadime which is sub-clauses (1), (2) and (3).

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, it is in Sub clause (2).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member you are not loud enough. Is our amendment on Clause 1?

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is a point of order by the Chairman.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. If I look at the Committee's amendment and that amendment by Hon. Mwadime, they are actually the same. He only needs to comply and allow us to go ahead.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Mwadime, I wanted to settle the issue because your amendment is the same as the Chairman's amendment.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, it is okay. I have withdrawn. We can move on because they are the same. It is already done in sub-clause (1) and they are the same. Let us adopt what you have done in sub-clause (1) .

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): So, are you agreeing with the Chairman? Please, get on record.

**Hon. Mwadime:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Please, withdraw your amendment.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I have withdrawn.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, Hon. Mwadime's amendment remains withdrawn.

*(Proposed amendment by Hon. Mwadime withdrawn)*

*(Clause 4 as amended agreed to)*

*Clause 5*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I see amendments by Hon. Tiyah Galgalo. The fact that she is not in the House, the amendment remains dropped. There is no official communication or a representative.

*(Proposed amendments by Hon. (Ms.) T.G. Ali dropped)*

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

THAT, Clause 5 of the Bill be amended—

(a) in subsection (1), by inserting the words “of the Constitution” immediately after the words “with Article 40”; and

(b) in subsection (4), by inserting the words “or by negotiated settlement” at the end of the sentence.

This is just a matter of clarifying the statement that is made in that agreement. It is a matter of clarity. That is why we are referring to the Constitution. Nothing much changes.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me hear your point of order.

**Hon. Ngikor:** Hon. Temporary Deputy Chairlady, this Motion is important because the issue of land is very important.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member, this is a Bill not a Motion. We are in the Committee of the whole House.

**Hon. Ngikor:** Hon. Temporary Deputy Chairlady, I am standing on a point of order under Standing Order No.96. This is a very important Bill and I wish to propose that the consideration of the Bill be adjourned, so that we can get more time to allow Members to make contributions and amendments that they wish to bring like what has been brought by Members from the Coast region. As the Turkana community, we want to bring some amendments to this Bill. According to Standing Order No.96, I propose that the debate be adjourned.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Before I give an opportunity to the Chairman, I must say that this is still the same sentiment that the Member, on behalf of the Coast region, had requested through a letter. Hon Gunga wrote a letter to the Speaker on the same issue. It is important for the Clerk’s desk to be advised on the outcome of the letter because many Members wanted to do the same. This Bill has been there for the longest time. So, it is important that the Clerk’s desk is advised and we get communication because this is going in circles. If you can table the contents of the letter, we can proceed. It is important.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us hear the point of order from Hon. Midiwo then we can hear from the Chairman.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, still on Standing Order No.96, as you may know, issues of land are very emotive. We would rather take a little bit longer and Members have enough time. It is true this Bill has been around for the longest time. That only means, in another sense, that one more week would not hurt especially for Members who come from areas where land is a big issue. Just indulge me. In the last seven days alone, there are issues of land clashes simmering all over the country. Therefore, I want to plead with you, because we have walked this path and we are almost succeeding, it would be good to give the Members one more House sitting. This is so that next week we can find appropriate time and Members can know

that the Bill is coming and we discuss this option, so that we are not accused of passing a wrong law when clashes are looming. I want to beg you, on behalf of my Members.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): This is interesting. It is important to know that the letter was taken because this is a House of records. A letter was brought from the Coast Parliamentary Group. I need to hear from the Chairman before I direct the Member who has risen on a point of order to do it in a better way. Let me get to the Chairman.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. I agree with the sentiments of the Members especially when it comes to issues of land in this country. I also need to draw the attention of Members to the Report of this Committee which was very open to Members. It was tabled on 14<sup>th</sup> October 2015. Today, we are in March towards April.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chairman, you have been blessed with height. Please, let us hear you better.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, maybe it is the height. I agree with Members especially with regard to the importance of land in this country. I understand the sentiments of Hon. Jakoyo Midiwo, who is my senior. However, this is a constitutional Bill which is supposed to be passed by 27<sup>th</sup> August 2016. We have a pileup of other Bills that are supposed to go through the conveyor belt. We tabled this Report around 14<sup>th</sup> October 2015.

Consultations have been ongoing all along. That is why there are quite a number of amendments which for some of them, we may agree or not agree because it depends on how we debate them. Although the Member has raised a point of order under Standing Order No.96, I know they had concerns about this Bill. I believe they had interests. I want to imagine the interest has not arisen today. It was there even at the time we were tabling the Report and debating it. It is one of the most debated Bills in this House. It was debated for three days, not even three hours and the HANSARD can show.

Therefore, we are saying that ventilation was quite intensive. The Speaker is on record saying that he needs to give more time for debate in the Second Reading, so that Members can ventilate. In as much as there is that problem, I urge the Members to kindly know that there is the urge to pass and enact this Bill for this country to move forward. We must realise that urge. I am not saying that it is a must that you do it today.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let the Chairman finish.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I have finished. I wanted them to understand that I am also in a quagmire because I have another Bill which has a constitutional deadline. Hon. Members, I urge you to understand this.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I must clarify that there is no Motion before the House. Hon. Nixon Ngikor, I did not call you. When we visit our Standing Order No.96, you will see how we do it. Since we had started with Clause 5 which has amendments by the Chairman, let us clear it.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Is the Chairman of the Departmental Committee on Lands who has just spoken out of order? If the Chairman who has just spoken is out of order, then we can listen.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I will give you a chance. Hon. Ngikor, consult your Standing Orders so that you can have a Secunder. Let us do our procedures well.

Hon. Members, let us clear with Clause 5 and then we go to the proposal by Hon. Ngikor after we get the communication from Hon. Speaker. Then, the House will have to follow the procedure. Hon. Member for Rabai, I gave you time to speak. Allow us to move on. You can be the Secunder of the Bill. Let me go to Hon. Alex Mwiru. Please, make your request on Clause 5(1). Can you be on intervention?

**Hon. Midiwo:** Let him speak Kimeru!

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): No! Hon. Leader of the Minority Party, we do not speak in our vernacular language in the House.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. Hon. Jakoyo Midiwo Washington, who is my friend, does not know that I am not a Meru. I am a Mutharaka. So, I am a pastoralist.

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

THAT, Clause 5 of the Bill be amended—

(a) in subsection (1), by inserting the words “of the Constitution” immediately after the words “with Article 40”; and

(b) in subsection (4), by inserting the words “or by negotiated settlement” at the end of the sentence.

The amendment is to give clarity and make sure that the State can compulsorily acquire community land, just like it can acquire private land.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Balambala, do you want to contribute to that? Hon. Member for Samburu North?

**Hon. Lentoimaga:** Hon. Temporary Deputy Chairlady, I want to contribute on the next one and not this one.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Hon. Member for Narok North, ole Kenta?

**Hon. ole Kenta:** Hon. Temporary Deputy Chairlady, I support the amendment. As my colleagues have said, we need to look at the whole Bill. It will be prudent we let him have his application rather than working on some of them in bits.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member for Kitui Central, Makali Mulu.

**Hon. Mulu:** Hon. Temporary Deputy Chairlady, I support these amendments by the Chairman. They make the Bill clearer.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us go to sub-clause (4) which has an amendment by Hon. Abdullahi Diriye. Hon. Members, we have three amendments

to sub-clause (4). We will start with Hon. Abdullahi Diriye, Hon. Tiyah Galgalo and Hon. Alex Mwiru.

Hon. Diriye is not in the House. His amendment is dropped.

*(Proposed amendment by Hon. Mohamed Diriye dropped)*

**Hon. (Ms.) T.G. Ali:** Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, clause 5 of the Bill be amended—

(a) by deleting sub-clause (1); and,

(b) in sub-clause (4) by deleting the words “person or persons” appearing immediately after the words “just compensation to the” and substituting therefor the words “community”.

I am proposing that amendment because we know that land is owned by communities and not persons. In the arid and semi-arid areas, we have trust lands and it is communities who live there.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I will give a chance to Hon. Ibrahim Elmi, Member for Tarbaj.

**Hon. Elmi:** Hon. Temporary Deputy Chairlady, I support the amendment. My initial interjection was to support the Member from Turkana. As the pastoralist community, we feel the amendments as they are on the Table or prepared are not adequate. We are really asking that we push this to next week.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, do you support or not? You are anticipating debate.

Hon. Ali Rasso, Member for Saku.

**Hon. Dido:** Hon. Temporary Deputy Chairlady, I rise to support the amendments suggested by Hon. Tiyah Galgalo. There is a lot of cheekiness throughout this Bill because the legislative agenda that appears to have been pushed through this Bill lacks decorum and decency. It fails to address the interests of communities who are likely to be affected by it. The idea of saying that any person can hold property anywhere is a serious mischief and should not be allowed in this Bill.

Further, I support the suggestion by Hon. Elmi. If this Bill is allowed to proceed the way it is---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Rasso and Hon. Members, do not anticipate debate. Can you just be relevant? We will still come to that. We are debating on the amendment by Hon. Tiyah Galgalo.

**Hon. Dido:** Hon. Temporary Deputy Chairlady, I support that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chairman, what is it?

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I have no objection to Hon. Tiyah Galgalo’s proposed amendment, but, it is also important to note what the Hon. Member has said; that there is mischief in one owning or trying to own land in any part of the country. I want to refer him to Article 40 of the Constitution of Kenya. I will read it.

“40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

- (a) of any description; and,
- (b) in any part of Kenya.”

The Hon. Member is out of order to insinuate that somebody is not supposed to own land in any part of this country. As I have said, whatever, Hon. Tiyah Galgalo has said, I have no objection with it because we are talking of a community owning a particular land and not a person.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Midiwo.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, that exchange is the reason I am telling you we adjourn this debate.

Under Standing Order No.96, I move that the Chair do report progress, just before we even conclude. I think we have a right to make that request. I ask Hon. Abdikadir to second.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Abdikadir.

**Hon. Aden:** Thank you, Hon. Temporary Deputy Chairlady. I want to second, Hon. Midiwo on this particular issue. Let me say, by and large, that this is a very important Bill which is well intended and will be historic in its nature in terms of land management in this country.

During my contribution in the debate of this particular Bill, I pointed out certain sensitive clauses within this Bill. I want to agree with Hon. Rasso that, indeed, certain clauses have sinister motives and they have not been amended in any way. I want to point a few of those particular ones. If you look at Clause 8, it literally takes power away from NLC and gives it to the CS. Everything in that particular clause gives almost absolute power to the CS. This is not a consulted position. We raised our concerns on this issue with the Chair of the Departmental Committee on Lands and part of his team. These are some of the issues that require attention.

Pointing, again, to the Hon. Members, there is Clause 46 of this Bill whereby if Abdikadir had stolen land before the enactment of this Act and fenced it up---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, you are just seconding Hon. Midiwo.

**Hon. Aden:** Yes, I am seconding and giving grounds. This particular Bill says that land, by the enactment of this Bill, becomes mine. This is not right and is not what is intended. Grabbed land must be surrendered back to the communities that own it or the national Government, if need be, so that it can be redefined as community land again. There are a number of clauses which I can point out. That will mean that the noble thing for the Committee to do is to call stakeholders.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): You are seconding the Adjournment Motion.

**Hon. Aden:** Yes. I am seconding the Adjournment Motion. I am just giving you the grounds for that. The continuation of this debate, in my view, is going to antagonise a lot of things. It is better we adjourn this debate, go back and consult. There are a lot of good amendments that have been suggested by the Committee, but there are quite a few of them that require further consultations and amendments to be agreed upon.

I want to second the Motion by Hon. Midiwo, that we call the Mover to report progress and we adjourn this debate for another date.

*(Question put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Before we report progress, let us do the reporting on the Forest Conservation and Management Bill.

THE FOREST CONSERVATION AND MANAGEMENT BILL

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Forest Conservation and Management Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**REPORT AND THIRD READING**

THE FOREST CONSERVATION AND MANAGEMENT BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Members! I call upon the Chairperson to report to the House. We are starting with the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015). Hon. Chepkong'a.

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Mover to move the agreement of the report.

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request hon. Jakoyo Midiwo to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Midiwo:** I second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You second, hon. Midiwo

*(Question proposed)*

*(Question put and agreed to)*

Can we have the Mover move the Third Reading?

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to move that the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) be now read the Third Time. I would also like to request, hon. Sakuda to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Sakuda to second.

**Hon. ole Sakuda:** Hon. Temporary Deputy Speaker, I second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Members! Hon. Ngikor when the Speaker is upstanding, you freeze!

*(Question proposed)*

I do confirm that we have the requisite quorum in the House for the purpose of decision-making.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): We will now move to report progress on the Community Land Bill (National Assembly Bill No.45 of 2015). Let us have the Chairperson.

**Hon. Mwiru:** Hon. Temporary Deputy Speaker, before I move, I request you---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mwiru, it is not the Chairperson of the Departmental Committee on Lands who is the Mover. It is the Chairperson of the Committee of the whole House.

### PROGRESS REPORTED

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Community Land Bill (National Assembly Bill No.45 of 2015) up to Clause 5, approved the same with amendments and seeks leave to sit another day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let us now have the Chairperson of the Departmental Committee on Lands.

**Hon. Mwiru:** Hon. Temporary Deputy Speaker, before I move this, now that there have been serious requests for extra time, I seek your guidance on whether we can hold a *Kamukunji* before the next consideration of this Bill. Through you, I suggest that we have it on Tuesday morning.

Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. ole Sakuda, who is my able Vice-Chair, to second the Motion for agreement with the Report of the Committee of the whole House.

*(Question proposed)*

*(Loud consultations)*

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

**Hon. ole Sakuda:** I did not second.

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Next Order.

## BILL

### *Second Reading*

#### THE POLITICAL PARTIES (AMENDMENT) BILL

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to move that the Political Parties (Amendment) Bill, 2016, be now read a Second Time.

This Bill has been brought to this House courtesy of the Departmental Committee on Justice and Legal Affairs. This is pursuant to consultations between the Committee, the political parties, the Registrar of Political Parties and the Independent Electoral and Boundaries Commission (IEBC). The Bill seeks to amend the Political Parties Act No.11 of 2011 in order to re-organize the manner in which political parties are managed and remove the existing ambiguities that have been in the legislation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, we have visitors in the Speaker's Gallery who have joined us to see what we do in Parliament. Please, allow me to interrupt you. Hon. Members, please join me in welcoming Kangaru High School from Manyatta Constituency, Embu County. They are in the Speaker's Gallery to observe the business of the day.

**Hon. Chepkong'a:** Thank you very much. We would like to welcome them to the House. We hope that they will be motivated to become Members of Parliament when they grow up.

The Bill seeks, among other things to ensure that political parties shall promote values of inclusiveness, democracy and participation of the people. The Bill further seeks to ensure that the applicants for registration of a political party uphold the constitutional threshold of the two-thirds gender rule. Most of the political parties do not comply with this rule. If you look at the top echelons of political parties, they are mainly composed of one gender. Once this Bill is passed, it is going to be a requirement that the political institutions of each party must uphold the principle of the two-thirds gender rule as contained in Article 27(8) of the Constitution.

This Bill seeks to address the issue of mergers of parties. There have been inadequacies. The Registrar of Political Parties has many applications from parties seeking to merge. Unfortunately, there are inadequacies in terms of the law on how that should be dealt with.

This Bill also seeks to ensure that terms such as "ethnic minorities, marginalised communities, special interest groups and youth" are defined in accordance with the Constitution. Currently, in the legislation it is not well defined who the marginalized communities and ethnic minorities are. This proposed amendment seeks to define that and give clarity of who composes the marginalised communities, ethnic minorities and the youth, so that we do not have confusion.

Clause 3 seeks to ensure that political parties promote the values of inclusiveness, democracy and participation by the people, so that people participate in the political parties. We

should not have briefcase political parties. We do not want parties which are controlled by one individual. We want parties that have structures from bottom going up as opposed to from top going down as we have seen some parties promoting in this country. When many parties in the last election were told that they must comply with the rule of participation by the people to recruit members in, at least, 24 counties, they went to *Mpesa* points and recruited members. We would like to discourage that. We would like the membership to be built from the grassroots as opposed to membership that is drawn from Nairobi.

Clause 5 seeks to amend Section 6 of the principal Act by making it a requirement that applicants for registration of a political party must meet the constitutional threshold of the two-thirds gender rule as enshrined in the Constitution. There are, at least, more than three constitutional proposed amendments that seek to meet the threshold of the two-thirds gender rule in this House and also in the Senate. The county assemblies are now properly constituted in accordance with Article 27 (8) of the Constitution. We would also like that good practice to be cascaded to the political parties.

Clause 6 seeks to amend Section 7 of the principal Act by harmonizing the use of the phrase “special interests groups”. It also introduces the requirement that political parties provide a desegregated data of its membership based on each of the components of the special interest groups so that every political party that seeks to file membership of their political parties with the Registrar of Political Parties must show in their list, members of the special interest group, minority group and youth group. This is so that they are not marginalised and are taken care of in accordance with the constitutional provisions which require that we adhere to promoting special interests in all organs of our institutions.

Clause 8 of the Bill proposes to amend Section 11 of the principal Act by setting out different procedures by which political parties can merge. There has been clamour for political parties to merge and that process was not clear. It has now been made very clear in this clause.

Clause 9 of the Bill proposes to amend Section 14 of the principal Act by setting out a clear mechanism by which political parties may deem their members to have resigned. There has been a lot of confusion. Mere opposition to a political party’s interest or things they are espousing is deemed to suggest that they have vacated their positions as members of that party. There is no vacation of membership by mere association. You must vacate through resignation. Let it be very clear that you have moved and merely crossing to sit on either side should not be taken to suggest that someone has defected. Merely seeing me in your constituency should not mean I have defected. It should not be taken to be betrayal of the interest of the party. Kenyans should be allowed to exercise their democratic right of association and freedom of speech.

Clause 10 of the Bill seeks to amend Section 15 of the principal Act by clarifying the marginal note to make reference to the content of the section and prohibiting the full registration of provisionally registered political parties that participate in elections contrary to the Act. The passage of these amendments would ensure that the parties that have been provisionally registered do not participate in elections. They must seek full registration and compliance within the provisions of this Act.

Clause 11 of the Bill seeks to amend Section 16 of the principal Act by introducing the laws of status as a political party if it fails to offer a candidate for election in two consecutive general elections. There are parties that exist on paper and only appear during the elections and threaten to participate but do not. They are only used for purposes of negotiations. If you do not effectively participate in two general elections, you will be deemed to be moribund and you will

be struck off the register of political parties. This is to make it clear that parties should be living institutions and not only formed for negotiating deals with other people.

Clause 13 of the Bill seeks to amend Section 19 of the principal Act by mandating political parties to hold meetings as per their constitutions and to comply with the law relating to public meetings. There is a requirement in the law that political parties should come up with their own constitutions. Many political parties have constitutions, but they do not comply with them. They do not call for meetings and that is why Hon. ole Kenta had to go to the Political Parties Tribunal to require his party to comply with its constitution. He is an active member in that party.

Clause 15 of the Bill seeks to amend Section 21 of the principal Act to require that a political party must have in its membership special interest groups in accordance with Articles 27 and 100 of the Constitution. It also proposes that a political party should maintain standards at registration during the entire duration of its existence. At inception, parties are very active. But they develop inconsistencies that are contrary to their enabling provision as they continue in existence. They must continue to exist in the manner in which they are proposed to do.

Clause 16 of the Bill seeks to amend Section 25 of the principal Act to require that a political party shall not receive funding if it does not have in its governing body representation of special interest groups. If you do not have special groups in your organs or party list, then you will not partake in the political funds set aside by this House.

Clause 20 of the Bill seeks to amend Section 21 of the principal Act by requiring that the Chief Justice (CJ) may, in consultation with the tribunal, prescribe regulations for the determination of disputes. This will facilitate the tribunal in developing its own rules for use. Previously, there were no rule-making procedures to deal with Political Parties Dispute Tribunal. In the Elections (Amendment) Bill that will be coming later on, we will be proposing that political parties comply with the requirements of the Political Parties Act as they participate in elections.

Clause 23 of the Bill seeks to amend the Second Schedule of the principal Act to ensure that political parties include special needs groups and dispute resolution mechanisms in their constitutions as per Articles 47 and 50 of the Constitution. There will always be conflicts and contentions where there are people. It is important that political parties have dispute resolution mechanisms in their constituting acts before either going to the Political Parties Tribunal or the High Court so that they can deal with their matters before they are exposed to third parties. This is an important amendment brought into this Bill. We will also be proposing to require that the Political Parties Disputes Resolution Tribunal will be mandated to hear disputes arising from party primaries as opposed to the Independent Electoral and Boundaries Commission (IEBC) hearing them now. The IEBC should only conduct fair and transparent elections.

Clause 27 of the Bill seeks to amend the Sixth Schedule of the principal Act to harmonise specific provisions of the Schedule to the Act and clarify the procedure for recruitment by the Public Service Commission (PSC). At the moment, there is a problem because the Registrar of Political Parties is still in an acting capacity because the process of appointment had not been clarified. Previously, Parliament was given the authority to recruit, but that is not the structure in the new Constitution. Parliament does not recruit anyone to the Executive; but only does vetting. That legislation was inconsistent with the constitutional provision which requires that the Executive advertises, recommends and Parliament vets. If we are dissatisfied with that candidate, then we reject and the Executive looks for another. We are now provided with a very elaborate

procedure on the appointment of the Registrar of Political Parties. Once this Bill is passed, we hope that the position will be filled substantively by a new Registrar of Political Parties.

With those remarks, I beg to move. I would like to request the indomitable Member for Kiharu Constituency to second. I found him today driving a small car, and I can confirm to his constituents that he is a man of frugal means.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kang'ata.

**Hon. Kang'ata:** I stand to second and support this Political Parties (Amendment) Bill 2016. It is a very good Bill which has new features. It is going to alter the political landscape and the way we manage political parties in this country. One of the reasons I support this Bill is this: For the first time in the history of this country, we have provided the mechanism of merging political parties. We know several political parties that have merged. However, they have done that in a very informal manner. A good example is the merger of the Liberal Democratic Party (LDP) and Kenya African National Union (KANU) in 1999. It was quite informal. It was being driven by two party leaders. Again, the fallout was not clear and not legally provided for. Therefore, we have new clauses which are clearly going to indicate the procedure of merging political parties.

I belong to the school of thought that Kenya has very many political parties which do not add much value to this country. It makes sense for a growing democracy to have fewer and fewer parties so that Kenyans can have a better choice of political ideas as opposed to a litany of political parties whose manifestos tend to be almost identical. This law has proposed a mechanism of merging political parties. To me, that is progress and one of the reason we should support this Bill.

Secondly, we have gender mainstreaming. We have provided provisions that are going to compel political parties to include young people and people with disabilities into their organs. For instance, we have the nomination list, the governing councils and membership. Several clauses of this Bill have proposed to compel those political parties to include women, the youth, people with disabilities and marginalised communities in this country. To that extent, this Bill is very progressive and we need to support it.

The third point which is also a very crucial aspect to this law relates to the Political Parties Dispute Tribunal. Clause 18 of this Bill proposed to amend Section 39 of the principal law to expand the membership of Political Parties Dispute Tribunal from five to seven. What is the advantage of this proposal? Presently, we only have five members in that tribunal. When you look at what happened in the last elections, there were so many suits which were taken before that tribunal. Members challenged the nominal lists and their exclusion from nomination. When you have only five members handling disputes of so many political parties, then that court was not giving justice to Kenyans. There are so many litigants who sought services from that tribunal. We, therefore, as a Committee, propose to have seven members. Why? That means we can have several benches. One may be sitting in Nairobi and another in Kisumu. That way, we shall have devolved justice. To that extent, we are going to reduce and mitigate the backlogs and cure the many capacity issues which currently bebove the tribunal.

We also propose to amend Clause 20. It proposes to amend Section 41 of the principal Act by providing that the Chief Justice, in consultation with the tribunal, can make regulations for the determination of disputes arising out of this law.

Hon. Temporary Deputy Speaker, if you have a case before the tribunal, you cannot know how you are going---

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members who are walking in, please, do that in a better way.

**Hon. Kang'ata:** Hon. Temporary Deputy Speaker, if you have a case before the tribunal, you do not know how you can move it. There are several ways of moving a case from a court to another. You can do it through filing a plea or originating sermons or a notice of motion. You can also move from a court by filing a petition. However, presently, the law is silent. You do not know how you can move. I know the principal Act has a provision providing that the tribunal should not have due regard to technicalities but, be that as it may, sometimes, technicalities make sense. When you move a case, you need to be told that you are going to file an affidavit or how you are going to set out your arguments. This Bill is going to give the Chief Justice the power to make regulations which are going to provide for the procedure of moving a matter before the tribunal.

Another Clause which I want to highlight is Clause 22, which seeks to amend the First Schedule of the principal Act to include adherence to the code of conduct by political parties on grounds of inclusion of special interest groups. We all know that so many people are nominated to become Members of County Assemblies (MCAs) on account of being disabled, but they are not disabled. We all know so many people who have been calling themselves young people and yet, they are past the age of 35 years. They are not young people, but they have been riding under the pretext of the ambiguity that the principal Act has. Therefore, this Bill is going to cure that ambiguity by clearly providing for how special interests are defined, so that we can ensure that political parties adhere to issues of special interest groups.

I will also highlight Clause 27, which amends the Sixth Schedule of the principal Act to harmonise the specific provision of the Schedule to the Act and to clarify the procedure of recruitment by the Public Service Commission (PSC). We need to involve the PSC regarding the people who serve under this tribunal, and also to people serving under various organs that had been established by this Bill.

Another key component which we need to support with regard to this Bill is Clause 11. Clause 11 of this proposed Bill purposes to amend Section 16 of the principal Act by introducing the loss of status as a political party, if it fails to offer a candidate for election in two consecutive general elections. We have briefcase political parties. They consist of people who do not participate in politics. They do not offer candidates, but they go around masquerading as political parties. This Bill is going to ensure that anyone who registers a political party must participate in an election. The era of briefcase political parties which do not offer candidates and ideas is going to end - going forward. The people who register political parties are there for political business. Political business is offering candidates in general elections.

On that account, I urge Hon. Members to support this very expansive Bill. Take your time to read it. It has very crucial issues that are going to change the political landscape of this country. Once we support this Bill, we are going to have a new Kenya.

Let me also tell members that the controversial proposal of only allowing degree holders to come here in Parliament is not in this Bill. Once that Bill comes, do not worry, I am one of those Members who will oppose it. I will not do that because I do not have a degree, I have a degree. I will do it on the basis that I believe in inclusivity. Everyone should be allowed to

compete in the political space without faltering the right of the Kenyans to elect anyone they wish.

Thank you and God bless you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member, you have not seconded.

**Hon. Kang'ata:** I, hereby, second this Bill.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Members! This is not how we behave in this House. When the Chair is on her feet, you freeze!

*(Question proposed)*

The first one on my request list is the Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Temporary Deputy Speaker. I will not take a lot of time on this Bill. I support it. This Bill is important to political parties. It will bring harmony within political parties. I thank the Departmental Committee on Justice and Legal Affairs for bringing this Bill to this House.

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Kajwang') took the Chair]*

Hon. Temporary Deputy Speaker, this country has had an acting Registrar of Political Parties for over eight years. I thank Madam Lucy Ndung'u because she has been acting as the Registrar of Political Parties. When you are in an acting position, you cannot make substantive decisions. First, I want to thank the Committee because it has provided the procedure in which the Political Parties Registrar will be recruited.

We also need to bring sanity in the running of political parties. You remember the other day I tabled audited reports of parties which do not exist in our respective constituencies and counties. There is a political party called 'Farmers Party', and Hon. Jakoyo asked where that party is. The rule is very clear. For you to be a recognised political party in this country, you must have 24 offices in 24 counties. I want to challenge any Member sitting here to tell us whether he or she has seen an office written 'Farmers Party'. We must deal with that party because there are parties which remain dormant for five years. They are revived before general elections.

Hon. Nyamweya can greet his Secretary-General.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Is this the Member I am hearing may or may not be the next governor?

**Hon. A.B. Duale:** There is likelihood that he will be a governor. I served with him for years. He has the potential to be a governor, but I do not know whether he will convince voters. He has the curriculum vitae but, in politics, it does not matter. It is the *wananchi* who decide.

The law must be followed. The Political Parties Registrar must be substantively appointed. The threshold of this Bill is that the recruitment procedure has been set out.

Secondly, once we have a substantive Registrar of Political Parties, the enforcement will come in. We know that the Orange Democratic Movement (ODM), The National Alliance Party (TNA), United Republican Party (URP) and Kenya African National Union (KANU) are parties which are known. They have Members of Parliament and Members of County Assemblies (MCAs). New Forum for the Restoration of Democracy (FORD) Kenya and the Alliance Party of Kenya (APK) have Members of Parliament, MCAs, governors and senators. But there are parties which are not known. They are docile but, as we approach the general election, especially during the nomination of candidates, they become very active. That is their harvesting period. They harvest their farm once in every five years. They harvest from thousands of MCAs and Members of Parliament who pay them.

Political parties have issues. We must bring in this Bill a proper procedure for use by the Independent Electoral and Boundaries Commission (IEBC) and Political Parties Registrar to enforce fair nomination of candidates within political parties. If political parties conduct free, fair and peaceful nominations, those small parties waiting for the day ODM, URP, TNA and many other parties will be doing their nominations, will not be there. They wait in the corridors. Their offices are somewhere along Moi Avenue or Tom Mboya Street. They wait somewhere and cash in. That is why there is no party discipline in this country. In our coalitions, we have Members of Parliament who were short-changed during the nomination process. They secured nominations from other parties, contested and won. A good example is Hon. Oyoo. He is a very popular man on the ground, but some people decided that he should not come to Parliament. The Almighty God and his people said: "No! Oyoo, you can stand on any other party except KANU." He was a member of KANU.

The other day, I saw KANU saying that they had another tallying centre, and that their gubernatorial candidate in Kericho won. The only thing I remembered was that KANU was used to the *mlolongo* system of conducting elections, where candidates with shorter queues would win. The followers of KANU in Kericho County thought that Kenya was still in that state. They thought that because Mr. Sang's 'queue' was very short, he should have been declared the winner. Kenya has left that stage of democracy. The days of the *mlolongo* voting system where Hon. Kenneth Matiba and many great men lost elections in that manner are long gone. Kenyans must be very careful because of the history of the party called KANU. Kenyans must be very carefully with the re-branded KANU.

My colleague, the Secretary-General of ODM - and whom I respect - always says that the Jubilee Coalition is taking the country back to the dark days. The revival of KANU and the re-branding of KANU is the biggest threat in this respect. That is the party which is most likely to take this country back to the dark days. Some of us have never been members of KANU, but we remember those dark days. We will not allow our coalition to go that route. I want to warn the CORD---

**The Temporary Deputy Speaker** (Hon. Kajwang'): Leader of the Majority Party, I know that we are discussing the Political Parties (Amendment) Bill, which gives us a lot of latitude. But keep the track very narrow. Do not go into issues which are not very relevant.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, let me finish.

There is the element of mergers in Clause 8. I like the way the Departmental Committee on Justice and Legal Affairs has put it. I will bring amendments to that clause. I have discussed

this with Hon. Ochieng and Hon. Kajuju. Merging and coalition-building are provided for in law. Parties can merge or form coalitions before a general election or have a post-election coalition. We want to make sure that we safeguard democracy. In a merging process, national delegates conferences of the parties involved should be given an opportunity to meet in a place like Kasarani and endorse the merger. That is one thing I support.

Secondly, members of the respective parties that want to merge have been given an opportunity in this law, and a timeframe within which to decide and tell them they can finish their term and join another political party.

A period of time has been provided in order to remove the element of coercion and dictation. In the previous law, what we used to have as coalition-building and mergers were being done in a very informal way by the political parties, and then they deposit that with the Acting Registrar of Political Parties. Now we have it in law such that if we decide that a certain number of parties want to merge, then it is anchored in the Political Parties Act. We are dealing with political parties. Allow me, as a founder member of ODM in 2007; a founder Member of United Republican Party in 2011 and a person who went through the corridors of court because I was about to be expelled and something happened--- My lawyer was Kioko Kilukumi and if he is watching---

I was taken to court about four times to be expelled from my then parent party. I paid a lot of money in litigation. We struggled in court until the day I was sworn in as a Member of Parliament (MP) for Garissa Township under URP. My lawyer went to court and said: "I think this case has no standing." That is because the case was about expelling me from one entity. He said: "This man is no longer in that entity."

So, this Bill is coming at the right time. At least, the procedure of appointing the next Registrar of Political Parties is clear. That office is so important in the management of political parties. There are only two people in this country who have been acting for more than eight years. One is the Chief Executive Officer (CEO) of the Constituencies Development Fund Board and the second one is the Registrar of Political Parties. I do not know what crime they have committed. How do you solve impartiality? It is by putting in law the recruitment procedure.

Finally, even though you told me not to get out of it---

**The Temporary Deputy Speaker** (Hon. Kajwang'): No! I am not gagging you.

**Hon. A.B. Duale:** I want to say it here to my colleagues in CORD that if there are people who will take Kenya back to the dark days, it is the re-branding and the noise from KANU. If my friend Senator Gideon Moi wants to have a party, he had better look for another party. That is because the history of KANU is so tainted that even if you wash it 10 times or take it to the best drycleaner in town, you cannot clean it up. This is another former KANU man. I am ready to handle all former KANU members.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I will bring you back. Member for Muhoroni.

**Hon. Oyoo:** Thank you very much. I have listened pensively as I sit here while my good friend, the Hon. Leader for the Majority Party is lambasting my favourite party KANU - *Baba na Mama* - all the time without proper reasoning. I want to inform him that he is a bigger beneficiary of the defunct KANU party. Without KANU, he would not be here. He was able to go to school courtesy of President Moi putting up the palatial Kabarak High School, Kabarak University, Moi University College and Moi Secondary School in the barracks here. He had the

benefit of getting proper education from those institutions. Now, he is mentioning the name of Golden Gideon Moi for nothing. This is very wrong.

**The Temporary Deputy Speaker** (Hon. Kajwang'): All right. Hon. Leader of the Majority Party, let us have the Member for Budalang'i.

**Hon. Ababu:** On a point of order. Is it really in order that, at a time when we are debating this law that is intended to streamline the political arena and make competition to be civil, make our politics to be mature, that we would start off by attacking and maligning political parties in the manner that the distinguished Hon. Leader of the Majority Party is doing? Also knowing that his current leader of Government or President is a former distinguished chairman of that party and his current party leader in URP is a former distinguished Secretary-General of that independence party; and knowing that when you lift the veil of the name 'Jubilee', what you see behind it is actually *Jogoo*; that behind the horn that is URP rests the famous emblem of *Jogoo*, is it really in order that the Hon. Leader of the Majority Party, who holds his position by virtue of the foundation that is KANU both in terms of the leadership and in terms of the history that has given birth to Jubilee--- Many of us believe that Jubilee is KANU reloaded. Therefore, it certainly would not be in order for the Hon. Leader of the Majority Party to malign that great independence party in the manner that he is doing. Is he in order? I believe he is highly out of order.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Lastly, let us have the Hon. Member for Kanduyi. Hon. Leader of the Majority Party, just receive all these points of order.

**Hon. Wamunyinyi:** On a point of order. Is the Hon. Leader of the Majority Party in order to tell the House about KANU, when he knows that KANU is a member of Jubilee? At the moment as we speak, KANU is in Jubilee. Just to stress the point, all the Jubilee leaders are Members of KANU. The Hon. Leader of the Majority Party should not mislead the House that KANU is going to take us back to bad days when KANU is in Jubilee and everybody in Jubilee is in KANU.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Leader of the Majority Party, take all those points of order.

**Hon. A.B. Duale:** Now that you have allowed three points of orders, first, the last Secretary-General of KANU, *Baba na Mama* party is the current leader of the CORD Coalition, Hon. Raila Odinga.

*(Loud consultations)*

Let me finish. The current leader of the Wiper Party, Hon. Kalonzo Musyoka, was the longest serving Organizing Secretary of KANU. The current leader of FORD (K) was not only a senior member of KANU, but was nominated several times as its legal advisor.

Finally, to Hon. Wamunyinyi, when we went for the 2013 General Election, KANU supported the Amani Coalition. They never voted for President Uhuru Kenyatta. I agree on our side that the President was the Chairman of KANU and the Deputy President was, at one time, its Secretary General. Putting all those together, even if all of us are former children of KANU, if the father at one time took the family in the wrong direction, we brought the new Constitution and other reforms. We must tell the father that now it is the time for the sons and daughters to lead the country on a good reform agenda.

That is why from our side, we are not in agreement with this animal called re-branding of KANU. Our only worry is the former leaders of KANU such as the Right Hon. Prime Minister and the former Vice-President. We must ensure that, as we go to the elections, we do not bring those people to your coalition because of the history of that party. The only thing which is associated with me in KANU is that I drank their milk and went to Moi University. That was paid for by the taxpayers. Universities are not run by KANU. So, my father is my father but, a time will come when your stepfather becomes better than your father.

So, I beg to support the Bill and I am sure we will not re-brand KANU again.

Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Hon. Member for Igembe South.

**Hon. Linturi:** Thank you, Hon. Temporary Deputy Speaker. I would ask the Leader of the Majority Party to indulge me for a moment so that he may hear what I have to say this precious morning about the *baba na mama*. I take serious offence when the Leader of the Majority Party tries to create an impression that KANU did not vote for President Uhuru Kenyatta. I was the Chief Whip of KANU in the last Parliament. I was a Member of Parliament of KANU and President Kenyatta was our Chairman. The Leader of the Majority Party should not in any way try to mislead this House by saying that KANU never voted for President Uhuru Kenyatta. In any case, he needs also to know that voting is by secret ballot. So, I do not know on what basis he is trying to create that impression.

Secondly, on the *baba na mama*, this Political Parties Bill or whatever Jubilee is trying to do is to bring people together to form one party. If you remember, *baba mwenyewe* said all these small parties, despite the fact that I respect the issue of the right to expression and the right to associate, would balkanise this country. To the extent that he said that, the only way to get a united Kenya is trying to remain within one party. This is what Jubilee is trying to do 15 years after former President Moi had talked about it. I do not think it is fair.

**The Temporary Deputy Speaker** (Hon. Kajwang'): All right. I have allowed you to express yourself enough outside the rail. Can we come back to business? The Leader of the Majority Party, something was addressed by the Member for Kanduyi I think to the extent that KANU has a coalition arrangement with Jubilee. We are discussing mergers and so on. That was, perhaps, the point which came out from the Member for Kanduyi which I did not hear you respond to. There is a coalition arrangement with KANU. I can give you more time to say it. I will give you a minute to discuss.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I am categorical. As we went to the 2013 General Election, KANU formed a coalition with the Amani Coalition of Hon. Musalia Mudavadi who was just about to be beaten by a small man called "Dida" from my region in the Elections. I want to go on record.

In Baringo County where the Senator got 108,000 votes, Musalia Mudavadi, his presidential candidate, got less than 25 votes. So, they were not in our coalition then. But when we formed the Government, they had a choice to join the CORD Coalition or the Jubilee Coalition for them to get their Members to get Committees because the House under presidential system recognises ruling coalitions, opposition coalitions and independent Members.

Since Members of Parliament were mainly from Jubilee-dominated areas, the leadership of KANU decided to form a coalition with us. So, we adopted them. It is like when you know your child. When you tell him this is where you need to go and graze your cows, he takes the

cows to the wrong place. So, currently, they are cohabiting with us. We are telling them that now there is a Bill before the House for all parties that want to merge.

In the Elections of 2013, we had no coalition agreement with KANU. Hon. Omar Mwinyi, a man I respect knows what we went through under KANU. So, we do not want to go back that route.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us move on. You have the Floor the Member for Samburu West.

**Hon. Lati:** Thank you, Hon. Temporary Deputy Speaker. Thank God the Almighty, I have nothing in relation to KANU past, present or future. I am surprised that in this House today, the people that I respect very much because of their stand and knowing what KANU did to Kenyans many years are today propagating positive things about KANU. I think we forget very quickly. I have nothing to do with KANU for now and forever.

I rise in support of this Bill because it has special aspects that are very palatable particularly to people like us who come from areas where political parties are given almost zero attention. The fact that this Bill recognises something called "marginalised" is a step forward in the political reorganisation and management of our parties in Kenya. Parties raise a lot of excitement and everything in parts of our country in places called down country but in northern Kenya, they raise very little.

In fact, a few days ago, I was telling my friends in a small conversation about who will go to CORD and who will go to Jubilee. I told them that where I come from, and I thank God for that, parties do not matter. If the Samburu think I am a good leader, I can be elected in a party called *ng'ombe*, *mbuzi* or even camel. It does not matter. I know that without good management of parties, some of our good friends who are very good leaders in this House could be affected and thrown out because of the kind of management that we have in parties.

So, I thank this Bill for recognising marginalised communities. I hope the people who will be running these parties will go a step further and make sure that marginalised communities, as they are, because everybody now claims marginalisation, are recognised in each of the political parties that we will have in our country.

The issue of inclusiveness is also another very attractive aspect in this Bill. As I said, parties in this country tend to be very regional. There are parties for Western Kenya, the Coast and Central Kenya. If we take a serious look, there is some correlation between this non-inclusiveness and regionalism of parties in Kenya and the kind of tribal clashes we have in this country. People tend to associate with particular parties even beyond leadership. Even when leaders have gone like Matiba and everybody, people of Central Kenya will galvanise around some party as a region and they do not like anybody who is not in that party.

There is some correlation as I said to the tribal clashes that we have had in our country. I am hoping that with the kind of Bill that we have here today, if parties were all inclusive and non-regional, we will go a long way in making sure that we reduce tribal clashes around election dates in our country. It will help foster harmony within our people if all people think they belong to a certain party, irrespective of where you come from. The Bill goes a long way to do that.

We should disqualify parties that do not include people like Samburu and the Borana. You must be inclusive. You cannot be inclusive when almost 100 per cent of your membership is Kikuyu or Luo. That is lack of inclusivity. We want to have parties that we all belong to as Kenyans that half the leadership of Samburu would be in some party and the other half of it in another party. That is democracy. Let us borrow from what is in the USA today.

I am really fatigued with this issue of two-third gender rule. The framers of our Constitution did not have in mind a Constitution where everything is two gendered. I have always thought that in the Constitution, you cannot have affirmative action. I am a proponent of affirmative action. Affirmative Action should come in form of Bills and Acts of Parliament and not in the Constitution. This is because it is very hard to amend the Constitution. As old as the American Constitution is, it has only been amended 27 times. We have the two-third gender rule in our Constitution. I think there must have been a very serious activist in the Committee of Experts and that is why we are facing many challenges. I do not think in this country one gender has been having problems all along. I also do not think we will be having a gender problem for many years. Our girls are getting educated and very soon they will catch up.

If the essence of having a two-third gender rule in the Constitution and all the Bills is to make sure that the challenges that our ladies face is somehow smoothed by getting them into these offices or elective seats--- A disabled person is more disadvantaged whether male or female than a female in Nairobi. Instead of the gender rule we should be a little bit diverse in our thinking that affirmative action is bigger than just being male or female. Instead of the gender rule, it should be affirmative action rule so that it considers disabled people whether male or female and people who are marginalised. Today if you consider, a small community called “Njemp” in Baringo, you will realise that they have never had one of them being elected into this House. We nominated 16 people to the Senate, but none of them is a Njemp. There is nobody to promote their inclusiveness in the National Assembly of our country.

We nominated 16 people through this gender rule and activism while making the Constitution. We have become the laughing stock of everybody in this world. First of all, the nomination of membership in any part of the world is not to cover representation. It is supposed to cover areas that could not otherwise be filled by a normal electoral process, very small areas. If you look at our Senate today, you will find that we are electing 47 Members and nominating almost 20 Members; almost 50 per cent of our Senate is nominated. What sense does that make? If you look at the County Assembly of Samburu today, you will find that we only have 15 wards but we have nominated 11 people. What is the purpose of going to elections in Samburu? Why not just nominate everybody? It tells you that the people who were making this Constitution were so much into gender. They actually lost track of who is marginalised in this country.

The other aspect I like is where you lose status as a party if you do not elect anybody. I want to go a step further; you have to elect national positions. Electing a councilor in some far flung area in Samburu does not qualify you to be a party. We will have very many parties that do not make sense. You must, at least, get some national representation, so that we can also have this inclusiveness, a harmonised country and feel that our country looks like the United States of America (USA).

The oldest parties in the USA were formed in 1820s. The Democratic Party was formed in 1828 and it is still there today. We need to move in that direction. I support this Bill because it is very progressive. I hope we can bring more amendments to make sure that parties have candidates elected to national positions. They should not have councilors elected in some parts of Turkana and say they are a party of the Republic of Kenya.

Thank you, Hon. Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Bondo, you have the Floor.

**Hon. Ogolla:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It is very critical that we make or have a sober environment where we do political dealings. Political parties play a critical role in democracy and are a major safeguard in those kinds of societies. This only happens when political parties are in an environment that is fairly organised and is proper, and the parties are organised and are sober. What we have experienced in this country for a long period of time is that we have many parties that are disorganized and are non-existent. We hear more of them during elections than any other time.

The chaos and disorganizations that are in political parties extend to elections. That is why we have had many problems as a country. The disorganization, issues of abuses and chaos seen in political parties extend to the entire process of elections. This becomes very expensive to the country to an extent that many times nobody gets to understand the outcome of elections.

It is important that we have a sanitized situation so that political parties make sense. This is in order to safeguard the achievements we have made as a country in terms of democracy. I support the Bill to the extent that it brings out a number of positive things, particularly in terms of mergers, registration and dispute resolution. There are many other things that, in my view, need to be relooked at a fresh. As we go through this, we might want to bring in a few aspects that are missing through amendments.

One thing that I want to bring to the attention of this House is the requirements for registration of political parties. We have generally agreed that for national parties, there are certain parameters or yardsticks that must be in place. I want to plead and bring to the attention of the House that certain things are not happening right. A lot of mess we are seeing in county governments is happening because they do not have alternative voices and checks. We see exactly what is happening when we are in this Parliament. There are enough checks and space for alternative voices and this is completely missing in counties.

This is happening because we are using political parties for purposes of forming county governments. If you go to county governments, you will realise that there is almost no opposition. If you go to areas that are dominated by certain political parties, you will realise that all the wards are represented by people from the same political party. At the end, there are no checks, alternative voices and ways of seeing things differently. We should look at national parties against the whole idea of regional parties. We need to have cadre parties for purposes of national arrangement. We should allow parties even if they are affiliated to the national parties at the regional or county levels. This is happening in Germany where we have of course the bigger parties but in each and every state there is space for political parties. I know this is not here but if we want to recognise it, we can because we now have devolution. I know there is a leader of the minority party in the county assemblies. However, in many counties this is not filled up because you get a situation where all the members of the county assembly are from one particular party. In my view, there are problems in counties because there are no other arrangements that are able to counter this.

In this Assembly, we allow our committees like the PAC and the PIC chairs to be from the other side of the House. This is missing in counties and it is a major problem. You get the head of PAC and PIC coming from the same party. Checks are completely compromised and that is why governors are getting a field day in terms of how things are happening at the counties.

The other thing that I wanted to bring out is the whole issue of compliance. We have experienced a situation where the Registrar of Political Parties has almost been toothless. It is time for us to disintegrate or move the Office of the Registrar of Political Parties from the

Independent Electoral and Boundaries Commission (IEBC). It has been operating as an appendage of the IEBC for too long. It has been operating like an extended office of the IEBC. All the officials in the Office of the Registrar of Political Parties have been seconded from the IEBC. Time has come for this Office to be independent and be completely detached from the IEBC. It needs to operate in a manner that makes it easy for parties to comply.

In this House, some of our colleagues have been wondering what has been happening in the ODM. Why does it hold elections? Some parties do not hold elections. When ODM was busy holding elections, they were wondering what was happening because all the other parties were quiet. Political parties have to do certain things and some of these include elections. This Office needs to be properly capacitated and organised. This Office also needs to enforce sobriety in political parties if at all we are to safeguard the gains we have had as a country.

There is the issue of a political party being disbanded if it loses in two successive elections and fails to win a parliamentary seat. It has been brought up by Hon. Lelelit and I need to emphasise it. It is not just a matter of any election. It needs to be a national election where we are talking about national offices and not just wards. If a political party fails to get a candidate or win a seat in the National Assembly or the Senate in two successive general elections, that political party does not need to be in place. It is important. That is why I to support the whole issue of coalitions.

Democracy is not dictated by the number of political parties in a country. For some time, Congo, during Mobutu Sese Seko's rule, had over 70 political parties. However, the top 30 parties were Mobutu's own political parties. It is important that we encourage these mergers so that we get to a situation where we have fewer, more organised parties and sober competition.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Budalangi.

**Hon. Ababu:** Thank you, Hon. Temporary Deputy Speaker. This is a very important piece of legislation.

As we debate this Amendment Bill, let us be cognisant of the fact that in 2011, a year after we enacted the new Constitution, the 10<sup>th</sup> Parliament took time to bring into effect Articles 91 and 92 of the Constitution, which for the first time in the history of this country, constitutionalised political parties and transformed them into constitutional institutions. Let us also admit that at that time, when the 10<sup>th</sup> Parliament was putting together the Political Parties Act, we were racing against time in terms of beating very tight constitutional deadlines that had been set in Schedule 5 of the Constitution for operationalisation of the Constitution. It is good that this House is taking time to take a fresh look at the Act of 2011 and bring about improvements to the law on political parties.

In the beginning, when this Bill was being put together by the Departmental Committee on Justice and Legal Affairs that was chaired by my learned friend, Hon. Chepkong'a, I got the impression that the motivation was to create a platform to give comfort, succour or the basis for the on and off merger of the Jubilee parties to create the so-called Jubilee Alliance Party (JAP). That appears to have been the primary motivation behind this Bill. Be that as it may, it gives us an opportunity nonetheless, to take a fresh look at the framework of the Political Parties Act. As we do that, I want to urge this House to debate this Bill within the context of the Constitution.

I was listening to my good neighbour, the Member for Bondo, suggest that we could have political parties of a regional nature. In Bavaria, Germany, there are political parties whose only area of operation is the region of Bavaria. They do not have any other interests beyond Bavaria.

This is a reality. In Switzerland, you will find a canton-based political party whose only interest is a canton. They do not go beyond that. That is a reality in certain jurisdictions.

Our Constitution was pieced together in the context of a lot of historical fear, misgivings and apprehensions, one of which was the overriding desire to build national unity. Article 91 of our Constitution sets the basic standard and principle for establishment of a political party. Currently, we are debating a statute law that must remain subservient and pay fidelity to these constitutional principles. That Article provides that every political party shall have a national character prescribed by an Act of Parliament. The issue of the national nature of a political party is a constitutional matter. The only way you can alter that is by altering Article 91 of the Constitution. A political party must have a democratically elected governing body. It also must promote and uphold national unity. The issue of the national-hood of a political party is enshrined and anchored firmly and expressly in the Constitution. That entire Article lists the basic principles that a political party must meet.

Article 91 (2) provides for what a political party must not be or must not do. It states:-

“A political party shall not be founded on religious, linguistic, racial, ethnic, gender, regional basis or seek to engage in advocacy of hatred on any such basis.”

There has been debate in recent days of pastoralists or the people from the Coast desiring to form a political party whose nature, motivation and character would be nothing other than regionality, ethnicity or communality. That would be an endeavour in futility because it would be a violation of Article 91 of the Constitution.

Article 92 gives this House the responsibility to legislate and provide the broader framework within which political parties must operate. As we debate this statute, may we ultimately be guided throughout this discourse by those provisions of Articles 91 and 92 of the Constitution. I am very proud of these Articles in the Constitution because for the first time the history of this country, political parties are now constitutional organs. Previously, political parties were managed under the same law called the “Societies Act”. That same law was also the framework for funeral committees, self-help groups and all sorts of small conglomerations of people coming together.

Hon. Temporary Deputy Speaker, that is the framework under which political parties were previously managed. We have raised the bar by constitutionalising political parties and that is out of the appreciation that political parties are key building blocks for any democracy. They are the basis of political party. This is a law that must be given absolute primacy because it seeks to refine those building blocks of our democracy.

I am pleased that in Clause 8 of this Bill we have revisited the key issue of political party merging, forming new political parties and new coalitions. It is important that we have now provided protection for Members when political parties merge. This was a motivation for the JAP of Kenya that Members have protection as they walk into JAP without necessarily being thrown to by-elections. We should use this to remove the fear that has previously been there that anytime you have a merger midstream then Members would have a problem.

The only issue I have not seen well articulated that I would wish to ask the Departmental Committee on Justice and Legal Affairs to take a fresh look at is that when political parties merge, we should revisit the share of the Political Parties Fund such that we provide a basis on how in the merger we recalculate the basis of sharing of the Fund. While at it, we should raise the share of the Political Parties Fund as a share of the Budget. It is one of the key innovations of

the Political Parties Act which has the potential of liberating political parties from influences of sponsors and other shadow characters that put their resources in political parties.

I would like to conclude by saying that we should take a fresh look at Clause 19 which is on how this Act can help in resolving disputes arising out of political party nominations which is a landmine and a big challenge. Through this law, we can---

**The Temporary Deputy Speaker** (Hon. Kajwang’): I will add you a minute.

**Hon. Ababu:** Thank you, Hon. Temporary Deputy Speaker. I really appreciate the indulgence. We should ensure that this law provides a basis of cleaning up the mess we witnessed in political party nominations.

Finally, Clauses 17, 18 and 27 talk about appointment of the Registrar of Political Parties and it is a shame that she has been in an acting capacity for the last eight years. It is unacceptable and we should hasten the enactment of this law and the process of the appointment of a substantive holder of this office.

Jubilee should respect KANU. I sat here with a lot of apprehension listening to the Leader of the Majority Party disparaging the grand old party of Independence that has been chaired by His Excellency President Uhuru Kenyatta and the party that the Deputy President has been the Secretary-General. The light scare in Kericho County should not lead Jubilee to suddenly turn on a key partner as KANU, which Jubilee has a coalition arrangement with. Relax and accommodate the competition that KANU offers. Young people in this country call it "*compe roho safi*".

I support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): The Member for Ugenya, take the Floor.

**Hon. Ochieng:** Thank you, Hon. Temporary Deputy Speaker. I am happy to rise to support this Bill and thank my Departmental Committee on Justice and Legal Affairs for taking time to work through a very important Bill. The role of political parties in any establishment cannot be gainsaid. Through political parties, ideas and policies are debated and people get expression into the political affairs of a country. The way these political parties work should concern everybody else in the country. Thanks to my colleague, Hon. Ababu, these are now statutory offices because they are there constitutionally and we are funding them using public money, and we must have interest in ensuring that they run not only in a democratic manner but also in a manner that allows Members to express themselves.

Last week on Tuesday, I was happy to watch on television citizens of America in Michigan going to vote for their parties in the same venue, same day and time. The Republicans were on one side voting for their candidate while the Democrats were on the other side voting for their candidate. It was amazing. What this law says about membership to political parties is very important. Parties must go to the ground and register members. Let us have parties mobilising members so that you do not say that since the Luo, Luhya and Turkana belong to the ODM, then all those who bear those tribes in their names are members of that party. Because of the allocation to the parties, they must go out and recruit members and have them in their lists. You cannot have a situation where the day ODM carries out its nominations in Ugenya you have people lining up and if Jubilee carries out its nominations in Ugenya, you will have the same people lining up because they have been paid or they have been asked to come and vote. Just like we are mobilising people to vote and urging them to acquire IDs, political parties must go out

and look for people who want to belong to their parties so that we know where people belong. It is going to sanitise the way we do our politics and avoid doublespeak that is part of our politics.

The Leader of the Majority Party is today trying to say that his “father”, KANU, is naked and that it is now a bad party and yet he admits that it was his “father”. We must have people belonging where they want. If you want to belong to ODM, belong there and if you want to join Jubilee, then belong there. We must have a framework where parties register members.

In the last few months, we have been treated to a very spectacular debate by the Jubilee where some Members from the United Republican Party are saying that they were not consulted and that they do not want to belong to the new party. In this Bill, I will bring some amendments that if you are going to have parties merging, then there must be representative organs of those parties making decisions. We cannot have five party officials sitting down and saying we are merging. We must have, at least, the delegates sitting down and saying we agree to merge or not. It is important so that if you are going in a way to kill parties, then let Members of those parties have a say on which parties they want to relate to.

In my opinion, parties must be guided by ideologies and policies that will move this country forward. We cannot have parties formed along tribal lines. I do not fear saying this because yesterday, I watched my President speaking in Rift Valley saying that they are in power until 2032. When the Deputy President rose to speak he said that all these small parties like United Democratic Front (UDF) and FORD (K) will be clamped down and we form a new party. If you read between the lines, they are saying that Kikuyu and Kalenjin are going to merge so that they are in power for all those years. We cannot do that. We must have parties selling policies not tribal inclinations. They should tell me as a Luo that if you join Jubilee, this is how we are going to run this country. You cannot be clamping down communities and saying that they must belong to a particular party. KANU was being accused recently during the by-election for going against the community’s wishes. KANU is a political party in this country and we must allow the Kalenjin to belong to KANU, UDF or ODM if they want. You cannot start spreading fear that if people do not go to a particular party, then the community loses power. Power is relayed by the people and not communities. We must learn to run parties based on ideas. Let someone join a party because they know that the party advocates for free health care and education. Let us not have parties that are meant to build and serve the egos of their leaders. It is not going to help this country.

In this Bill, we propose that the IEBC sticks to the mandate of being credible, create systems and run elections. It should leave the duty of sorting out disputes arising from political party primaries to another body. They keep telling us that Article 87 of the Constitution allows us to solve disputes arising from nominations. We have a body established under the Political Parties Act called the “Political Parties Dispute Tribunal”. We want this body to be given the sole mandate of resolving disputes arising from nominations of political parties. The sole mandate of the tribunal is to sort out disputes between or among members of political parties. If a party does its nominations and a member feels aggrieved, that is purely a dispute between a member and his political party. That is why we want the IEBC to stop going into things that do not concern them. Let them leave the tribunal to sort out disputes arising from members. We are proposing in this Bill to expand the membership of that tribunal from four to seven so that it can be able to sit in more than one panel. I hope the IEBC will understand this. I hope that this Parliament will vote more money to this body so that in the coming elections, this tribunal can

plan forward and tell members of its existence and how it is going to help them solve their disputes.

The reason why we say in Articles 91 and 92 of the Constitution that we want our parties to have a national character is that we also know that our country has very many interests. It has disabled people, women and marginalised groups. That is why we say that parties must, as of law, mainstream this interest in their structures. This Bill talks about how we are going to ensure that the various interests are mainstreamed in these political parties.

As I pen off, I think that the biggest threat to this country today is something called “Jubilee”. I do not know whether it is a party or a coalition.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I beg your pardon.

**Hon. Ochieng:** The biggest threat to even our Constitution in Kenya is something called “Jubilee”. We cannot have a party that wakes up every day and tries to sell tribalism. It is selling sectarianism. You cannot have a party that does that. We would like to tell President Uhuru Kenyatta and the Deputy President that if they want to form a party, they should form one that they will convince all Kenyans to join not because of their tribe or how their teeth look like but because they believe in the ideas that their party propagates.

Thank you very much. I support.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Yes, the Member for Narok North.

**Hon. ole Kenta:** Thank you, Hon. Temporary Deputy Speaker. I also would like to support my colleagues and insist that this is a very good Bill. In fact, I commend the Departmental Committee on Justice and Legal Affairs for this job. It is well done.

A member has commented that this Bill was specifically made for the merger of parties in the Jubilee Coalition. I tend to agree with them.

*(Hon. Chumel consulted loudly)*

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Kapenguria, can you allow the Member for Narok North to finish? Where are you in Chamber? Allow the Member for Narok North to finish and then I will come to you.

**Hon. ole Kenta:** I agree. I am the one who went to court and stopped the merger because they started it without consulting the party organs or anybody else. They just gave instructions to parties to merge without looking at the law. In fact, the effect of that merger was that the President, the Deputy President and the governors and their deputies would have been out of work. Nobody even looked at the law. I am surprised because they have very senior lawyers there, including Senator Kiraitu Murungi. They should be advised by the Attorney-General (AG) of this country because I think they have abandoned that very important role of the AG. They had been very badly misadvised.

Whereas we talk about unity and bringing parties together, the issue is, even in those parties, there is still inequality, favouritism and ethnicity in the employment aspect. You may be in government but you will get nil out of that government. So, the issue is if you do not practise what you preach, why form those parties? I am very disappointed by the tirade of the Leader of the Majority Party. Honestly, I think with friends like that, the Jubilee Coalition does not need enemies. This is because if you are talking about bringing Kenyans together, why would you disparage a party that is actually part of you?

The other issue is that this Bill actually looks at the marginalised and disabled members. It is important that these things are carried out in a way that is going to benefit people. When we had nominations in Narok North, we gave names of people from our respective communities. Do you know what happened? They brought people from Central Region and elsewhere and nominated them on behalf of the people of Narok. So, even being in that party will not assist. We had to go to the High Court to change those things so that our people could benefit. If that is what mergers are all about, then it is unreasonable and should not be accepted.

We have looked at very many issues and I believe we need one or two parties that will bring Kenyans together. We need to be like the USA, the United Kingdom (UK) and other mature democracies.

We should also look at the effect of some of these mergers. This is because if you start a party from the top, then it means that you are going to say that it belongs to the big bosses and not the people. That is what is failing some of these mergers because if you start a party from the top without consulting the people, how do you expect the people to accept it? That is the mistake of Jubilee. You are trying to force members into mergers without following the right procedures. I think it will not work. Even if the Bill is good, it might not succeed if things are not done in the right way.

A member talked about the pastoralist party. I want to advise them accordingly. The law is very clear. If we have common interests and we can have offices in 24 counties, we can form a party. Pastoralists are spread all over. We shall not ask for anybody's permission. We shall look at the law. If we satisfy it that we can form a party, we shall do it and drive our interests without anybody interfering with us. If we are going to form a party and enter into agreements with like-minded parties like the Orange Democratic Movement, we shall do it without any apology to anybody.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Narok North, you still have five minutes but Hon. Amina Abdallah is on an intervention.

**Hon. (Ms.) Abdallah:** Hon. Temporary Deputy Speaker, my point of order is on whether my good friend, Hon. ole Kenta, who happened to have been with me in KANU and the Executive and who happened to be a founder member of the National Alliance (TNA), is in order to mislead this House that he thinks we should move the American way to have, at least, two parties and yet he has taken his own party to court refusing it to merge. He is confusing me. It is my understanding that he is against mergers and then on the Floor of the House, he proposes that Kenya moves to have only two parties. Which is which? I am confused.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Can we have the Member for Narok North?

**Hon. ole Kenta:** Hon. Temporary Deputy Speaker, I would like to indulge the Chair because maybe she does not understand why I went to court. I went to court because they were merging TNA with other strange parties without following the laid down procedures or calling the organs of the party. That was going to leave the country without a President, a Deputy President, governors and deputy governors. They were not covered by the current law. So, I just told them that they are wrong and that I do not want my President to lose his position. There was an element of greed and many unnecessary things.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I know the nominated member wants you to emphasise the point which I am sure she knows.

**Hon. ole Kenta:** When it comes to the issue of two parties, I believe that that should be the right way to go. As I said, people should act in accordance with the law. We must maintain fidelity of the law in this country. Doing things haphazardly as if the law does not exist is emasculation of the rights of party members.

Hon. Temporary Deputy Speaker, the other issue is that certain people feel that they own parties. I have said that even in the Jubilee Coalition that some governors and other people feel that the party belongs to them. If you do not agree with any of their views, and you raise concerns about marginalisation of your people, you are told that you cannot be there. Party members should be allowed to decide what is best for them and for their people.

There is also the issue of the Registrar of Political Parties. I believe that we should have a substantive Registrar of Political Parties. The job should be given on merit because it is a very powerful position. It influences a lot of things, just like the way the courts do. The Registrar of Political Parties should be somebody who is qualified and non partisan. The appointee should meet all the requirements for appointment to that particular office.

The special interest groups have also been mentioned. The marginalised communities must also be considered. Most of these communities look at the parties that will convince them. They have said on record that they will not be going to anybody anymore. They will wait for us to decide whether we will be with them or not. Nobody should think that we will write to them to be included in their party.

Hon. Temporary Deputy Speaker, we should respect one another and other parties. We should not use this House to malign and abuse other parties. That is not the right thing to do. If we want to be cohesive, we should not do that.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Well spoken.

Let us now have the Member for Kanduyi.

**Hon. Wamunyinyi:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me the chance to support this Bill. First of all, political parties form governments after winning elections. So, political parties are very important in ensuring that countries are run properly. Therefore, there must be good law to govern political parties. Political parties have a history in our country. One of the glaring ones is "*Chama cha Baba na Mama*" of Hon. Amina. It is an independent party. This Bill seeks to put in place ways in which political parties will be run to harmonise areas where there are difficulties and challenges and provide clear provisions in the Act.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, there is a bit of interference from colleagues. I need your protection. You have not said a word. I am trying to stress the point that there is need to strengthen political parties.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Kanduyi, the Member for Turkana East is on an intervention. Can we take it?

**Hon. Wamunyinyi:** Yes, Hon. Temporary Deputy Speaker.

**Hon. Ngikor:** Thank you, Hon. Temporary Deputy Speaker. The Member for Kanduyi is misleading the House and the entire country. I am also more confused because I know that Hon. Amina has been nominated by the National Alliance Party. Hon. Wamunyinyi is misleading

Kenyans that Hon. Amina is a member of KANU. I do not know. The Kenyans I represent here will not know whether to refer to Hon. Amina as a Member of KANU or TNA.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Kanduyi, before you respond, there is another intervention from Hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Speaker, the Member for Kanduyi was pointing a finger at me and saying that I am a member of KANU.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Was he pointing at you menacingly?

**Hon. (Ms.) Abdalla:** Yes, Hon. Temporary Deputy Speaker. I was really scared because the Member for Kanduyi is a member of an extremely violent party, namely FORD (K). I am worried for my own security because he pointed a finger at me. If you were in the House this morning, you would have seen that he almost went to war with Hon. Pukose. He must withdraw. I am not a member of KANU. I am happy to have been in KANU but for him to point a finger at me is not good. I want him to withdraw.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Kanduyi, attempt to respond and withdraw the pointing of the finger.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Speaker, I need your guidance on how to withdraw the pointing of a finger. I do not know whether I should point again.

*(Laughter)*

The Member for Turkana East, who is my brother, does not understand how I knew Hon. Amina. I have known her as a strong member of *Chama cha Baba na Mama* until recently. They are still associated because *Chama cha Baba na Mama* is still in Jubilee, where she is. So, they are still together.

The point I am trying to make so that we save time is that this Bill is very important. It gives us a dispute resolution mechanism that would ensure fast resolution of differences among members of political parties. The point that would require clarification is the fact that in some cases, you find that the aggrieved members rush to courts of law to settle disputes. Others go to the political parties offices where we have a tribunal to solve their disputes.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Gem, is this an intention to contribute or is it an intervention?

**Hon. Midiwo:**--- *(Off record)*

**Hon. Wamunyinyi:** It needs to be clarified.

**The Temporary Deputy Speaker** (Hon. Kajwang'): One minute, the Member for Kanduyi. The Member for Gem is on an intervention.

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Speaker. I am concluding.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You still have pending minutes, which I will give you. But the Member for Gem is on intervention.

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, I was on a point of order. I wanted to save Hon. Amina from the wrath of Hon. Wamunyinyi but my intervention has been overtaken by events. Hon. Amina is a lady. She does not deserve that kind of highhandedness from Hon. Wamunyinyi.

Thank you.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Speaker, I am known to be a gentleman, unless I am provoked. This happens to anybody.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I still remember that you are an ambassador. Once you are an ambassador, you are forever one.

**Hon. Wamunyinyi:** That is the position.

**Hon. Member:** He was an ambassador in Somali!

*(Laughter)*

**Hon. Wamunyinyi:** Hon. Temporary Deputy Speaker, if you were an ambassador, you always remain one. It is like being a Member of this House, you remain honourable. So, you can choose to refer to me as ambassador or Hon. Member but not general. Generals are elsewhere.

The point that I am trying to make, which is very important, is that there has to be clarity on the way we handle disputes. I am saying this because some Members have taken disputes to courts of law while others have taken them to the Political Parties Tribunal. The outcomes are varied. Some have been rejected, making matters worse. There is need to clarify this. The merger of political parties attempts to ensure that members who wish to move with parties are protected so that they are not said to have left their political parties.

However, we are comfortable the way we are in our coalition. We do not have a problem because we do not want to merge. We want to strengthen our political parties. We need more measures put in place to ensure that, for example, my party, FORD(K) where I am the Chairman for Bungoma County and I am looking forward to being the national Chairman in the near future is strengthened and properly funded. The way we envisage these political parties is likely to form governments when they get to power. So, we need to give them sufficient funding and adequate support to ensure that they enhance democracy. The ODM is one of the most democratic parties in the country. We need to ensure that such parties are properly funded.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members there is a lot of interest in this debate. It will definitely spill to next week. So, if you do not get an opportunity to make your point this morning, you will get time. Party leadership is not part of the Constitution but I am going to allow the Member for Suba to take the next nine minutes just because we are discussing an issue which I think he will---

**Hon. Ng'ongo:** Thank you. You can only be Member for Suba and you cannot be the Member for Subra. Hon. Temporary Deputy Speaker, I agree with your decision because when it comes to Political Parties Act and amendments thereof, it affects mostly the management and running of political parties. Therefore, political parties have a lot of interest. Having said that, I want to start by saying that the Constitution is very clear that Kenya is a multiparty democracy. That Article of the Constitution defining the Republic clearly indicate that political parties and their management is very important.

Looking at these amendments, I am aware that the primary objective of the amendments as Hon. Ababu said, was to make it easy for the formation of the JAP or Jubilee Party (JP). It is something to do with the Jubilee Party. Even if that is the objective, it has provided us with an opportunity to look at the Political Parties Act and ask ourselves whether there are areas we can bring amendments so as to help in the running of the political parties.

We have seen chaos in the management of political parties both by the political party teams that are managing them, of which I am one of them and also the membership who do not believe in them. I have looked at the amendment on allowing the merger of political parties and I agree with those amendments. If political parties decide to merge, there should be a procedure for merging.

However, if a member does not want or is not interested in joining the merged political outfit and that Member is holding a position, then he should be at liberty to join another political formation or remain an independent member. This is because, Kenya is a democracy and you cannot force a member, when he or she offered him or herself for election to a particular political party. Those who elected that Member elected him or her on the basis of that political party. However, when you decide to go to another formation, you do not have to force that member to follow you to that formation. I am talking about the positives in these amendments.

The other positive thing that I have seen which is of interest is the issue of mainstreaming the special interest groups in the Political Parties Act. The gender of women, the marginalised community, the youth and those living with disabilities is important. I want to add that we need to sanction those political parties that cannot respect inclusivity or do not want to include the marginalised members of our society in the management of political party affairs. There is also need to have law in place to make it mandatory that those political parties will not exist.

That takes me to the respect that we give to the laws that we pass in this Parliament as a country and whether we put people in offices who are ready to follow the law and implement it. Whether the Registrar we have today is acting does not make any difference in my view. She is occupying that position and she is required by law to follow the Political Parties Act and any other relevant law in discharging her duties.

What we see is a Registrar who has decided to be hands-off: A Registrar who has allowed chaos in the political party management. The law is very clear on how one would be conceived or construed to have resigned from a political party. It is very clear that if you propagate or support the activities of another political party that is in competition with the political party that sponsored you to a political office, the law requires that you do not continue membership of that political party. He should be deregistered and, therefore, should leave his political position. Above that, you are coning the electorate because when I offered myself to be a Member of Parliament for Suba, the people of Suba elected me on the basis that I was a Member of ODM, that I believed in the ideals and policies of ODM and they identified with the ODM Party. When I come to Parliament and without any consultation and that consultation can only be confirmed through either a referendum or an election and I start supporting another political party, what in effect I am doing is to con the people who voted for me. This is because those people do not believe or at least there is no evidence that they believe in the political parties whose interest I am championing.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Suba, that is an interesting debate but how does the Registrar receive evidence that this person is propagating ideals of a different party? Is it not that the evidence is communicated to the Registrar?

**Hon. Ng'ongo:** Hon. Temporary Deputy Speaker, it is very clear. Political parties are supposed to communicate to the Registrar but, if I gave you evidence of how ODM has communicated with the Registrar of political Parties on issues of discipline, you will be shocked. There are cases of Members of County Assemblies (MCAs) from Narok. I know of MCAs from Kilifi who started campaigning for other political parties and other political interests. Some of

them are even nominated. A party nominates a Member to champion its interests. That is why parties are given this space to nominate. When you have nominated MCAs championing interests of other political parties, then that political party communicates to the Registrar.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I have no problem with the championing and even the communication but the Registrar is an office which must receive that evidence somewhat. Do you think there is some institutional or statutory weakness in the framing of that part of the law?

**Hon. Ng'ongo:** Hon. Temporary Deputy Speaker, I really doubt. If you have championed or propagated interest of another party, the evidence is there. We can adduce it. As a matter of fact---

**The Temporary Deputy Speaker** (Hon. Kajwang'): From the media?

**Hon. Ng'ongo:** Hon. Temporary Deputy Speaker, even from the media unless you deny it. Actually, we write. I have participated in this. I have written to a number of Members who have been accused or alleged to have participated in other political parties. Even after---

**The Temporary Deputy Speaker** (Hon. Kajwang'): Just one minute. I will see how to give you a minute. The Member for Gem, you are on intervention.

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, what you are asking my party Chair is something very important to many Members of Parliament. As you know, it is only yesterday that a section of Members of my party, the ODM crossed the Floor. I am tempted to imagine the scenario which is now a big issue in Jubilee if you try to just pass a law. If you followed the contribution by Hon. ole Kenta, you will throw this House into a serious problem and basically the nation because it is not just this House which is affected. There are 47 counties including the Senate which will be affected. So, it will be nice for my Chair to be informed that the Registrar who has been acting for more or less on a permanent basis has been unable to act because of that scenario.

I do not think it should be by way of communication from the party. That information needs to be picked from the media and everywhere. The point I am trying to make is that, we need to take our time on some issues which are in law to get rid of them because they are restricting the way human beings behave. They are against the norms of the society. Those are the issues which you are asking.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I am constrained by time. I was just chasing what I thought was interesting. The Member for Budalang'i in half a second, you have the Floor.

**Hon. Ababu:** The matters that my Chairman is raising are of critical interest to all parties. As an eminent lawyer, you know that the problem is certainly not the law. The law recognises what is called matters of public notoriety or matters that you take judicial notice of. There is even the maxim *res ipsa loquitur* which simply means "the facts speak for themselves".

There are certain matters where you do not need further explanation. When the Member for Kilifi North struts all over Malindi Constituency campaigning for a candidate of a rival party to his own party that is *res ipsa loquitur* or the facts are speaking for themselves. When the Member walks into this Chamber and proceeds to sit next to Hon. Leader of the Majority Party of the rival party who by his demeanour and smile which threatens to drown even his own ears and it sends a very clear message that this is a captured fish, then that is *res ipsa loquitur* or basically matters speaking for themselves. The problem is that we have had a Registrar of

Political Parties that sees no evil and basically has been captured by the forces of impunity that do not respect the sanctity of political parties.

**The Temporary Deputy Speaker** (Hon. Kajwang'): All right. Thank you. The Member for Suba, in half a second take the Floor.

**Hon. Ng'ongo:** I do not know whether this half a second is now consuming all my time or I will start.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You have the option of taking your time but I can give you just a minute to wind up so that we adjourn after you have finished.

**Hon. Ng'ongo:** Can I take three more minutes?

**The Temporary Deputy Speaker** (Hon. Kajwang'): There is no time. You can see the clock.

**Hon. Ng'ongo:** Anyway, my point has been ably reinforced by my colleagues. Crossing the Floor is very serious in most jurisdictions that respect political parties. By someone saying that Hon. Mung'aro crossed the Floor and he did not even object to that is a clear indication that the gentleman has left the party. However, the problem in this country is on the Registrar of Political Parties failing to enforce our laws and it is not the lack of laws. We actually legislated very well in terms of coming up with the Political Parties Act in the 10<sup>th</sup> Parliament and the provisions are clear. Look at the ODM Constitution which is filed with the Registrar of Political Parties. You are not only supposed to lose your seat, but you are also supposed to lose your membership of the party as a whole. I urge the Registrar of political parties to start acting on these cases. It does not matter whether she is acting or she is occupying that office substantively. She is in office and she needs to act. She is just there and I do not know what she does.

Finally is the issue on funds. The law is clear. It says that 0.3 per cent of revenue which translates to about Kshs3 billion is supposed to go to political parties. We do not see that happening. The Jubilee Government is violating this provision of the law and they do not care about it. I hope that this time round when Parliament is going to allocate funds to political parties, we are going to have 0.3 per cent of revenue allocated to political parties for management.

Thank you.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang'): Order! The time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m. It is so ordered!

The House rose at 1.00 p.m.