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THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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Wednesday, 16th October 2024

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, we do not have quorum. Serjeant-At-Arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Order, Hon. Members. We now have quorum to proceed.

Hon. Members, allow me to reorder the Order Paper. Instead of going to Order No.7 now, let us go to Order No.8, followed by Order Nos.9 and 10. We will then come back to Order No.7. You may announce Order No.8.

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM THE PROVISIONS OF STANDING ORDER 40(3)

Hon. Silvanus Osoro (South Mugirango, UDA): Hon. Deputy Speaker, I beg to move:

THAT, this House resolves to exempt the business appearing as Order Nos.9, 10, 11 and 12 in today's Order Paper from the provisions of Standing Order 40(3), being a Wednesday morning, a day allocated for business not sponsored by the Majority or Minority Party, or business sponsored by a Committee.

I beg to move and ask Hon. Kuria Kimani to second. Thank you.

Hon. Kuria Kimani (Molo, UDA): Hon. Deputy Speaker, as the Majority Party Whip has stated, we have lost a number of days in the course of this week and last week. Therefore, it is important that we prioritise Government Business, and exempt the business appearing today, Wednesday morning, a day allocated for private Members' discussions.

Thank you, Hon. Deputy Speaker. I second.

(Question proposed)

Hon. Members: Put the question!

(Question put and agreed to)

MOTION

SENATE AMENDMENTS TO THE DIVISION OF REVENUE (AMENDMENT) BILL

(National Assembly Bill No.38 of 2024)

THAT, the Senate amendments to the Division of Revenue (Amendment) Bill (National Assembly Bill No. 38 of 2024) be now considered.

(Moved by Hon. Mary Emaase on 15.10.2024)

(Debate concluded on 15.10.2024)

(Question put and agreed to)

Hon. Charles Nguna (Mwingi West, WDM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order?

Hon. Charles Nguna (Mwingi West, WDM): Hon. Deputy Speaker, I was in the House yesterday when...

(Several Members rose in their places)

Members: Division!

Hon. Charles Nguna (Mwingi West, WDM): Allow me to finish. Tell them, Hon. Deputy Speaker.

Hon. Deputy Speaker: There is a division. We are going to vote. Let him finish.

Hon. Charles Nguna (Mwingi West, WDM): Hon. Deputy Speaker, I was in the House when we were debating Motion No.9, and it was clear that nobody supported it. I request you to put the question again so that Members can make proper decision on this matter.

Hon. Deputy Speaker: Hon. Members, I will put the question again because it seems Members did not understand.

(Question put and negatived)

PROCEDURAL MOTION

ALTERATION OF THE CALENDAR AND RESOLUTION TO SIT ON A SPECIFIED FRIDAY

Hon. Silvanus Osoro (South Mugirango, UDA): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Orders 28(4) (Calendar of the House) and 30(3)(c) (Hours of Meeting), this House resolves to commence the short recess on Tuesday, 22nd October 2024 and hold Sittings on Friday, 18th October 2024, commencing at 9.30 a.m. for the morning sitting and 2.30 p.m. for the afternoon sitting, for purposes of considering priority business, including mediated Bills.

Hon. Deputy Speaker, the rationale for seeking a resolution of the House to alter its calendar to sit on Friday, 18th October 2024, arises from the fact that we need to recover time lost by the House on Mazingira Day which was a public holiday last week. We also had suspension of a sitting for public participation last week back for the proposed removal from office, by impeachment of the Deputy President, and the sitting used to consider the Special Motion.

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There is also the urgency to conclude the following priority business pending in the House before we go for recess; the Sugar Bill, 2022; the Mediated Version of the Water (Amendment) Bill (National Assembly Bill No.33 of 2023); and the Division of Revenue (Amendment) Bill (National Assembly Bill No.38 of 2024) that is going to be referred for mediation going by the voting in the House this morning, and any other mediated Bills that are going to be received in the course of the week.

Hon. Deputy Speaker, we shall use the opportunity to list for Second Reading several individual Private Member's Bills pursuant to Standing Order 14. They are currently 52 in number and are likely to lapse when the House proceeds on long recess on 6th December if their Second Readings are not concluded. That is why we need to alter the calendar. There is also a need to provide room for the House to consider any other business requiring expedited consideration.

I beg to move and ask Hon. Emmanuel Wangwe to second.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Deputy Speaker. I rise to second the Motion by the Majority Whip on alteration of the Calendar. I want to cite the mediated version of the Sugar Bill. I am the Co-Chairperson of the Mediation Committee and I wish to lay a Paper this afternoon. Now, that the Majority Whip has put it into consideration, my people are waiting to see the Bill being passed. My absence from the constituency because of moving this Bill, will be value for money. I am pretty sure my people and Kenyans will be happy. I second the Motion.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: We can now go back to Order No.7.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: We have a request for statement by Hon. Mohamed Bidu, Member for Isiolo South. Is he here?

Hon. Bidu Mohamed (Isiolo South): Thank you, Hon. Deputy Speaker. Pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee...

Hon. Deputy Speaker: My apologies, Hon. Bidu. I am sorry. I have realised in the Order Paper, we have questions. Let us start with questions and then we will come back to statements. You may sit down. You will have your turn in a minute.

ORDINARY QUESTIONS

Question 134/2024

UNFAIR DISMISSAL OF POLICE CONSTABLE NELSON WAHOME

Hon. Deputy Speaker: There is an Ordinary Question by the Member for Nyandarua, Hon. Faith Gitau, to the National Police Service Commission. You may proceed, Hon. Gitau.

Hon. Faith Gitau (Nyandarua County, UDA): Thank you, Hon. Deputy Speaker. I wish to ask the following Question:

- (a) When will Police Constable Nelson Wahome (PF No.36703), who was unfairly dismissed from the Service in September 1990, be reinstated despite being acquitted by the Bungoma Court vide Case No.2076 of 1990?
- (b) State the timelines within which Mr Wahome will receive payment for outstanding salaries and benefits for the period he has been out of employment, as well as compensation for the unwarranted violation of his labour rights as guaranteed under Article 41 of the Constitution?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question is to be replied by the Departmental Committee on Administration and Internal Security. How much time do you require, Hon. Tongoyo?

Hon. Gabriel Tongoyo (Narok West, UDA): Thank you, Hon. Deputy Speaker. Considering that the House is going on recess, possibly in two weeks after we resume.

Hon. Deputy Speaker: Thank you. We have a Question by the Member for Mbeere North, Hon. Ruku. He is not here, so we will skip it. He loses the opportunity. The next Question is also by the same Member, Hon. Ruku. In his absence, we shall skip those two questions. We can now go back to statements.

(Question 135/2024 and Question 136/2024 deferred)

REQUEST FOR STATEMENTS

TENURE AND TRANSFER OF THE DEPUTY COUNTY COMMISSIONER FOR GARBATULLA IN ISIOLO SOUTH CONSTITUENCY

Hon. Deputy Speaker: Hon. Bidu, you can now make your request for a statement.

Hon. Bidu Mohamed (Isiolo South): Hon. Deputy Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and Internal Security regarding the tenure and transfer of the Deputy County Commissioner for Garbatulla in Isiolo South Constituency.

Hon. Speaker, the National Government Coordination Act, 2024 provides for a Deputy County Commissioner in respect of every sub-county, mandated with coordinating national Government functions at the sub-county level. It is with great concern that I raise the issue of deteriorating security situation in Garbatulla, Isiolo South Constituency and failure by the Deputy County Commissioner of the area to adequately address this issue.

Over the past five years, residents of Garbatulla have faced rising cases of insecurity and have persistently appealed to the Deputy County Commissioner, Mr Stephen Nyakundi, to address the issue to no avail. This issue has negatively impacted the social and economic lives of the residents, including a five-year closure of Binasadi Primary School and Korbasa School as a result of unmitigated conflicts between feuding communities in the region.

Just recently, the Ministry of Interior and National Administration announced transfer of Deputy County Commissioners, including that of Mr Stephen Nyakundi. However, in a quick turn of events, his transfer was reversed, which makes this the fourth time this has happened in the last seven years. Consequently, this has sparked public outcry as the residents believe that the Deputy County Commissioner has failed to fulfil his mandated duties, particularly in maintaining peace and fostering cohesion at the sub-county level.

Hon. Deputy Speaker, it is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Administration and Internal Security on the following:

1. Reasons for the repeated reversal of the transfer of the Deputy County Commissioner (DCC) for Garbatulla, despite demonstrable failure by the DCC to end the persistent insecurity in the region;
2. Measures being taken to effect the transfer of the DCC for Garbatulla in Isiolo South Constituency, and post a replacement; and
3. Strategies put in place to enhance the transparency and efficiency of the transfer process of National Government Administrative Officers to ensure that they are positioned to serve their assigned regions effectively.

Thank you, Hon. Deputy Speaker, for giving me the opportunity.

Hon. Deputy Speaker: The Statement shall be made by the Departmental Committee on Administration and Internal Security. How much time, Hon. Tongoyo?

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Deputy Speaker, probably, when we come from recess. But with a lot of respect to the rule of the House and the Hon. Member, having listened to what he was saying, this is purely a human resource issue which probably, should not warrant it to be raised as a Statement in the House. This is because the National Government Administrative Officers (NGAO) responsible with the issue of placement and transfers of our officers, have their offices open. And they do this based on merit of individual cases. I would rather challenge or ask the Member if he can find it fit to just go to these officers and discuss the issue with them. It would be better if approached that way.

Hon. Deputy Speaker: I think he has taken note of that. However, because the Member has sought a Statement on it, just put in in the request.

Hon. Gabriel Tongoyo (Narok West, UDA): Well guided.

Hon. Deputy Speaker: The Committee will make sure it gets the response for you. Hon. Tongoyo, is two weeks okay?

Hon. Gabriel Tongoyo (Narok West, UDA): (Off-record) Yes.

Hon. Deputy Speaker: Okay. You do not have to wait until we come back from recess. It can be sent to NGAO because Government offices do not go for recess. If you send out the letter today, by the time we come back from recess, your response will be there. You cannot put the country also on recess. Thank you.

The next Question is by the Nominated Member, Abubakar Talib.

Hon. Bidu Mohamed (Isiolo South, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Bidu Mohamed?

Hon. Bidu Mohamed (Isiolo South, JP): I have tried four times to go to this office after the transfer.

(Hon. (Dr) Robert Pukose spoke off record)

Hon. Deputy Speaker: Hon. Pukose, you are out of order. Allow him to proceed.

Hon. Bidu Mohamed (Isiolo South, JP): When can I go? Can I be given an assurance?

Hon. Deputy Speaker: Hon. Member, I have already ruled that the Chairperson will send out the letter today or tomorrow, and by the time we come back from recess, there should be a response. So, that issue is sorted. Thank you.

Hon. Ali Raso (Saku, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Raso?

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Deputy Speaker.

I respect your Ruling on this matter. But as the Chairperson has already affirmed, this is a human resource issue, and what Hon. Bidu is saying is that this DCC has overstayed in that area. As a result, the citizens are up in arms complaining. Some things are administrative and they do not have to come to the Floor of the House. But I believe, as a Committee, we will

also pursue it so that it does not waste the time of the House when it can be done by the Ministry.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Okay, Hon. Raso. That is a point taken. However, let us allow the relevant State Department to do that response to the Member, and not yourselves. You are now acting like the State Department. If the Member wants a response from them, let it be and especially, if it has been pending.

Next request for a Statement is by the Nominated Member, Hon. Abubakar Talib.

TERMINATION OF INSURANCE BUSINESS BY
DIRECTLINE ASSURANCE COMPANY LIMITED

Hon. Abubakar Talib (Nominated, WDM): Thank you, Hon. Deputy Speaker.

Pursuant to the provision of Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Finance and National Planning regarding the abrupt termination of operation by Directline Assurance Company Limited.

Hon. Deputy Speaker, on 10th September 2024, Directline Assurance Company Limited announced the immediate cessation of its insurance business operation. In the announcement, the company stipulated that any further transaction must be conducted through its original shareholders. This development has raised significant concerns about the stability of the insurance sector and the welfare of policyholders across the country. Furthermore, it has created widespread confusion and uncertainty in the market, potentially affecting thousands of policyholders and the broader public.

Hon. Deputy Speaker, it is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Finance and National Planning on the following:

1. Provide a comprehensive report on the Current Status of Directline Assurance Limited, including detailed information on its ownership, shareholding, and number of policyholders.
2. Clarification on the legal status and validity of insurance policies issued by Directline Assurance Company Limited, particularly on the coverage and protection of vehicles and passengers in the event of an accident.
3. Plans put in place to ensure that claims made by motor vehicle owners insured by Directline Company Limited are processed.
4. Measures being taken to ensure that all vehicles with valid insurance covers from Directline Assurance Company can operate without hindrance for the duration of their policy, validity and plans put in place to prevent future cases where the financial instability or closure of an insurance company could adversely, affect the operability of insured vehicles and the safety of passengers.

Thank you.

The Deputy Speaker: Chairperson for the Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): Thank you very much, Hon. Deputy Speaker.

At the outset, I would like to thank the Hon. Bidu for bringing this matter to the attention of this House and the Committee. This is a matter of public concern where several people are taking insurance coverage but when it comes to compensation, challenges arise.

Hon. Deputy Speaker, without pre-empting what the Committee will do, the situation that has happened with Directline Insurance Company Limited is unfortunate and should not have happened in the first place. In any case, there is a Policy Compensation Fund where in the event something happens to an insurance company, whether insolvency or whatever

challenges that may arise, the insurance policyholders should not be the ones to suffer any loss. Given the short time of recess, in another three weeks, we should come back with a response and hopefully, to the satisfaction of Hon. Bidu.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next is a request for a Statement by Hon. Joyce Kamene, Member for Machakos County.

DELAY IN DISBURSEMENT OF THE NATIONAL GOVERNMENT
AFFIRMATIVE ACTION FUND FOR MACHAKOS COUNTY

Hon. Joyce Kamene (Machakos County, UDA): Hon. Deputy Speaker, pursuant to the provision of Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Social Protection regarding the delays in disbursement of the National Government Affirmative Action Fund (NGAAF) for Machakos County.

Hon. Deputy Speaker, NGAAF is a cornerstone for our Government's commitment to inclusive development by providing access to financial resources for social economic empowerment for women, youth, people living with disability, needy children and the elderly. Through the Fund, many of our young men and women have found reliable avenues for promoting their enterprises and value-additional initiatives, making it instrumental in transforming lives, owing to the crucial contribution of affirmative action initiatives in our societies.

It is important to ensure timely disbursement of such Funds and proper structure for its efficient administration. Sadly, Machakos County continues to face inexplicably delays in disbursements leading to the accumulation of unspent balances for the Financial Years 2022/2023 and 2023/2024.

NGAAF has been deploying Madam Betty Kanyiri Njoni of Personnel Number 2009142127, Principal Gender Officer as the County Coordinator on extremely short-acting contracts. These inexplicably intermittent deployments, separated by uncoordinated delays spanning as long as two months for NGAAF to renew the contract, continue to cause serious administrative gaps that significantly, disrupt the effective administration of the Fund.

Hon Deputy Speaker, it is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Social Protection on the following:

1. A report on the status of disbursement of the NGAAF balances for the financial period 2022/2023 and 2023/2024 to Machakos County, and the measures put in place to ensure timely disbursement to enable the continuation of projects approved for funding.
2. Action being taken by NGAAF to immediately post Ms Betty Kanyiri Njoni, of Personal No.2009142127, as the NGAAF County Coordinator for Machakos for an interrupted contract of at least one year, in order to ensure effective and seamless administration of the Fund, including the timeline of the posting.

Thank you.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. (Dr) Rachael Nyamai) took the Chair]

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon Kamene. This request for a Statement is referred to the Departmental Committee on Social Protection. Is the Chairperson in the House? In his absence, is the Vice-Chairperson in the

House? Since they are absent, I would like to pass this request for a Statement to the leadership of the House. Hon Osoro, when can Hon. Kamene get a response?

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Temporary Speaker. I commit to whip the Chairperson of the relevant Committee. With my push, I promise that we will get the answer once we resume from recess. This will be about two weeks from now.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Kamene, is that acceptable to you? You will get a response within the first week after we come back from recess.

Hon. Joyce Kamene (Machakos County, WDM): Hon. Temporary Speaker, I wish I can get an answer in the next 24 hours. This is because we are going for recess. These are balances that are within the Headquarters of NGAAF. I will be on the ground doing nothing without even a coordinator. You remember that we had gone for another recess and I had nothing to do on the ground because we did not have these funds. They are available at the NGAAF Headquarters. Can I, please, get a better answer?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Osoro, do you want to respond to Hon Kamene?

Hon. Silvanus Osoro (South Mugirango UDA): Hon. Temporary Speaker, I am just holding brief for the Chairperson. I do not want to make a commitment to Hon Kamene that I will not deliver. Please, allow me to push the Member to respond in two weeks' time. It is not a very long time, Hon Kamene. When we go for recess, you will find a lot of other engagements with the great people of Machakos County. I am sure you will be very much committed. You will utilise these funds during the long recess that we will go after we resume. In the meantime, you can build capacity and other things.

Hon. Kassait Kamket (Tiaty, KANU): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Before I go back to Hon Kamene, Member for Tiaty, what is out of order?

Hon. Kassait Kamket (Tiaty, KANU): Hon. Temporary Speaker, while I appreciate Hon. Osoro giving responses on behalf of the Chairperson, I find it difficult to understand his role. He is the Whip of the Majority Party. Leader of the Majority Party was here a few minutes ago. Which role is Hon. Osoro playing in this House?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): What is out of order, Hon Kamket?

Hon. Kassait Kamket (Tiaty, KANU): Which role is he playing? The Leader of the Majority Party was here. It looks like Hon. Osoro is acting as the Leader of the Majority Party. I do not know what is happening here. Can he explain to us what is happening in the leadership of the National Assembly? Are there changes that we do not know? Can we be informed of what is happening?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): What is out of order?

Hon. Kassait Kamket (Tiaty, KANU): We want to know whether there are changes in the leadership because Leader of the Majority Party is here.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): There is nothing out of order, Hon. Kamket. I have watched the body language of the Member for Machakos County as she was being engaged by Hon. Osoro. I request for your patience. You will get the answer in two weeks' time. This will enable you not to get commitments that are impossible, especially when we are on recess.

Thank you, Member for Machakos. Hon. Abdul Haro, please, proceed with your request for a Statement.

INCREASE IN WILDLIFE ATTACKS IN MANDERA COUNTY

Hon. Abdul Haro (Mandera South, UDM): Hon. Temporary Speaker, pursuant to the provisions of Standing Order 44(2) (c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Tourism and Wildlife regarding the increase in wildlife attacks in Mandera County.

Over the past five years, Mandera County has witnessed an increase in human-wildlife conflicts. Many residents and their livestock have fallen victim to attacks by crocodiles, hyenas and snakes which have caused physical, emotional, and financial devastation to the affected families. One such case is that of Mr Ibrein Abdullahi Ali of Identification Card No.6411601, who was attacked by a hyena in Ababosone Location on 27th June 2023, resulting in the loss of his right arm. His family, burdened with significant medical expenses, has been forced to seek specialised treatment in Awasa Hospital, Ethiopia.

Similarly, Ms Fatuma Noor Ali, a young woman from Abbey Umur Village in Elram Location, lost her life due to a snake bite on 24th May 2016. Her case was duly recorded through the Kenya Wildlife Service (KWS) Compensation Claim Form, Serial No.694/MDR/2016, and submitted to the KWS Mandera County for processing. Unfortunately, eight years later, her family is yet to be compensated. These incidents underscore the need to address and safeguard the well-being of residents of Mandera County.

It is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Tourism and Wildlife on the following:

1. A comprehensive report on the support being provided to KWS to ensure prompt responses to distress calls in Mandera County.
2. A report on the immediate and long-term measures that the Government has put in place to mitigate the recurring human-wildlife conflict in Mandera.
3. An update on the compensation status for the families of Mr Ibrein Abdullahi Ali and Ms Fatuma Noor Ali, including specific timelines for the settlement of their claims.
4. Measures put in place to streamline and expedite the compensation process to ensure timely and fair compensation for all victims of wildlife attacks.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Member for Mandera South. This request for a Statement is referred to the Departmental Committee on Tourism and Wildlife. Is the Chairperson in the House? In his absence, is the Vice-Chairperson in the House? Let me pass it to the House leadership. Hon. Osoro, it is to the Departmental Committee on Tourism and Wildlife. The question was asked by the Hon. Abdul Haro, Member for Mandera South.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much Hon. Temporary Speaker. In the absence of the Chairman and any Member of the Committee, I make an undertaking that the Member will get a response once we resume from recess.

Hon. Abdul Haro (Mandera South, UDM): I stand guided, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. Next order.

STATEMENTS

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, we will go to the Hon. William Kamket, Member for Tiaty on the response to questions.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Temporary Speaker, it is the Chairman to respond to the Statement sought.

REVIEW OF THE SCHEME OF SERVICE FOR APPOINTMENT OF
CHIEFS AND ASSISTANT CHIEFS IN MARGINALISED AREAS

Hon. Gabriel Tongoyo (Narok West, UDA): Thank you very much, Hon. Temporary Speaker. I promised yesterday to respond to the Request for a Statement by the Hon. Member for Tiaty. This is the Statement.

The Member for Tiaty Constituency, the one and only, Hon. William Kamket, had requested a Statement regarding the review of scheme of service for the appointment of chiefs and assistant chiefs in marginalised areas. He sought to be informed particularly on the following:

1. Whether the Ministry of Interior and National Administration could consider a review of the academic qualification for appointments of chiefs and assistant chiefs in marginalised areas.
2. Whether the Ministry could consider experienced individuals from their respective location and sub-location in the recruitment of chiefs and assistant chiefs on the basis of affirmative action.

The response is as follows. The appointment of chiefs and assistant chiefs is guided by the reviewed scheme of service for the National Government Administrative Officers 2015 that explicitly sets the minimum qualification for appointment as follows. Concerning the position of assistant chief, for appointment to this entry grade, a candidate must have the following qualifications:

1. Kenya Certificate of Secondary Education (KCSE) Mean Grade of C-, or its equivalent from a recognised examining body.
2. Be not less than 30 years of age.
3. Be a resident of the particular sub-location.
4. Produce a police clearance certificate.
5. Good communication skills.
6. A certificate in computer application skills from a recognised institution.

For the position of a chief, to be appointed to this entry grade, a candidate must have the following:

1. A Kenya Certificate of Secondary Education, (KCSE), Mean Grade of a C, or its equivalent from a recognised examining body.
2. A diploma in any of the following disciplines: public administration, management, social work, community development, education, governance, conflict management, or its equivalent from a recognised institution.
3. Be not less than 35 years of age.
4. Be a resident of the particular location.
5. A police clearance certificate of good conduct.
6. Good communication skills.
7. A certificate in computer application skills from a recognised institution.

However, in specific circumstances, where the advertised position does not attract qualified candidates, the Ministry, on a need basis, requests academic waivers from the Public Service Commission to facilitate the filling of these vacancies. The Public Service Commission (PSC) always grants such academic waivers on request.

The other thing that the Member wanted to know is whether the Ministry could consider experienced individuals for the said position. While possession of experience in social, political, economic, and cultural aspects of communities is important in public administration at the grassroots, all cadres or positions in public service are subject to particular minimum academic requirements during recruitment and selection process. As already indicated, the use of academic waivers in special circumstances is in itself an affirmative. (I underline that.) The

affirmative action ensures that citizens in the marginalised areas are not discriminated, but have an equal access to the chiefs and assistant chiefs' positions.

Thank you, Hon. Temporary Speaker. I submit.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): The Hon. Kamket, is the response satisfactory?

Hon. Kassait Kamket (Tiaty, KANU): Hon. Temporary Speaker, while I appreciate the response from the Chairman, the policy as he has stated began in 2015. From then, the positions of chief and assistant chief, which are very important positions in Government, have been watered down completely.

In places where some of us come from, very many young people have been disenfranchised. This policy that the PSC came up with is very punitive. It is anti-people; it is anti-hustlers, and it is a policy that never underwent any public participation. In my Request for a Statement, I specifically asked the Ministry whether it could consider a review. But, what it has said is that it has special circumstances where it asks for academic waivers. What if those people are not available? The Republic of Kenya is not equal. We have places where you cannot get somebody who has completed Form Four, let alone somebody who has a C Minus or a C Plain.

I asked for a specific policy review because this one never underwent public participation. I ask and demand that this policy be reviewed. Otherwise, we are going to challenge it in court.

(Hon. (Dr) Robert Pukose spoke off the record)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Do you want to ride on that before I give the Chairman a chance? Let me start with the Hon. (Dr) Pukose.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Speaker. On the issue that has been raised by the Member for Tiaty, I want to ask the Chairman whether the academic waivers only apply to marginalised areas or to all other areas where people with minimum qualifications as stipulated for assistant chief or chiefs are not acquired.

The second one is: recently, we had gazettelement of divisions, locations, and sub-locations, but they have not been operationalised. When are they going to be operationalised?

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): On the same, I would like to give a chance to two more Members then we end it at that. Hon. David Bowen, Marakwet East, followed by Hon. Peter Lochakapong.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Temporary Speaker. I support Hon. Kamket, specifically on that policy that requires some specific academic qualification for chiefs and assistant chiefs. In many parts of this country, say, in the northern frontier all the way to Turkana, it is true that you may go to a sub-location and not find someone who has completed Form Four and yet that place requires an administrator. The reason there are too many insecurities and banditry in the pastoral community is that there are no administrators and the Government is far from the people. If we want to bring services closer to the people, the services are offered by a chief or an assistant chief. That policy needs to be reviewed so that we see how to consider even someone who finished Class Eight to do the job if no one in that location or sub-location has finished their Form Four. I ask my colleague, the Hon. Chairman, if he can, to go back to the Ministry and give us a very concrete answer.

At the same time, regarding what Hon. Pukose has said, too many administrative units were gazetted: locations, sub-locations, and divisions. A recent example is in my place of the Kerio Valley Sub-County. They operationalised the sub-county and posted a Deputy County Commissioner yet they have not operationalised divisions and locations. We have a Deputy

County Commissioner who is without the Assistant County Commissioners and chiefs. How is he going to operate?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Well, thank you. You have made your point. Hon. Members, I had agreed to give Hon. Lochakapong one minute, please.

Hon. Peter Lochakapong (Sigor, UDA): Thank you, Hon. Temporary Speaker. I commend Hon. Kamket for bringing up this matter. This is something affecting many parts of the country, especially pastoralists. Getting somebody with a C- to be an assistant chief where I come from, is a big problem. Worse still, the Chairman has even communicated that it is a C Plain for a chief. The spirit of promoting an assistant chief, probably recruited with a C- and on the exit of a chief, becomes very difficult. Even where he says academic waivers are issued in some special circumstances, sometimes it is not forthcoming. We have had challenges. That policy needs to be reviewed. For example, no academic qualification is required for somebody to contest to be even a Member of this House.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Nicholas Ngikolong, Member for Turkana East. You are the last one.

Hon. Nicholas Ng'ikor (Turkana East, JP): Thank you for giving me this chance to support the Request for Statement by Hon. Kamket.

The Ministry of Interior and National Administration is really supposed to look at the issue of chiefs and assistant chiefs in marginalised areas. I am the son of a chief and I am in this House because of the reward the people of Turkana East gave me because of my dad. I am here as their Member of Parliament because of the job he did in that place. My dad was just a mere pastoralist yet he was given the position and he did a good job. That is why the people of Turkana East rewarded me. It is because of the good job my dad did. Where is this C- or the C Plain coming from when we want to recruit chiefs? This policy is supposed to be reviewed so that everybody can be given a chance. When we talk about those places, please, realise we do not even have schools in some areas! How can we get a C- in those areas when we do not even have a school?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Well, it is okay. You have made your point, *Mheshimiwa*.

(Hon. Beatrice Elachi spoke off the record)

Hon. Beatrice, very kindly, I would like us to go back to the Chairman so that we close this discussion. Chairman!

Hon. Gabriel Tongoyo (Narok West, UDA): Thank you, Hon. Temporary Speaker. I have heard the Members who have raised concerns. I know that the subject matter received much interest across the House and even the nation. However, I want to state that is how it is now. We very clearly laid down how waivers are applied. If they are delayed, it could be attributed to individual officers responsible for doing so.

(Hon. Kassait Kamket spoke off the record)

Let me make my point, Hon. Kamket.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Kamket. Please, be orderly. I would like him to first of all respond to your concern. You can also say that you are not satisfied if you are not. However, let us give him time to finish.

Hon. Gabriel Tongoyo (Narok West, UDA): I am saying that I am in total agreement with the concerns of Members. It is true that a majority of these pastoralist communities or some areas in this country have a problem getting persons with a C-. Even the people who,

probably, have these grades are the people who are in Nairobi and other towns. The role of the chiefs needs somebody who knows local issues in a community.

Having said this, nothing is cast in stone. That is how the scheme is at the moment. This House also has the power to review it if need be. At the moment, this is how it is. Maybe Hon. Members can also look into the means of the scheme and how such policies and regulations can be reviewed. I am also in support that, maybe, we need to reconsider the policy.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Before Hon. Kamket speaks, Hon. Members, let us bear with Chairmen of Committees. The Chairman is reading a response from the Ministry. I believe that the Chairman has agreed with the Members that there is a need for policy change. With that, you have one more minute Hon. Chairman.

Hon. Gabriel Tongoyo (Narok West, UDA): Yes, add me one minute. To be on record, I understand. I personally come from a pastoralist community. I know how important this matter is. The majority of the most competent and efficient officers could be the people who have been staying in that area for too long and understand local issues.

Lastly, the Hon. Member is supposed to have written a statement on administrative units. Nevertheless, we all know that this thing boils back to finances and the availability of resources. As said by Hon. Bowen, we know the issue of Kerio Valley was hurriedly done because of insecurity in the region. It has helped a great deal. The issue of small units is just a factor of resources and money. We all know that the vacation of the Finance Bill did a big deal to the operationalisation of this unit. Moving forward, I know good days are ahead. On a need basis, we will consider allocating resources to operationalise that when we move into Supplementary Budget II.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I would like you to be on record. I would like the Chairman to be on record on the matter of need-to-need basis. Is it the operationalisation of gazetted existing units?

Hon. Gabriel Tongoyo (Narok West, UDA): Yes, Hon. Temporary Speaker. It is the gazetted units. They are quite a number, backdating to 2017. Quite a number have not been operationalised because of the constraint of resources. We are going to do it gradually, depending on availability of resources.

(Hon. Kassait Kamket spoke off the record)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): The Chairman has already agreed with you. There is no need to push this further because it is not a debate. I will give you one minute because the question belongs to you. Please, pass the microphone to Hon. Kamket. Other Members, please, bear with us because we have to move to the next Order.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Speaker. We have an interesting situation here. The Chairman himself does not believe in the answer in the reply he has brought to the House. The Chairman agrees with me and agrees with the rest of the Members that this policy needs to be reviewed. Now, why does he bring a Statement to the House that he does not even believe in? We would have looked for ways of repealing it if it was a regulation. However, the Ministry did this policy. Would I be in order to ask that you order this Chairman to call for a meeting where the Cabinet Secretary and the Public Service Commission (PSC) appear, then we come and address this matter holistically? Because as it is now, even the Chairman does not believe in the statement he has brought. He agrees with me.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. Gabriel Tongoyo (Narok West, UDA): For Hon. Kamket to say that I do not believe in what I am reading is of course very wrong. I have said that I am totally in agreement with the concern Members from the pastoralist community, where I also come from, are raising. To be on record, I had also said that nothing is cast in stone. Policies can be reviewed depending

on merit and on a need basis. That is exactly what I have said. The Member is senior. You are a ranking Member in this House and you know the procedures. You know that if there is need to review the regulations, policies and the scheme of service, it will be done. You have made your point, as guided by the Hon. Temporary Speaker. We will scale it up and see. It has to be between the Ministry and PSC which is the custodian of the schemes.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Chairman. I would like you and Hon. Kamket to take your seats. Hon. Members, I order that this matter be discussed further by the Departmental Committee on Administration and Internal Affairs. In this Committee, the Cabinet Secretary or the Principal Secretary, if the Cabinet Secretary decides that the Principal Secretary be there, and the PSC should appear. Let this matter be discussed by the Committee.

Thank you.

(Hon. Kassait Kamket stood in his place)

Hon. Kamket, please take your seat.

(Hon. Kassait Kamket spoke off the record)

Hon. Kamket, you are being disorderly yet this is your third term in this House. Is it your third or your fourth? Second? I thought it is your third term. Hon. Kamket, after this matter is discussed by the Committee, the Chairperson will bring a report to this House.

(Applause)

I hope that this will not be for pastoral communities only, because this matter affects many other areas of this country. Thank you.

Next will be the Chairperson of the Departmental Committee on Education responding to the request by Hon. Dorice Donya, Member for Kisii County. She has been patiently waiting. I do not see the Chairperson in the House.

PROHIBITION OF TUITION IN SCHOOLS

Hon. Abdul Haro (Mandera South, UDM): Hon. Temporary Speaker, with your permission, I will read the response.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): You have the response? Please proceed.

Hon. Abdul Haro (Mandera South, UDM): Yes, on behalf of the Chairperson of the Departmental Committee on Education. The question was the strategies that the Ministry of Education has put in place to ensure that schools adhere to set regulations, including prohibiting tuition during weekends. The Ministry of Education in Kenya has implemented various strategies to ensure that schools adhere to regulations prohibiting tuition during weekends and school holidays. Some of the key measures are circulars and guidelines. The Ministry regularly issues circulars reminding schools and stakeholders of the ban on extra tuition, which we first imposed in 2012. The circulars outline the guidelines prohibiting any form of tuition during weekends, public holidays and school vacations.

Two, through the Directorate of Quality Assurance and Standards, the Ministry conducts routine inspection of schools to ensure compliance. Officers from this department visit schools, particularly during weekends and holidays to check if extra tuition is taking place.

Three, reporting mechanisms. The Ministry has established reporting mechanisms where parents, students and the public can report cases of schools that violate the ban on tuition to the sub-county field offices.

Four, public awareness campaigns. The Ministry has rolled out public awareness campaigns to educate parents and students about the importance of rest for learners and the regulations on tuition. These campaigns aim to discourage parents from asking for extra tuition.

Five, engagement with stakeholders. The Ministry regularly engages with key stakeholders to ensure collective responsibility in enforcing the ban. These dialogues help ensure that both educators and parents are aligned with the government's policy on the matter. These efforts are part of the Ministry's broader agenda to promote a balanced learning environment and prevent the overburdening of students.

Question two was on the plans the Ministry of Education has put in place to ensure that public and private schools that pick and drop students have sufficient vehicles, to avoid long travel time to and from for school going children. The response is as follows. The Ministry of Education in Kenya has taken several steps to address the issue of school transportation, especially concerning the adequacy of school buses for both public and private schools. These strategies aim to ensure that students are safely picked up and dropped off without facing long distances or delays.

One, transport guidelines for schools. The Ministry of Education has developed guidelines for school transport to streamline the management of school buses. These guidelines/circulars encourage schools to ensure that they have sufficient buses that comply with safety standards, and adequately serve their student population. Schools are required to ensure that buses are properly maintained and the journeys are properly planned.

Two, encouraging schools to purchase buses. Public schools have been encouraged to prioritise the purchase of school buses through Government funding, the National Government-Constituencies Development Funds (NG-CDF) and contribution from parents and alumni. Schools that already own buses are urged to increase their fleet to serve the growing student population. The Ministry emphasises this as part of the infrastructure development necessary for Competency-Based Curriculum (CBC) rollout.

Three, monitoring and auditing school transport systems. The Ministry's Directorate of Quality Assurance and Standards is tasked with the safety of learners and transport systems in schools to ensure they meet the required standards. Schools are checked for sufficient transportation resources and long pick-up or drop-off distances are discouraged.

Four, engagement with parents and school boards. The Ministry of Education works closely with parents and school boards to address transportation challenges. Parents are encouraged to participate in discussions with school administrations regarding the transportation needs of students. This includes raising funds for additional buses in cases where schools face logistical issues related to insufficient transportation.

Five, partnership with the National Transport and Safety Authority (NTSA). The Ministry collaborates with NTSA in ensuring that school buses adhere to the required safety standards, including the appropriate routes and operational hours. This partnership helps to enforce the use of buses that are safe, properly licensed and capable of serving the school's catchment area effectively.

Six, government-funded school buses. The Ministry has worked through Government programmes, including NG-CDF and county government funding, to assist public schools in purchasing school buses. This initiative focuses on equipping public schools with the necessary resources for transportation, particularly in rural and marginalised areas where transport infrastructure may be underdeveloped. The NG-CDF has been instrumental in funding the acquisition of school buses in numerous constituencies, with Members of Parliament actively supporting these initiatives. These buses are meant to serve students in areas where public

transportation is limited, reducing the burden of long-walking distances or the need for students to use unsafe or expensive alternative means of transport.

Seven, transportation safety and capacity regulations. The Ministry in collaboration with NTSA, has implemented stringent rules regarding the capacity and operation of buses. These regulations mandate that school buses must not exceed their passenger capacity, should adhere to specific operational hours, no night travel for school buses, and must have proper safety equipment such as seat belts for each seat. Schools found violating these regulations, such as overcrowding buses or allowing unsafe travel conditions, are subject to penalties including fines or revocation of their bus permits. This ensures that available buses are used efficiently and safely, reducing transport risks.

Eight, capacity building and training for school bus drivers. The Ministry of Education, in partnership with the NTSA, conducts capacity building programmes for school bus drivers and transport managers. These training sessions focus on:

- (a) Enhancing road safety awareness.
- (b) Improving route planning to minimise long travel times.
- (c) Encouraging adherence to transport regulations specific to school vehicles.

Trained drivers and transport managers can better organise student pick-up and drop-off schedules avoiding unnecessary delays or long routes that might strain the transport system.

Nine, community and stakeholder involvement. Schools are encouraged to involve the local community, parents and alumni in solving transportation challenges. Fundraising initiatives and alumni contributions have been successfully employed by many schools to purchase additional buses or maintain existing ones. In some cases, local buses or organisations sponsor school buses as part of their corporate social responsibility (CSR) efforts. The Ministry is in the process of developing of a school transport policy to guide in implementation of various interventions outlined above to entrench a culture of a safe and secure transport system for all learners.

The response is signed by Florence Amoit on behalf of the Principal Secretary.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Donya.

Hon. Dorice Donya (Kisii County, WDM): Thank you, Hon. Temporary Speaker. I have just followed along as he was reading. All the things that he has read did not make any sense. He could have answered my request for a Statement with the last point which stated that the Ministry of Education will look into ways of coming up with a transport policy. That could have worked better because there are schools where learners wake up at 3.45 a.m. to go to school. We see them by the roadside. Members of Parliament wake up very early to go for games. By 5.00 a.m., our children are in school buses headed to schools. He is saying that they will ensure that school buses are not overcrowded. I do not know if he was reporting for Kenya or Uganda. If you are on the road every day, you will see overcrowded school buses. He has just read things that are on paper, but that is not the situation on the ground.

With regard to the time for reporting to school, the Departmental Committee on Education could have called me and asked me which schools these are. I would have given you a list of schools so that you visit them and ask the learners to fill a questionnaire. You could ask them what time they wake up and what time they come to school.

You have not answered what I had asked. Your response is information that everyone has, just like one can have a newspaper in the house. However, that is not what is happening. I do not know how I will get legitimate answers to this question from the Ministry of Education.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): The Member is indicating that she is not satisfied with the response. I give it back to you.

Hon. Abdul Haro (Mandera South, UDM): Thank you, Hon. Temporary Speaker. This is the response given by the Principal Secretary. Obviously, we will communicate back to the

Ministry that the Member is not satisfied with the answer. From her follow-up response, she is also indicating that if the Committee needs to know the specific schools which have grievances, we should make a point of indulging her so as to get to know those schools. That is the communication that I will take back to the Committee and by extension, to the Ministry.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Donya.

Hon. Dorice Donya (Kisii County, WDM): If I am not wrong, the Member who was reading the response is a parent. Were you satisfied with what you were presenting?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Member for Kisii, I would like to protect Hon. Haro. First of all, he is reading the response on behalf of the Chairperson of the Committee, who is not in the House. You have indicated that you are not satisfied with the answer because it is on policy. Because everything in this House is on record, I would like you to register your dissatisfaction with the response with the Chairperson of the Committee.

Hon. Haro, I would like to give you an opportunity to give us an indication of when you will present a more satisfactory response. How many weeks should we give you?

Hon. Abdul Haro (Mandera South, UDM): Thank you, Hon. Temporary Speaker, I will definitely pass that message to the Chairperson. To be fair, as soon as we come back from recess, I will communicate to the Chairperson that a follow-up response is required by Hon. Donya.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. That will be in the first week after we come back from recess.

Hon. Members, allow me to give a chance to Hon. Ruku. I am aware of where he was. He was performing very important duties for this country. So, please, go ahead and ask your Questions.

ORDINARY QUESTIONS

Question 135/2024

MEASURES TO ENSURE INCLUSIVE TEACHER RECRUITMENT PROCEDURES AND ADEQUATE AFFIRMATIVE ACTION FOR TEACHERS FROM MARGINALISED GROUPS

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker, for this chance. I rise to ask two questions to the Teachers Service Commission:

- (a) Can the Teachers Service Commission outline specific measures in place to ensure that teacher recruitment procedures are inclusive and provide adequate affirmative action safeguards to accord teachers from marginalised groups such as the Mbeere community opportunity for equitable employment, particularly in the ongoing recruitment, in line with the fulfilment of Articles 10(2)(b), 27(6) and (8) of the Constitution?
- (b) Can the Teachers Service Commission provide the list of teachers from marginalised groups and communities, including the Mbeere community, who have been recruited on account of affirmative action in the past five years?

Question 136/2024

RECRUITMENT AND PROMOTION OF MARGINALISED GROUPS IN THE PUBLIC SERVICE

I also rise to ask the Public Service Commission the following two questions:

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- (a) Can the Public Service Commission provide a report on the actions that the Commission has taken to mainstream marginalised groups...

(Hon. Abdul Haro walked out of the Chamber)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Ruku. I would like to ask Hon. Abdul Haro to go back to his seat. The Question that is being asked concerns the Departmental Committee on Education, and you have just been speaking on behalf of the Chairperson of the Committee. Please wait. You can listen to this Question and then you can proceed to your next business. Proceed, please.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker. I also rise to ask two questions to the Public Service Commission:

- (a) Can the Public Service Commission provide a report on the actions that the Commission has taken to mainstream marginalised groups and communities in the public service through recruitment, placement and promotion in line with Article 232 of the Constitution and the Public Service (Values and Principles) Act, CAP 185A?
- (b) Can the Public Service Commission clarify whether there are established recruitment quotas or targets for marginalised groups in the public service, and if so, provide details on the progress made in meeting these quotas and targets?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Geoffrey Ruku. The two Questions are referred to the Departmental Committee on Education. I would like to give a chance to the Member for Mandera, Hon. Abdul Haro, to tell us when the questions will be responded to.

Hon. Abdul Haro (Mandera South, UDM): Thank you, Hon. Temporary Speaker. I think two weeks after recess would be a good time to respond.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Ruku, are two weeks after we come back from recess a good time for the matters that you have raised?

Hon. Ruku GK (Mbeere North, DP): Yes, that is enough time. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. Next Order.

MOTIONS

APPROVAL OF THE MEDIATED VERSION OF THE WATER (AMENDMENT) BILL (National Assembly Bill No.33 of 2023)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Chairperson.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Temporary Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150(3), this House adopts the Report of the Mediation Committee on the Water (Amendment) Bill (National Assembly Bill No. 33 of 2023), laid on the Table of the House on Tuesday, 15th October 2024 and approves the Mediated version of the Water (Amendment) Bill (National Assembly Bill No. 33 of 2023).

Hon. Temporary Speaker, the Water (Amendment) Bill (National Assembly Bill No. 33 of 2023), was published on 4th July 2023 and read for the first time on 26th July 2023. The Bill was considered by the National Assembly and passed with amendments on 23rd August 2023 and thereafter referred to the Senate for consideration in accordance with Article 110 (4) of our Constitution.

Pursuant to Standing Order 144 of the National Assembly and Article 110 (4) of the Constitution, the Bill was forwarded for consideration by the Senate. The Senate considered the Bill in accordance with the Senate Standing Orders and the Constitution and passed it with amendments on 2nd March 2024. Subsequently, the National Assembly considered and rejected some of the Senate's amendments to the Bill on 30th April 2024. Consequently, pursuant to Article 112 (1) (b), and 113 of the Constitution, the Bill was referred to the Committee on Mediation.

The Speaker of the National Assembly appointed Members to the Committee on Mediation on 13th May 2024 as required by the National Assembly Standing Order 149 (2) while the Speaker of the Senate appointed Senators to the Committee on 9th May 2024 under the provision of Standing Order 166 (2) of the Senate Standing Orders. The Hon. Members of the National Assembly comprised myself, Hon. Kangogo Bowen, as the Chairperson, Hon. Maisori Kitayama, Hon. (Eng.) Muiruri Muthama Stanley, Hon. Hussein Weytan Mohamed, Hon. (Eng.) Nzengu Paul Musyimi, Hon. Dorothy Muthoni Ikiara and Hon. Gertrude Mbeyu. On the part of the Senate, there were Sen. John Muhia Methu, Sen. Mariam Sheikh Omar, Sen. Johnes Mwashushe Mwaruma, Sen. Agnes Kavindu Muthama, Sen. Beatrice Akinyi Ogolla, Sen. Steve Lelegwe Ltumbesi and Sen. Wamatinga Wahome.

Hon. Temporary Speaker, the Committee on Mediation began its sittings on Thursday 19th September 2024, and pursuant to Article 113 (4) of the Constitution, the Committee was required to agree on the version of the Bill and table the report within 30 days of the first sitting. The Committee held a total of five meetings with the first meeting held on Thursday, 19th September 2024 and concluded its sittings on Wednesday, 9th October 2024. The Committee considered the clauses of the Bill that were under mediation and subsequently agreed on the version of the Bill, whose report I tabled yesterday, for consideration by the House.

In summary, the Committee on Mediation considered the Senate Amendments on the Water Amendment Bill (National Assembly Bill No.33 of 2023) and identified clauses 1, 3, 4, 5, 6, 7, 11 and 12 as being contentious clauses and agreed on the version of the Bill.

(Loud consultations)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order Hon. Members. I would like you to reduce the high levels of consultations so that we are able to hear the Chairperson.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Temporary Speaker. The Committee, in arriving at the agreed version, was guided by the provisions of the Constitution, the Water Act, the Public Private Partnership Act and the other relevant laws. Further, in accordance with Article 118 of the Constitution, the Committee took into consideration the submissions made by the public during public participation conducted by the National Assembly and Senate as contained in the report of the two Houses.

The first main issue of contention was the subjection of the proposed Bulk Water Purchase Agreement by Water Works Development Agencies and the Water Storage Authority, the contacting authority and the private investor, to an economic efficiency criteria set by the Water Services Regulatory Board. In this regard, the Committee was able to agree that the proposal by the Senate on the requirement of the subjection of the Bulk Water Purchase Agreement to an economic efficiency criteria set by the Water Services Regulatory Board, be dropped and instead include the Water Services Regulatory Board (WASREB) to be among the bodies to be consulted whenever the Water Storage Authority and Water Works Development Agencies enter into Bulk Water Purchase Agreement.

The Mediation Committee was of the view that, whereas the Bill provides for the Bulk Water Purchase Agreement, it will be subject to the Public Private Partnership Act, which provides the general framework for the visibility and approval of the Public Private Partnership

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projects across the various sectors under Section 32. This does not preclude the House from having more specific requirements for the water sector given the unique nature of the water services. Further, noting the role of WASREB as the regulator, which is crucial in ensuring these projects meet the highest standards.

Hon. Temporary Speaker, the second issue of contention was the non-transferability of completed National Public Water Works to counties. The Committee on Mediation considered Clauses 4 and 6 and agreed to retain the provisions precluding the handover of the National Public Water Works to counties. You may be aware that Section 8 of the Water Act sets out the National Public Water Works, which are financed by the National Government share of the National Revenue, pursuant to the Public Finance Management Act and are intended to serve the National Government functions, hence the same may not be transferable to the county government.

Further, some of these National Public Water Works are cross-county in nature and therefore it should pose an administrative challenge to determine which county to transfer such water works.

The third point is that the Committee was able to agree on the issue of publication of standards to be set by the regulatory board on licensing of water works development agencies in the provision of bulk water services as proposed in Clause 5 of the Bill.

Hon. Temporary Speaker, having taken a closer look at Sections 2 and 22 of the Statutory Instruments Act, the guidelines are statutory instruments and, therefore, ought to be published in the *Kenya Gazette*.

The fourth issue is on Clause 7, which provides for an amendment of Section 72 on the powers and functions of the regulatory board to additionally make tariffs for bulk water services. The Committee agreed on a revised version of the clause, which was generally correcting a drafting error and harmonizing the provisions with the existing provisions of the Act. The Committee agreed to separate the WASREB authority to evaluate and recommend the water and sewerage tariffs for water services providers from the authority to evaluate and recommend bulk water tariffs for water works development agencies. Given that Section 72(1)(c) of the Water Act already gives WASREB the role of evaluating and recommending water sewerage tariffs for water service providers, the Bill needed to distinctly address the evaluation, recommendation and approval processes for bulk water tariffs.

The fifth issue is that the Committee agreed to delete Clause 11 of the Bill that sought to amend Section (11)(4) on the objects of the Water Sector Trust Fund to enable the water works development agencies to benefit from the fund. Currently, the Act mandates the fund to provide financial support to counties for water and sanitation services as well as support the development and management of water services in the marginalized and underserved areas.

The Committee observed that there is need to protect the integrity and purpose of the WSTF, which has been historically earmarked to support the marginalized counties. Allowing the water works development agencies – which are national entities – to access this fund poses the risk of diverting resources away from the counties with acute water service needs, undermining the fund's primary objective and alleviating the disparities in a deserved region.

The WSTF also receives contributions from the county governments for agreed upon programmes as stipulated under Section (1)(1)(7) of the Act. Expanding access to national entities that are already financed by the national Government raises concerns over the equitable distribution of these resources. This could create an imbalance, allowing the national entities undue advantage while depriving counties of vital resources needed for the local water service development.

Hon. Temporary Speaker, the Committee agreed to retain Clause 12 that proposed an amendment to Section 19 of the Water Tribunal, as proposed by the Bill. The Committee agreed to reject the Senate proposal to provide for nomination of two persons by the Council of

Governors (CoGs) to the Water Tribunal. You may notice that Article 169 of the Constitution establishes subordinate courts, including the local tribunals established by an Act of Parliament. In exercising the judicial authority under Articles 159 and 160 of the Constitution, the tribunals ought to be independent and subject only to the constitution and the law, and to be independent from direction or indirect control of any other person or authority. The Water Tribunal, as proposed in the Bill, is established to hear disputes related to the implementation of the Water Act. As an arbiter, it is prudent that the Tribunal membership remains as neutral as possible.

Hon. Temporary Speaker, the Committee is grateful to the offices of both Speakers of the National Assembly and the Senate for their support since the formation of the Mediation Committee to the conclusion of the preparation of this final Report.

I also express my appreciation to the Members of the Committee from both the National Assembly and the Senate. I appreciate our Secretariat for enabling the Committee to complete the task within the stipulated period.

Hon. Temporary Speaker, those are the few clauses of the Water (Amendment) Bill (National Assembly Bill No.33 of 2023), which we passed in this House. When it went to the Senate, they introduced amendments to the clauses that I have mentioned. However, when we sat as a Mediation Committee, we agreed on all the contentious clauses and the Bill is now before the House. I ask my colleagues to approve this Bill so that it can go back to the Senate for approval so that it can be taken to the president for assent.

With those remarks, I beg to move and request Hon. Kamket to second the Motion.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Temporary Speaker, I second.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Kamket.

(Question proposed)

Hon. Members, if you are interested in debating this Motion, please; press the intervention button.

Hon. James Nyikal, Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Speaker. I rise to support the mediated version of the Bill merely on the fact that it is a mediated version, meaning that Members of this House sat with those of the Senate, looked through the Bill and agreed on the areas that the National Assembly and the Senate had initially disagreed on.

I want to point out the fact that these are really important Bills. It is unfortunate that when we discuss them, we do not have many Members looking at them. Water is the greatest social determinant of health. In fact, if we improve water supply to the citizenry, we will eradicate diseases that are related to water by over 90 per cent. Therefore, I would have expected that a lot of us would be here to discuss such Bills.

The other point is that every time there is a mediated Bill, issues to do with devolution always come up and we do not seem to agree on the role of the county governments. If you look at this Bill and what was presented, you will see that the main issue was in the Tribunal and the involvement of the CoGs. I want you to hear me on this one. I have said that every time we have a mediation, there is always the issue of involvement of the county governments. Even in this Bill, the main issue that has come out is on the Tribunal and the role of the county governments in it. If you look at the way we have implemented our constitution and devolution, you will realise that there are very many issues that have not been totally addressed.

I take this back to the days of the Transition Authority, when things did not work well. There are many structures that do not work. It is my considered view that we look at the constitution and see how it has been implemented in the last 10 years. What areas should we

look at? It is the same thing. We will soon be talking about the Division of Revenue Bill. Again, when discussing the Division of Revenue Bill, people often come here and say that they now understand the need for the counties. Why is it that when we discuss these matters at the initial stage we do not understand the need for including the counties but when we go into negotiation, we claim to understand the needs for involving counties? This means that, structurally, there is a problem with the implementation of our current constitution, which brought about devolution. It is time we looked at it and identified areas that need to be strengthened.

In this country, when somebody talks about amendment of the constitution, people see it purely in political terms. We fail to understand that it does not matter what politics does if in the end people get services. If a Bill is affected in such a way that a devolved function cannot be properly implemented unless we improve the relationship between the national Government and the county governments, then that is where we should look at. We cannot keep on going like this every year. We should look at these aspects.

With those remarks, I support the meditated version of the Water (Amendment) Bill.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Dr Nyikal. Hon. Beatrice Elachi, Member for Dagoretti North.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. I also rise to support the mediated version of the Water (Amendment) Bill. We all live in Nairobi, and we are aware of the water challenges that we have always faced. Talking of water bulk services, I know that Nairobi will soon be receiving water from the water tunnel from Murang'a. The Government of Nairobi City County has been installing new pipes. However, my biggest worry is that despite the fact that many counties, including Nairobi, have always complained about water challenges, we have decided to ignore the infrastructure. So, as service delivery improves and we have increased water supply in Nairobi, as we pass these amendments, the Senate should help us to push the county governments to also bring new and clear regulations, not just for water but also for infrastructure.

We have always asked why it is possible for water vendors to get water into their tanks to sell in Nairobi but not piped water. The issue of Nairobi City Water and Sewerage Company must be dealt with by the Senate. The Senate sometimes complain that we are interfering with their mandate. The other day, Mheshimiwa Atandi said that the Senate has now decided to do everything. It is time we started dealing with issues affecting the national Government even if they are within the purview of the counties. We must start with overseeing the budgetary allocations that we normally send them. Water is a devolved function but we also need to deal with it because we also develop policies. We must make sure that there is quality assurance in the water sector.

How we treat our water is also a key issue. So, it is not just about the water, but the whole package. Since the start of devolution, we at times wish to have tokens for water so that when you use and pay for it, you know the number of units that you have used. Nowadays you get a water bill even if you do not receive any water for a month. I agree with the amendments, especially those aimed at improving service delivery. First of all, when they were looking at the Bill, under Clause 3, they agreed with the proposal by the Senate on the requirement to subject the bulk water purchase agreement to an economic efficiency criterion. We have agreed on that but we are not asking ourselves what happens to the institution that has been running it. Where do we end up in this regard? Nowadays everything in Government is bulk. The Social Health Insurance Fund (SHIF) is very bulky. We have since migrated to SHIF but we have no idea where we are headed to. As *Mheshimiwa* said, water is life. Water is health. Accessibility of clean water reduces the prevalence of diseases.

We need the infrastructure to be looked at. As we go into all the new things that we are introducing, the old infrastructure must be looked at. We must build new infrastructure to facilitate implementation of the new proposals.

Lastly, on the same issue, we now have apartments all over. I will use my constituency, Dagoretti North, as an example. We now have boreholes all over but some of them are drying up despite the fact that guys have gone down 400 metres to look for water. As we look into regulating those who are undertaking bulk water purchasing and all these agreements, can we look at the critical ones that affect our lives? People in Nairobi are now drilling boreholes all over, and that is really affecting us. There is a borehole in every apartment. We read in history that the water table in Nairobi was very high. Why are people drilling up to 400 metres to get water? There must be a problem. We must look at it. I want to plead with the Senate to look at the water infrastructure. It is a big issue. We cannot continue the way we are today. We cannot be clamouring for improved water services and forget that we need improved infrastructure for that service to work.

With those few remarks, I beg to support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Dagoretti North.

Next is Hon. Osoro.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Temporary Speaker. I join the Members who have spoken before me in congratulating the Mediation Committee for the very good work it has done on the Water (Amendment) Bill. It is important for Members to appreciate that the particular clauses that have been reviewed, and the proposed amendments by the Senate, are very pertinent to water management across the country.

Hon. Temporary Speaker, Section 72 of the Water Act has empowered the regulatory authority to publish regulatory standards without the approval of the Cabinet Secretary. This is for purposes of ensuring consistency with the law. It is also for purposes of safeguarding the independence and operational autonomy of the WASREB. This Board should be empowered to enable it set standards for water service providers as it encourages them to develop water management assets without approval of the Cabinet Secretary.

Hon. Temporary Speaker, there is need to adhere to Sections 2 and 22 of the Statutory Instruments Act, which require publication of regulations in the *Kenya Gazette*. This is very important. Therefore, the Mediation Committee has included it in Clause 5. The Committee also agreed with the proposal by the Senate on the requirement to subject bulk water purchase agreement to economic efficiency criterion. This should be dropped and instead WASREB should be among the bodies to be consulted when the water works development agencies enter into bulk water purchase agreements. This was a very good proposal by the Senate, which the Mediation Committee agreed with.

There was another proposal for deletion of a clause which provide that national public waterworks shall not be transferable to the county governments. The proposal was dropped to allow for non-transferability of national public waterworks. Members will agree with me that water is essential for life to continue. There is a delicate balance in management of water and health systems in the society.

The Mediation Committee came up with very good proposals after consulting widely. Even the CoGs rejected the Senate's proposal for them to nominate two persons to sit in the Water Tribunal. This was vital because Article 169 of the Constitution establishes subordinate courts, which include local tribunals established by an Act of Parliament. So, in exercising judicial authority under Articles 159 and 160 of the Constitution, tribunals ought to be independent and subject only to the Constitution and the law. They should be independent from the direction or control of any person or authority. Therefore, including two people nominated by the CoGs would be unfair. This is because when it comes to matters of judicial review or litigation when disputes arise, it is important to have these independent bodies. The Water

Tribunal, as proposed in the Bill, will operate on the basis of the Water Act to hear disputes related to its implementation.

With those reasons...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Silvanus Osoro. There is a point of order by Hon. Jared Okello, the Member for Nyando. What is out of order, Hon. Jared Okello?

Hon. Jared Okello (Nyando, ODM): Thank you, Hon. Temporary Speaker. I do not intend to interrupt my very good friend, Hon. Osoro while delivering justice to the mediated version of this Bill. He was winding up and I hope I did not disrupt his thought process.

The mediated version of the Water (Amendment) Bill has been discussed extensively in this House. There were a few issues on which the National Assembly and the Senate did not agree on, thus calling for mediation between the two Houses of Parliament. What we have before us is a complete document. There is nothing we can do in terms of amendments. It can only be passed or it falls. In the interest of time, I would not wish that the House delves deep into these issues as if we are opening it up for further debate and amendments. Such an attempt would be in vain.

Therefore, I request for your indulgence that you put the question so that we close this matter. There are many issues before us, including a special sitting slotted for Friday. This is based on the number of agenda items before us as we proceed for recess next week.

Hon. Speaker, I seek your indulgence that you put the question on the mediated version of the Water Bill.

Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I will give chance to Hon. Silvanus Osoro to conclude his contribution. I will then find out the mood of the House.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Temporary Speaker. I was concluding my comments on the good work that the Mediation Committee has done.

I agree with Hon. Jared Okello that there is nothing much that can be done about the mediated version of this Bill. I just want to commend them for a job-well-done. What stands out in the Mediation Committee's Report is the earlier proposed nomination by the CoGs. This would have invited an element of impartiality, which would jeopardise the good cause. I agree with the Committee that the Tribunal membership should remain as neutral as possible. I appreciate and congratulate the Committee for a job-well-done.

With those remarks, I beg to support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, the original Bill was debated and passed by this House. It was referred to the Senate for concurrence, but it was returned to this House with proposed amendments. This House rejected the Senate amendments and committed the Bill to the Mediation Committee. We are, therefore, discussing what has already been agreed upon by the Mediation Committee set up by the National Assembly and the Senate. Is it the mood of the House that I call upon the Mover to reply?

Hon. Members: Yes!

(Question, that the Mover be called upon to reply, put and agreed to)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Mover, proceed.

Hon. Kagongo Bowen (Marakwet East, UDA): Thank you, Hon. Temporary Speaker. As you heard from Hon. Jared Okello, this Bill was debated in this House and many Members contributed. The Bill was introduced to the House in 2023. We passed it with amendments and referred it to the Senate for debate and concurrence. The Senate also came up with some

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amendments. What is before us now is a mediated version of the Bill requiring the approval of this House. It is not subject to further amendments.

I thank the Majority Whip and all the Members who have ventilated on the mediated version of the Water (Amendment) Bill (National Assembly Bill No.33 of 2023).

I beg to reply.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, I will not put the Question at this moment. It will be put during another sitting as will be scheduled by the House Business Committee.

(Putting of the Question deferred)

Let us proceed to the next Order.

ADOPTION OF REPORT ON INQUIRY INTO IRREGULAR GRANT
OF TAX EXEMPTIONS TO COMPANY UNDER SPECIAL
OPERATING FRAMEWORK AGREEMENT

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Komingoi Kibet, please; proceed. Are you a Member of the Committee on Delegated Legislation?

Hon. Kibet Komingoi (Bureti, UDA): Yes.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Okay. Proceed.

Hon. Charles Onchoke (Bonchari, UPA): Hon. Temporary Speaker, I wish to present the Report on the inquiry into irregular and illegal grant of tax exemptions to a company under the special operating framework agreement.

I will give a summary of the Report and findings of the Committee. This Report presents the findings of the Committee on Delegated Legislation upon inquiry into alleged irregular and illegal tax exemptions granted to M/s Blue Nile Rolling Mills Limited, under purported special operating framework agreement.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Onchoke. Please, start by moving the Motion as it is in the Order Paper. You can then proceed and tell us what you are telling us now.

Hon. Charles Onchoke (Bonchari, UPA): Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I would like him to be provided with a copy of the Order Paper.

Hon. Charles Onchoke (Bonchari, UPA): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on the Inquiry into Irregular and Illegal Grant of Tax Exemptions to a Company under the Special Operating Framework Agreement, laid on the Table of the House on Thursday, 26th September 2024.

Hon. Temporary Speaker, the inquiry was initiated following a request for Statement on the Floor of the House on 31st July 2024 by the Member for Kiambaa, Hon. John Njuguna Kawanjiku. He raised concerns about the legality and fairness of the exemptions. Upon request, Hon. Speaker referred the matter to the Committee on Delegated Legislation for its consideration, pursuant to Standing Order 44(2)(c).

This is an investigation into the circumstances surrounding the grant of exemptions, the legal basis upon which the exemptions were given to the company, and the potential impact on the Government's revenue and local steel industry, among others issues. The Committee held a total of four sittings, during which it received oral and written submissions from various stakeholders including the Ministry of the National Treasury and Economic Planning, the

Ministry of Investments, Trade and Industry; the Kenya Association of Manufacturers, and the management of M/s Blue Nile Rolling Mills Limited. Having considered submissions by stakeholders, the Committee made the following findings:

That, the Special Operating Framework Agreement dated 18th December 2019 contravened:

1. Article 35 of the Constitution on access to information in regard to Article 7 of this Agreement, which has a confidentiality clause.
2. Article 201 (a) on principles of public finance on openness and accountability, including public participation.
3. Article 95 (4)(c) of the Constitution with regard to the oversight role of the National Assembly over national revenue and its expenditures.
4. Article 210 (2) of the Constitution on maintenance of public records of tax waiver and its report to the Auditor-General.
5. Articles 10 (2) (c) and 118 of the Constitution, which require good governance, integrity, transparency and accountability.

There was non-conformity with the relevant Statutes. The Agreement failed to conform with the relevant Statutes, including Section 13 of the Income Tax Act, Cap. 1 and 7, Laws of Kenya, which allows the Cabinet Secretary to exempt any income or class of income accrued in or derived from Kenya from taxation.

Hon. Temporary Speaker, firstly, this is supposed to be done by publishing a Gazette Notice to that effect, in accordance with the sub-section. Secondly, it is supposed to be done by submitting the notice to be laid in the National Assembly without unreasonable delay, in accordance with Sub-Section 3.

These are requirements that the Committee observed were not adhered to since the Cabinet Secretary for the National Treasury neither published the notice in the Gazette nor submitted it for laying before the National Assembly for approval.

Hon. Temporary Speaker, Section 68 of the Value Added Tax Act, Cap. 476 of the Laws of Kenya has all Special Operating Framework Agreements entered into with the Government, which were in existence at the commencement of the Act in 2022. The Agreement was signed between 16th and 30th January 2020, which falls within the timelines of the agreements under the Value Added Tax Act. Consequently, the Committee found out that the purported Special Operating Framework Agreement between M/s Blue Nile Rolling Mill Limited and the Government was not entered into procedurally and, therefore, is unlawful. The company ought not to benefit from the said saving.

The process also contravened the provision of the Law of Contract Act, Cap. 223 of the Laws of Kenya in relation to their signature and affixing of common seal. The Agreement has three signatures appended by parties but on different dates and places. This implies that all the parties were not present during signing, contrary to the principles of the Law of Contract. The Agreement was void to the extent that it lacked the affixing of the common seal of one of the parties.

Further, the agreement does not conform with the Miscellaneous Fees and Levies Act, Cap. 169(c) of the Laws of Kenya. Article 5 of the Agreement seeks exemption from import declaration fees and Railway Development Levy. However, the same has not been exempted under the Miscellaneous Fees and Levies Act.

Based on the provisions of the Tax Procedures Act, Cap. 169(b), Laws of Kenya, the Committee considered the failure by M/s Blue Nile Rolling Mill Limited to remit the attendant taxes a tax avoidance, as defined in Section 3 of the Act, as the transaction or scheme is designed to avoid liability to pay tax under any law. From the submission by the National Treasury, the Committee observed that due to the tax avoidance, the Government lost revenue in terms of unpaid tax amounting to Ksh2,311,775,548 as of July 2024.

Hon. Temporary Speaker, the Competition Act, Cap. 305 of the Laws of Kenya, contemplates fair trade practices. Section 21 (3) (f) prohibits any agreement, decision or concerted practice that applies dissimilar conditions to equivalent transactions with other parties thereby placing them at a competitive disadvantage. This was the case in these circumstances. The Committee observed that this Agreement was discriminatory and created unfair grounds for other industry players, contrary to the Constitution on non-discrimination on any grounds.

In compliance with the Statutory Instruments Act, Cap. 2 (a), Laws of Kenya, Circular No.9/218, Ref. No.ZZ/TS/GP/30, dated 18th October 2018 issued guidelines for grant of tax exemptions. The guidelines were relied upon in granting tax exemptions in a statutory instrument within the meaning of Section 3 of the Statutory Instruments Act. Although the above mentioned guidelines are statutory instruments, the Committee observed that they were not laid before the National Assembly, in line with Section 11 (1) of the Statutory Instruments Act, for scrutiny and approval.

Consequently, the circular ceased to have effect upon the expiry of seven days from the date of issuance as provided for under Section 11(4) of the Act. The Special Operation Framework Agreement (SOFA) was a statutory instrument which ought to have been submitted to the National Assembly for tabling and consideration as required under the Statutory Instruments Act. Consequently, the Committee observed that the SOFA Agreement was nullity *ab initio*.

On non-compliance with the principles of a standard contract/agreement, the agreement did not comply with the general principles of a standard contract or agreement in respect to the signatures appended and the dates reflected therein. The Committee further observed that the exemption under the East African Community Duty Remission Scheme was granted despite lack of demonstration of any application for the same which is a clear indication that the exemption was unprocedurally and unlawfully granted.

Having conducted the inquiry, the Committee recommends that this House adopts the Report on its inquiry into irregular and illegal grant of tax exemptions to a company under the SOFA with the following recommendations, that this House resolves:

1. To declare that the said SOFA was done outside the requisite legal framework, thus a nullity and hence void.
2. To direct all the relevant statutory bodies to take necessary legal action on parties involved in the whole process of the irregular tax exemptions under the SOFA therein.
3. Pursuant to Section 12(2) of the Statutory Instruments Act, the Cabinet Secretary for the National Treasury and Economic Planning submits tax exemption guidelines for the implementation of SOFAs to the National Assembly within six months of the House adopting this Report.

Hon. Temporary Speaker, I take this opportunity to thank all the Members of the Committee for their contributions and input during the deliberations and writing of this Report. I also thank the stakeholders for their submissions that enriched this Report. The Committee further wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the logistical support provided during the consideration and investigation of the issues raised in the Statement.

It is now my pleasant duty and privilege, on behalf of the Committee on Delegated Legislation, to present the Report on the inquiry into the irregular and illegal grant of tax exemptions to a company under the SOFA to the House pursuant to Standing Order No.199 for consideration and adoption on behalf of the Chairman of the Committee, Hon. Chepkonga Kiprono Samwel, CBS, MP.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Member, you need to move and identify a person to second.

Hon. Charles Onchoke (Bonchari, UPA): Hon. Temporary Speaker, I move. I request Hon. Kwanjiku, the Member for Kiambaa to second.

Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. Hon. Kwanjiku, the Member for Kiambaa.

Hon. Njuguna Kwanjiku (Kiambaa, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I rise to support the Report of the Committee on Delegated Legislation on the enquiry of the alleged irregular and illegal grant of tax exemption to the Blue Nile Rolling Mills under SOFA.

As we are aware, the Report culminates from the enquiry carried out by the Committee upon Request for a Statement that I made to the House. In my Statement, I had sought the indulgence of the Committee to look into concerns relating to the legality of the SOFA, which had illegally exempted taxes returns of billions of shillings belonging to the people of Kenya to one company called the Blue Nile Rolling Mills.

I have had a chance to pursue and certainly examine the Report of the Committee. I rise to support its findings as contained in the Report, particularly from paragraph 114 to 121. The Committee has established that the SOFA was unconstitutional for violating among other provisions Article 35 on access to information and Article 201(a) on openness and accountability in public finance.

The circumstances under which the SOFA was executed with the Blue Nile Rolling Mills were shielded in secrecy in clear violation of fundamental pillars of our Constitution on openness, good governance, transparency, accountability, integrity, access to information, and in particular public participation. How one can exempt a company from paying hundreds of billions without disclosure is baffling and certainly cannot stand the test of our Constitution. What is even more worrying is that the SOFA, which is a statutory instrument, ought to have been submitted to this House for scrutiny in the manner provided for by the Statutory Instruments Act. This was never done.

Consequently, the SOFA is certainly illegal, null and void for being contrary to the provision of the Statute. This House was bypassed to grant tax exemption in billions to a private company in complete disregard of our oversight role. This cannot stand the test of the Constitution. I agree with the recommendations of the Committee.

In light of the foregoing, I support the recommendations of the Committee that the relevant bodies should take necessary legal action against all parties that were involved in the whole process of the irregular tax exemption.

Additionally, I support the Committee's recommendation that the Cabinet Secretary for the National Treasury and Economic Planning should submit guidelines for implementation of the SOFA to this House so that we do not encounter such illegalities in the future.

In conclusion, allow me to thank the Committee. They did an amazing job. They made sure they looked into that enquiry. They gave a fair hearing to the company, the Ministry of National Treasury and Economic Planning, and everyone who was involved in passing this agreement. It was a serious oversight that this House was not involved and public participation was not conducted noting that they were exempting billions of money from the taxpayers. You are denying Kenyans an opportunity to earn this money by giving it to one individual without even consulting the people's representatives in this House.

I, therefore, congratulate the Committee. Its findings should be taken into consideration. The Cabinet Secretary for the National Treasury and Economic Planning should provide guidelines on how exemptions should be carried out in the future in case we find ourselves as a country in a similar position. It cannot be allowed that people decide on issues that affect our country without involving this House. The mandate of this House is to pass laws

and should always be involved when passing such laws that have serious ramifications to the public. The Committee's recommendations are critical.

I support them.

Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Kwanjiku, you should second, not support.

Hon. Njuguna Kwanjiku (Kiambaa, UDA): I am Sorry. Hon. Temporary Speaker, I beg to second.

Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Member for Kiamba.

(Question proposed)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Ruweida Obo, Member for Lamu East. Hon. Members, I request those interested in debating this matter to go to the Intervention Button. Hon. Beatrice Elachi, Member for Dagoretti North.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you. I have been seated waiting for this Report since morning.

I support the Report with certain prayers. I just want to go to a lane where we, as Kenyans, feel so disgruntled. Why is construction damn expensive? Why is buying a wire so expensive? People are screaming they cannot construct their houses today. You will find a Kenyan seated in an office somewhere, and that Kenyan just decides to take us somewhere. Kwanjiku is telling us that even this House did not go through that exemption policy to allow one company to provide us construction wires in Kenya. It is very sad.

It is not just this. That is why we pass good laws in this House. Everything changes the moment they go to the Executive. The policy on education changed. We are now in some model that we are wondering about whether we passed it in this House. What happened to the old model? We have not finished that one and we are on another about health. It is the same challenges. Again, we are wondering why we passed it. Kenyans need insurance when they cannot even access that health now.

There are many companies in this country yet one must import every of these. Let me tell you that the ones owned by Kenyans are suffering most. It is unfair when you exempt some from billions of shillings and leave others struggling. I hope we are not saying this so that my friends at Devki Steel Mills Limited become beneficiaries again. I know they follow the law. However, let us not also monopolise and find ourselves under one company again. That is the way we have monopolised the one for the Social Health Insurance Fund (SHIF). We can buy equipment, one or four, and it is just one person supplying.

The health sector is about to do the same thing, like the company called the Blue Nile Rolling Mills did to us. It should never be. It should not happen. If we want to be serious as the National Assembly before we go for recess in December, we must ensure that we have clarified and done our best to the education model and the SHIF. We should go for recess to next year knowing that Kenyans close with us having done the right thing in this House.

Let us look at recommendations 22, 23 and 24 and listen to what the East African Community Customs Management Act of 2004 provides and all that. When you come to Recommendation 27, we are saying that the SOFA that is the framework used to bring this exemption was not published in the gazette notice. It was not forwarded to Parliament for consideration and approval as required by Articles 10, 118, 201, and 210(a) of the Constitution. You will still find that the officers who did this are the same going to do these other things. That is why the President is in big trouble.

As we always say, it is not the President. It is we that Kenyans have given the privilege to be in offices that are auctioning our country day and night. You are the technical person to prepare the document yet you are expecting the President to read every document word by

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word because he has no idea what other word you have hidden inside there to benefit you afterwards. How will the President read all documents? He cannot. As the technical person, you are the one putting us in hell as a country. Then, all of us will start screaming the way we are screaming about the Public Private Partnerships (PPPs).

There is a most important thing we must ask ourselves today. I have looked at the submissions by the National Treasury and Economic Planning when they came in. They told the Committee that the Income Tax Cap 470 Paragraph 2(k) of the Third Schedule to the Income Tax Act states that the tax rate shall be to the extent provided in the agreement in the case of a company engaged in business under a special operating framework arrangement with the Government. Now, you can imagine us seated negotiating with a company and it is for you to provide that agreement. There is no NECs there. You are now to protect Kenya at that time.

I always say that we have a demon in this House. It is hovering in our bodies. We need to pray to God to help us to remove the “what is in it for me” to do good for Kenya or be patriotic to Kenya. The demon of corruption has become a culture to us. It is hurting Kenyans. That is why construction is expensive. We have to look into our eyes and say it as it is. That is why civil servants come into our offices without the ethics of work because they know they have what they want and they will get what they want in anything. Then you find another Kenyan saying this Government is bad. Yes. It is a bad Government. However, why are you doing business with it? Leave if it is bad. This is very painful.

This has to go to the Ethics and Anti-Corruption Commission (EACC). This has to go there. We must recover money so that other companies trying to look for ways and exemptions can benefit. Even children's homes including mine tried looking for exemptions for us to bring pipes for water and everything, and they denied us getting clean water. We had to go back to Davis & Shirliff to buy it. I am wondering. This is just a children's home yet a person doing business so well in this country and making good money is still given an exemption. When they finish, they will go to the Kenya Revenue Authority (KRA) to claim. That is what is happening. In fact, there is a very sweet business in Kenya right now. Just do big business and walk into KRA with a letter wanting incentives back. That is what big companies are doing here in Kenya.

It is unfair to Kenyans who are paying very high taxes. It is time we changed. It is time we had an ethical way of doing work. When given work by the Government, that office is not to auction Kenya. That office is to keep Kenya safe and protect Kenya from people taking advantage of our country. That is why we want to see the PPP programme and the agreement of the PPP project at the airport in this House. We should go through it and tell Kenyans this is how it is.

As I finalise, I thank Kwanjiku. I tell him this would continue if he never brought it. It would have been very sad. I end by saying that before we leave this House in December, we should rectify what we have done wrong on the education model and the health insurance. Everyone is wondering what happened to us.

I support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. Hon. Samuel Atandi, Member for Alego Usonga.

Hon. Samuel Atandi (Alego Usonga, ODM): Thank you, Hon. Temporary Speaker for the opportunity to comment on this Motion. Let me begin by offering my accolades to the Member for Kiambaa, who has brought this matter before the House. Hon. Kwanjiku, by coming up with this matter, this is what I would call proper oversight by Parliament. Hon. Kwanjiku, you are now in another league.

I agree with the Report from the Committee, but I take issue with the recommendations. This is clearly corruption. What happened in this matter is clearly corruption because established laws were ignored and this company was allowed to set up and operate outside the

framework of the law. According to me, this is corruption. The recommendation in the Report should have been very clear in black and white and in bold that the directors of this company should have been prosecuted. This is something that needs to be clear. We are talking about the economy having lost taxes in billions of shillings and there are Government officers who allowed this to happen. So we need to amend the recommendation to say that directors of this company together with the Government officials who assisted them in ensuring that this tax evasion is achieved be prosecuted.

Secondly, I am one of the people who believe that for Kenya to attract serious investors, we need to have a framework where certain tax exemptions are granted. This is something that I believe in because I have compared the business operating environment in neighbouring countries like Uganda, Tanzania and Rwanda, and in some of those countries, if you are an investor that is coming to set up a business in a particular sector where there is no competition, you will be given tax exemptions for a year or two until your company becomes profitable. But again, if you look at the guidelines that are in law, they are very clear that first of all you need to be an investor that is going to put in about Ksh10 billion in that investment. In other words, we do not just expect briefcase investors to arrive in Kenya and be given these exemptions. I urge the Cabinet Secretary for the National Treasury and Economic Planning to invoke this particular provision to attract investors from Tanzania and Uganda. But this must be done above board because the biggest issue in this country is that many things are not being done above board. We need to ensure that as we implement the law, we put everything on the table so that discussions are very clear.

One of the areas that I always feel needs to be addressed is the potential of a particular investment to rejuvenate the economy. In other words, how many jobs will that particular investment create in the economy? How much money in terms of taxes are we to get in the short term and in the long term. These are very fundamental factors that are very clear in law and the particular public officers in charge of giving exemptions are supposed to see. They should know that the company is going to propel the economy. As you are aware, recently I heard the Government of Tanzania bragging that they are taking a lot of investors from our country. This is something which we should never allow as a House. This House must ensure that we know investors exiting this economy and the reasons why they are exiting. If there are issues to do with taxation and areas where we can engage, we should advise the Cabinet Secretary for the National Treasury and Economic Planning to ensure that these things are not allowed. Investments that come into this economy are the reason Kenya is regarded as an economic powerhouse. Kenya cannot be an economic powerhouse if we continue to lose investors.

Another area that we need to check is corruption. Corruption is not sustainable in the long run. It will give an investor leeway to come to the economy, but it will also block new investors from coming in. If the yardstick for giving exemptions by public officers is corruption, then it means that those who cannot offer corruption will never have a chance to come to the economy. It is the people who are going to lose in such circumstances.

I wind up by saying that we need to amend this Report to ensure that the directors of this company are prosecuted. If that is done, it will be another deterrent for the future. Hon. Kawanjiku, thank you very much for this particular Motion. I believe that by speaking on the Floor of this House, every stakeholder in the country interested in investing and public officers will take note that Parliament is not interested in allowing corruption to thrive especially in areas where exemptions are important. Tax exemption is something that we need to embrace, but it must be done above board.

Thank you, Hon. Temporary Speaker, I support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Atandi. You know the most effective way to deal with an amendment of a report is to propose the

amendment so that the report is debated in an amended form. However, I will just proceed to give this chance to Hon. Jared Okello, the Member for Nyando.

Hon. Jared Okello (Nyando, ODM): I thank you very much, Hon. Temporary Speaker, for the opportunity. From the onset, let me make it clear that I belong to the Committee on Delegated Legislation. We examined, re-examined and scrutinised the entire Special Operating Framework Agreement (SOFA) as pertains the Blue Nile Rolling Mills Company.

Firstly, let me put it clear that the main source of revenue for a Government are taxes. There are issues of fines from courts of law which is paltry. Parastatals make little money in Appropriations-in-Aid, much of which is ploughed back into the same parastatals. The little that goes to the Treasury is not worth talking about. Therefore, taxes present the only viable opportunity for a Government to run its programmes. That is why treasuries all over the world would be very slow to grant any tax exemption to anybody and to any company, because by extension, that denies the Government an opportunity to make money.

This SOFA idea emanated from the East African Legislative Assembly (EALA) that came up with a law that would allow certain countries to grant tax exemptions to particular companies within the East African Community (EAC). That is what gave birth to the East African Community Customs Act. Article 1 of our Constitution dictates that Kenya becomes a signatory to ratified treaties and conventions across the world. But there is usually a process; it is not blanket. Those protocols must be domesticated by countries such as Kenya for them to operate. This SOFA, whereas it has been recognised within the EAC as a protocol, was not domesticated in Kenya. Therefore, it could not be gazetted by the Attorney-General to operate within our borders. That is where the problem lies. How would a company be enjoying tax rebates and tax holidays based on a law that has not been domesticated? That was the gist of our interactions with all the players that came before us, including the Treasury.

Article 50 of our Constitution pays credence to a fair hearing. I would be remiss not to make it clear that the Committee sent summons to the Blue Nile Group of Companies on numerous occasions. On all those occasions, they had one reason after another not to present themselves before the Committee. The Committee could not wait in vain, and so it went ahead and came up with the Report that is now before us.

Interestingly, whereas they have been enjoined on a law that does not exist, other competitors also applied, but were denied an opportunity to enjoy the same rebates that this Blue Nile Group of Companies has been enjoying. The Competition Act, 2019 does not allow one single company to have an advantage over others. That is why companies that are also in the same line of work were at pains to transact business because the SOFA that was extended to the Blue Nile Group of Companies touched on certain raw materials that are used for manufacturing metals. We have a company that buys raw materials from abroad, which attracts no taxation, thus lowering their cost of production, against others who have to pay heavy taxes, therefore, giving an undue advantage to one particular producer. That is why we have this Report before us.

Firstly, a SOFA that has not been domesticated in our country must be terminated. Secondly, under the Competition Act, 2019, everybody must operate on a level playing field. All metal-manufacturing companies should enjoy the rebates coming out of the SOFA. We challenged the National Treasury to give us a tabulation of all the taxes that the Blue Nile Group of Companies has been exempted from, so that we can know how much they need to pay as a penalty. We got some figures that were subjected to queries. As we dialogue and proceed with this matter, we will be asking more questions on that report from the National Treasury.

Our country is suffering because we are not getting enough taxes from those who should pay taxes. If a company that trades in billions is circumventing the processes of remission of taxes, that must be questioned. This Report has gone to great lengths to prefer very harsh

penalties on these companies under question, and to also put a stop, going forward, to enjoyment of this illegal tax regime by a company that does not merit.

Therefore, Hon. Temporary Speaker, I support the Report.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, Member for Nyando. Hon. Mary Emaase.

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Speaker. At the outset, I would like to congratulate Hon. Kwanjiku for bringing this Motion before this House. I want to appreciate the Committee for their good work.

Hon. Temporary Speaker, this Motion by Hon. Kwanjiku has brought to the fore some of the rot in our very own Government. Sometimes I do not understand whether we have two governments, one that frustrates its own businesspeople, and another one that still requires taxes so that we can run the country. The fact that one company is exempted from paying legitimate taxes, thus defeating the very principle of fair competition as espoused in the Competition Act, 2019, is criminal and illegal. Therefore, this matter should move from here to the Ethics and Anti-Corruption Commission to carry out further investigations and take action against the characters who are committing such kinds of criminal acts.

Hon. Temporary Speaker, there are companies in this country which are running legitimate businesses, paying taxes, earning genuine profits, yet they are frustrated as if they are not Kenyans. Talk of our ports, for example. There are companies which, after they import their wares, they cannot be cleared, not because they do not have money, but because they have to go and see certain powerful individuals and oil their hands before they can be allowed to clear their goods. That is not fair.

I remember that during the tenure of the late President Kibaki, he gave an ultimatum of 48 hours. Once a ship docked and the goods landed, they had to be cleared within 48 hours. When one company is given an exemption, yet others are not given similar treatment, that becomes an undue advantage. Just to echo what Hon. Atandi said, that is why businesspeople get frustrated and flee to Tanzania or other countries in East Africa and Africa because our environment is not conducive for business. We are chasing away our own businesspeople.

The House needs to take this matter seriously. If we are to grow our economy, we know the contributions that businesses make to the economy, including employment. We must do something. We must re-look at the law and make any necessary amendments. It is time this House reined in on such practices and set things right for this country to grow.

I support the Report of the Committee.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Ferdinand Wanyonyi, Member for Kwanza.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Thank you very much for giving me an opportunity to speak, Hon. Temporary Speaker. Thank you, Hon. Kwanjiku, for coming up with this very important Motion.

Without going too far, this country is in dire need of revenue. I am a Member of this Committee. From what the Committee has presented to this House, we should have acted yesterday, not today, and not tomorrow. We should have acted yesterday and if possible, summoned the Commissioner for Income Tax to appear before the Committee, and asked the EACC to investigate what is happening. We should not give preference to anybody. Our country is very competitive.

As someone has mentioned, and it is quite true, we are seeing many companies moving out of our country. Kenya was one of the best countries for doing business in East Africa. I was once a regional sales and marketing manager for Kodak, which is an American company and I was in charge of 13 countries in this region. If you went anywhere and said that you were from Kenya, you would get a good reception. They would say how far our country had gone. It is time for us to think of the past and move forward. Our country is losing its good name and

reputation to inferior countries. I do not mean they are inferior in the sense of their economy, but in terms of hardworking people.

First and foremost, we should go further and ask the concerned parties why the so-called Blue Rolling Mills in Thika is receiving exemptions. If there is anything to do with the free zone, it must be exclusive. For example, if you are going to the airport, it is a free zone; you do not pay anything extra because that is a free area. Given what it is, we should do something to correct the current situation.

As has been mentioned by my colleagues here, this country depends on the taxes that you and I pay. Without those taxes, we can see our country going through a tough time. People are not paying taxes, and there is a lot of corruption. I have just had a case where we discussed corruption, and it is true. When you ask this person why they are exempted from taxation, you find there is no reason for not paying taxes. This is because the people put in place to assist this country in getting revenue are corrupt.

The National Assembly, where you and I are, should live up to the expectations. We are not doing what is supposed to be done. This kind of thing that the Hon. Member has brought is nothing personal. I asked him about it, and he told me that even that company does not employ as many people as it should. So, what are we up to? My contribution to this Committee is that the commission that is supposed to be doing this and, the Ethics and Anti-Corruption Commission should be brought to this House. Maybe there are 20 other exceptions doing the same thing, and you and I do not know. We are supposed to oversee all these companies.

My take is that we should move very fast. This is just one example, among others. We should move and rectify the situation. I support this and look forward to us taking action to correct the situation. Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you.

The Hon. Peter Orero, Member for Kibra.

Hon. Peter Orero (Kibra, ODM): Thank you, Hon. Temporary Speaker, for allowing me to contribute to this very important Motion brought by our colleague, Hon. Kawajiku. It has reached a time that people should respect the functions of this Parliament. We have a number of issues that pass or are commissioned without the involvement of the National Assembly. Exemptions of duty and taxes are a menace to this country. Yesterday, we were debating on the sharing of revenue in this country to the county governments. We agreed that we were not collecting enough taxes and revenues in this country, and we could not approve the disbursement of funds to the counties. At the same time, the Government that we are supporting not to disburse funds to the county is the same Government that is allowing the exemption of billions of shillings in this country to a single company. Kenya is a capitalistic nation where fair competition should be allowed, especially in the field of business.

Imagine that all the steel, the Y12, Y8, and Y10, are manufactured by a single company, which is why the prices of some of these commodities are very high. It has reached a time that, as Parliament, we must take serious action on some of these favoured companies' omissions and commissions. We must not allow that we lose billions, yet as of last year, the Government was only able to collect, maybe in terms of revenue collection, about Ksh2.9 trillion, and they missed the target. Therefore, what we budgeted for as a country and which passed through this Parliament could not be met. Meanwhile, we lose billions to companies owned by individuals who do not serve Kenyans per se.

Some of the laws we have made, for instance, the Privatisation Act; some of the companies being privatised are done through the National Treasury and are not passing through this Parliament. I am happy that the courts have stopped some of these transactions and ordered this to be done through Parliament. Parliament must look at some of the acts which allow us to control the management of some of these things. We must also have a threshold where the exemptions can be done with the Ministry.

Hon. Samwel Chepkonga (Ainabkoi, UDA): On a Point of Order.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): What is out of order, Hon. Chairman?

I know you are an expert on standing orders.

Which standing order is it?

Hon. Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Temporary Speaker. I rise pursuant to Standing Order 95. This a day that is reserved for Members' Motions. We are discussing a Committee Motion, which will take us to 1 O'clock without discussing a single Member's Motion. I sit in the House Business Committee, and it has been a concern for us that the Members' Motions have never been discussed. I see the next Motion is by the Hon. Elisha Odhiambo. To do justice to the Private Members' Motions, it is important that we consider this Motion. I know Members would like to contribute to this. This is a serious matter because the Government has been struggling to raise taxes. The reason why Gen Zs invaded us is because we have been given too many exemptions. You can imagine you are giving an exemption to a monopoly. We do not even need to say too many things about this. A monopoly cannot enjoy tax exemption; it should be paying taxes.

Hon. Temporary Speaker, Would I be in order to request you to ask the Mover to reply without anticipating the next Motion, but just to be fair to the Private Members' Motions? I feel very bad when we close the day without the Private Members' Motion being spoken to. I thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): This is within your Committee, the Select Committee on Delegated Legislation. This matter has found itself on the Floor of the House. It has been moved and seconded, and now it is being debated.

Just to understand you, Hon. Chairman, you are saying that Members already agree. So, the Mover is to be called to reply. I am going to put this to the House to make a decision as to whether the Mover should be called to reply.

Hon. Peter Orero (Kibra, ODM): Point of Order, please. Point of Order.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Take your seat, Member for Kibra. I would like to find out from you, Hon. Members, whether it is the mood of the House that the Mover be called upon to reply.

(Question, that the Mover be called upon to reply, put and negatived)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Someone was on the Floor. Member for Kibra, you have two minutes.

Hon. Peter Orero (Kibra, ODM): Thank you. I think today the House has found it necessary that this is a very important Motion. The country should know that certain companies have a monopoly and have been allowed to evade taxes or are given tax exemptions. I wish it were during the former President Mwai Kibaki when there was a commissioner – I think Mr. Waweru – who never allowed these exemptions. Kenyans were able to collect enough taxes, and we were able to have budgetary allocations, which were fulfilled. We need to look at our ways of recognising the indigenous companies of this country and create an enabling environment for all the Kenyans who are supposed to be businessmen, giving them the same opportunities we give others.

We can never go back to a state where one company monopolises business. When I look at the recommendations in the Report, I realise that those involved in this have not been given any penalty. Those who were granted exemptions should by now have been taken to court. The investigating agency should have taken care of them. I ask that we amend some of the recommendations to ensure that those involved in the tax exemptions are not allowed to

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run Government offices. We are also saying that we must give room to indigenous companies to operate freely instead of providing exemptions to only one company to import goods without taxes, yet they still compete with indigenous companies. I support this Motion. As legislators in the National Assembly, we should put our feet down and ensure we protect local companies.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you. Hon. Ruweida Obo, Member for Lamu East.

Mhe. Ruweida Mohamed (Lamu Mashariki, UDA): Asante, Mhe. Spika wa Muda, kwa kunipatia nafasi kuchangia hii Ripoti. Haya mambo ya kuruhusu kampuni kutolipa ushuru yanafaa kufanyika kwa uangalifu sana. Kuna haja saa nyingine kampuni ipewe nafasi kuleta bidhaa bila kulipa ushuru kwa sababu bidhaa ile itamsaidia Mkenya. Kwa mfano, wakati wa Ramadhani, kule Saudia kuna matajiri Waislamu wengi wanaotoa bidhaa kama tende kuleta huku, na wanalipa nauli ya meli. Lakini bidhaa ikifika huku, mambo ya ushuru tujipange wenyewe. Hiki huwa ni chakula cha msaada. Ni tende ya kufungua saumu wakati wa Ramadhani. Inawezesha wenye huwa hawapati tende kupata. Ikiwa kuna vikwazo kuwa lazima walipe ushuru, meli inafika Mombasa na wenye uwezo wanalipa ushuru kisha wazichukue zile tende waende waziuze. Hivyo basi, wale ambao wanafaa kufikiwa na ile tende hawafikiwi. Ninaishukuru Serikali kwa kuchukua jukumu la kutoa ushuru kwani inasababisha tende ije. Hakuna atakayesema kuwa yeye ndiye alizilipia zile tende ushuru ndio aziuze, ama afanye vile anavyotaka. Inakuwa rahisi tende kufika hata mashinani ikiondolewa ushuru. Ni jambo nzuri sana, na tunataka liendelee. Ninampongeza Rais Ruto kwa kuendeleza jambo hilo tangu aingie ofisini.

Vile nimepata hii nafasi na tunazungumzia jambo hili, ninaomba Serikali, kupitia Rais Ruto, ifanye mpango mapema zaidi, labda mwezi moja kabla ya Ramadhani. Saa zingine ile tende inaondolewa ushuru, lakini inachelewa kuingia, na ikifika, huwa Ramadhani imeisha. Kamati iseme kila kampuni lazima ilipe ushuru, au kila bidhaa lazima iwekewe ushuru. Hii inasaidia sana, na watu wengi wanafaidika. Hawafaidiki Waislamu peke yao; hata Wakristo wanafaidika. Kwa mfano, mimi nikigawa tende Lamu, ninawapatia Waislamu na Wakristo.

Hili la *Blue Nile Rolling Mills*, ninataka Bunge hili tuwe waangalifu. Sikuwa kwenye Kamati, lakini nimeangalia mapendekezo yake. Ninadhani uchunguzi ulifanywa vizuri. Kama kumeonekata tatizo, basi iendelee hivyo. Lakini kama hakuna tatizo, basi isiwe ni kugandamiza tu kampuni. Tunazihitaji hizi kampuni. Zikiwa hapa zinaajiri watu ambao wanafaidika. Ninasisitiza kuondolewa kwa ushuru, kama kwa tende, kwa kuwa inatusaidia sana. Ifanye mwezi moja au miezi miwili kabla Ramadhani.

Asante, Mhe. Spika wa Muda.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Esther Passaris.

Hon. Esther Passaris (Nairobi City County, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to the Report of the Committee on Delegated Legislation on the inquiry into irregular and illegal grounds of tax exemption to a company under SOFA. I have looked at the Report and heard the sentiments of Members. Tax exemption, first of all, should not be a secret. When the Government gives tax exemption, it should be very clear how one gets it and for what reason. We are in an era where the Government requires a lot more money. Our tax exemptions have to be clear.

A few years ago, a donor gave some equipment to a hospital in Rift Valley. They said they would ship the equipment to us, but we would clear it by paying duty. The then-governor said he would pay the duty but failed to get an exemption. These were equipment for a maternity hospital. When he failed to get the exemption, the goods stayed at the Port of Mombasa for almost a month, incurring demurrage charges. In the end, the donor had to pay. We did not get any other donations from the donor. That is something that should have been given tax exemption.

I heard Hon. Ruweida talk about tax exemption on dates, especially during Ramadhan. If a donor is willing to give something to a civil society organisation rather than the Government directly for free, like medical equipment, and then the CSO donates it to the Government, there has to be criteria. We need to review and put in place legislation, policies or regulations on how and what should be tax-exempt. At the end of the day, if we do not have a framework, then we have unfair trade practices. Why was this company given tax exemption? How many other companies are allowed tax exemptions denying the Government money? Maybe they are being allowed tax exemptions, and they save billions of shillings. We need to love our country. We need to understand that if we fail to negotiate good deals for the benefit of the country but negotiate good deals for our pockets, karma is karma. It is going to come back and harm and haunt you. Somebody out there will lack services, whether education, medical, good infrastructure or food security. So, many things are going to be lacking because money is not sufficient. We have to love our country. When anybody operates in this country, whether Kenyan or not, what is in the country's best interest? That should be the question.

I hope the Committee would have asked the Auditor-General to provide a report. I gather that secret deals are being done. I want to understand why it is a secret. If you are giving tax exemptions, it means you are denying the country tax. That means you affect every citizen in this country. If you are giving tax exemptions, it cannot be a secret. If it is a secret, that means there is something wrong. We will fail if Kenyans sitting in high offices do not negotiate good deals for the country. That means you are affecting every citizen in this country. If you are giving a tax exemption, it should not be a secret. If it is a secret, that means there is something wrong. I also want to say that if we, as Kenyans sitting in high offices, do not negotiate good deals for our own country, we will fail.

Let me speak about the Adani Group. The Adani Group is coming into this country to do many deals, whether in energy, airports, *et cetera*. If we, the people sitting in the offices, do not negotiate very good contracts and terms, we would have failed Kenyans. At the end of the day, we might have Adani succeeding in one country but failing in Kenya because we, as Kenyans, allowed ourselves to short-change our own country. We need to understand that if we do not love our country, protect our resources, and negotiate the best deals for this country, we will fail. It is true that we do not want to have borrowings. It is also true that the interest of one trillion shillings is not working in favour of this country. We cannot give tax exemptions that are not of maximum benefit to the country. If it were a maximum benefit to the country, the Committee would have seen the value of tax exemption, such as creating 10,000 jobs. The value of the jobs created and PAYE received makes up for the tax exemption. However, they did not see any benefit to the country besides one company getting massive tax exemptions under a lot of secrecy.

The Auditor-General should look into this. If things are done secretly, we should have a law that says no tax exemption is a secret. Of course, I understand that when it comes to matters of security, there could be secrets because it is about national security. However, for matters of industry, this is an unfair tax practice. That is why it was picked up by Hon. Wanjiku. There must have been people in his constituency who questioned why this company was treated fairly while others were treated unfairly. Why is the market not equal for all of us? This will deny us investors. There will be investors who want to come into the country but will not come once they learn the reason why the prices of a particular company are so low, while other companies are unable to break even or are closing shop because they have special favours from the Government. Sometimes, we shoot ourselves in the foot because we give a tax exemption to one investor. However, all the other companies that want to come in cannot come in because there is no level playing field.

I commend the Committee, but I would like us to see the gaps that allow the National Treasury to come up and give exemptions and how many other companies have been tax

exempted. There has to be a full disclosure. I do not know how we will end up getting the full disclosure. Sometimes, people out there think that Parliament does not do its job, but we as Parliament and as legislators have to find a way to bring these walls and bottlenecks down so that at the end of the day, Kenya can be efficient, profitable, and can bring prosperity to the people of Kenya. We want investors to come with goodwill. We want investors to come but not to rip us off. We are not rich, but even if we were a rich, developed country, we should not sell ourselves short. We will always need to provide wealth for our people, and we cannot provide it when we allow ourselves to have bad deals. Why do we allow bad deals? Because of corruption. Who benefits from the corruption? The people who make those deals. You can see that even if they benefit from this corruption, they will not make much money because corruption does not pay in the long run. Eventually, it catches up with you.

As a country, we must ask ourselves this question: What is in Kenya's best interest? Was this deal in Kenya's best interest? It was not. I hope that the anti-corruption authorities will deal with the people who did this, and we shall see it in the near future. We hope that the money that the Government lost in terms of taxes will be collected so that that money can come and serve the people of Kenya. Whether local or foreign, investors who invest in our country should work for Kenya's best interests.

Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you.

Hon. Rahim Dawood, Member for North Imenti.

Hon. Rahim Dawood (North Imenti, Independent): Thank you, Hon. Temporary Speaker. I want to join my colleagues in supporting the Report of the Committee on Delegated Legislation. There is no way we can give anybody tax exemptions. There was a time when Grain Bulk Hauliers in Mombasa were granted tax exemptions. I remember my predecessor...

(Hon. (Dr) James Nyikal spoke off record)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Dawood. What is out of order, Hon. (Dr) Nyikal? Is anything out of order? Let him finish.

Hon. Dawood, please proceed.

Hon. Rahim Dawood (North Imenti, Independent): Thank you. I will give you way, Hon. Nyikal.

As I said, there is no way we can give tax exemption to one firm - Blue Nile of Mr Rao - so that he can sell his products cheaper than other industrialists producing steel in Kenya.

Hon. Temporary Speaker, there was a time when Members of Parliament used to get a duty exemption on the importation of vehicles. I once went to ask Hon. David Mwiraria, the former Cabinet Secretary for Finance, if I could get an exemption on the importation of a car. He told me that it was not possible because it had been cut off. We need to do away with all subsidy programmes, waivers of duty and other things unless it is an emergency and it is brought to the Floor of this House. We should not just give the leeway to the Cabinet Secretary. Therefore, we may have to make some changes in the law.

I will give Hon. Nyikal an opportunity because he wants to move an amendment.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): You are completely out of order.

Hon. Rahim Dawood (North Imenti, Independent): Thank you, Hon. Temporary Speaker, for giving me the space.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Kaguchia.

Hon. Kaguchia John (Mukurweini, UDA): Thank you, Hon. Temporary Speaker, for the opportunity to make my contribution. As we have noted, the SOFA has previously been

abused and misused by Government functionaries. Sometimes, it is done with the intention of giving an undue advantage to certain manufacturers, business people, or entrepreneurs.

In this case, you realise that Blue Nile is one of the importers. As a country, we are looking at a situation where we can encourage more manufacturing than importing goods. As a country, we intend to have cottage industries across the Republic. You are aware that we have Small and Medium Enterprises (SMEs) that have bought small machines that can produce *mabati*, nails and all the things needed for infrastructural development in our country, particularly building materials.

When we take one company and give it an undue advantage over the others by removing all the taxes, we first deny the Government the revenue. Secondly, we are discouraging small manufacturers and SMEs. We are discouraging the development of the cottage industry and bringing down the number of young people we can employ in this nation. We are also in the business of weakening our shilling because we need to have the outflow of dollars from this Republic. For that reason, our shilling becomes weaker. The question is: are we strengthening our economy by giving this undue advantage?

The other day, we were in this House looking at the issue of the Competition Authority of Kenya, and I am aware that we have approved the name of a new Chief Executive Officer (CEO). I believe this is one of the things that the Competition Authority of this Republic should be able to look at. We should not have one party, a monopoly, that is getting an undue advantage over other SMEs.

Hon. Temporary Speaker, I support the idea that the National Treasury must table in this Parliament the guidelines they have used to give these tax waivers to this particular company. If this company was manufacturing in this Republic, and the tax break had been given to a manufacturing company, then it would be understandable.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Kaguchia. You have a balance of five minutes. I believe this matter will be scheduled again for debate. We still have more time for it.

Hon. Nyikal, I have noted that you have an amendment. I suggest you draft it properly and take it to the Speaker's Office for approval so that you can bring it in another sitting when this Motion is scheduled.

ADJOURNMENT

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, the time now being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.

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