

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 10th July, 1996

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

## PRAYERS

## NOTICE OF MOTION

### CENSURE OF MR. SPEAKER

**Mr. Orengo:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House expresses its disappointment and disagreement with the rulings of the Speaker made on 11th June and 2nd July, 1996 regarding the Report of the Public Accounts Committee and therefore hereby censures the Speaker.

## ORAL ANSWERS TO QUESTIONS

*Question No. 143*

### REDUCTION OF UNEMPLOYMENT LEVEL

**Mr. Nthenge** asked the Vice-President and Minister for Planning and National Development:-

- (a) what plans the Ministry had to reduce the level of unemployment in Kenya;
- (b) whether the Minister was aware that many young civil servants who retire under the Early Retirement Programme had limited knowledge, especially in establishing viable projects; and,
- (c) what specific programmes the Ministry had introduced to ensure that these retirees have the necessary skills to assist them invest wisely.

**The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development** (Mr. Oyondi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government is aware that unemployment is one of the major challenges facing the country today and has over the last three years initiated and implemented various reforms with the aim of creating the necessary conditions for rapid and sustained economic growth at the level which will result in a significant reduction in unemployment and poverty.

(1) The Government is also committed to continue providing an enabling environment for private sector development because it, is in the private sector where the bulk of the jobs will be generated in industry, agriculture, *jua kali* and service sectors.

(2) Initiating policies and programmes which generate employment particularly among the vulnerable groups who are unable to participate in economic activities due to problems beyond their control such as Youth Development Programmes which target the youth who are the unemployed majority.

(3) Encouraging research in agriculture and small-scale and *jua kali* enterprises so as to improve the quality and quantity of the products as a means of expanding these sectors.

(4) Improving infrastructure especially in rural areas so as to accelerate economic growth.

(b) Yes, the Government is indeed aware that some young civil servants who retire under the Early Retirement Programme have limited knowledge in establishing viable projects.

(c) To ensure that these retirees are equipped with the necessary skills to assist them to invest wisely, the Government, through the Directorate of Personnel Management, Office of the President, has taken measures to train every retiree before he or she leaves the Public Service.

The objective of this training is to ensure that they fit smoothly in the society by putting the money paid to them as lumpsum into proper and productive use in nation building and self-sustenance. They are helped to

initiate and successfully operate small-scale enterprises.

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, can the Assistant minister be fair enough to answer my Question by being specific and not making a general economic speech but tell us what exactly is being done because what he has said is the theoretical part of it. I want an answer that will relieve the present unemployment.

**Mr. Oyondi:** Mr. Deputy Speaker, Sir, I do not think the hon. Questioner is fair to say that I have just given a general answer. The problem of unemployment is not something that can be solved in a day and that is why I said that for the last three years the Government has seriously embarked on how to reduce unemployment.

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, why, if so, the Government has not reduced the problem? If the problem is increasing it means remedial measures are not being taken and now a lot of university graduates are unemployed and others are under-employed.

**Mr. Oyondi:** Mr. Deputy Speaker, Sir, that is a statement and not a question.

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, the Assistant Minister did not get my question. I asked why, if the Government is taking action, the problem of unemployment is getting bigger and bigger? The question is; why?

**Mr. Oyondi:** Mr. Deputy Speaker, Sir, the growth rate in Kenya is higher than the employment opportunities that are being generated and that is why the Government is taking the steps that I have already enumerated in my earlier answer.

**Mr. Michuki:** Mr. Deputy Speaker, Sir, the Assistant Minister in response to hon. Nthenge's Question says that the Government has provided an enabling environment to alleviate unemployment. Could he be specific and enumerate what constitutes what he says has been done to provide that environment because as the Questioner has stated, it is not enough to repeat theoretical policies whose evidence cannot be ascertained on the ground? Could he enumerate what constitutes on the ground the enabling environment?

**Mr. Oyondi:** Mr. Deputy Speaker, Sir, the Government is aware of this challenge and has over the last three years as I said before initiated various reforms to accelerated economic growth. This includes decontrol of prices, removal of exchange controls, liberalisation of maize marketing and petroleum market, Civil Service reforms and Government divesture from most parastatals. These are enabling environments which can help the unemployed youths to get employed. When we say that we have liberalised many of these things or decontrolled them, at least, some of these youths can employ themselves by venturing into business.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the Government is enabling the youth to do their own private businesses when we know very well that in Nyahururu, just two days ago licensed curio vendors had their shops demolished and they had employed themselves? These are some of the small businessmen who bring foreign exchange to our country. Is he, therefore, in order to say that the Government has created an enabling environment to the youth to employ themselves when they are destroying them?

**Mr. Oyondi:** Mr. Deputy Speaker, Sir, I do not have that Question about Nyahururu in the Order Paper. But if the hon. Member wants to ask that Question, he can put it up and I will give him an answer.

**Mr. Deputy Speaker:** Next Question, hon. Kiraitu Murungi.

#### *Question No 197*

#### ASSAULT OF SCHOOL GIRL BY ASSISTANT CHIEF

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

- (a) whether he was aware that the Assistant Chief of Nyonyi Sub-Location in Nkuene Division of South Imenti Constituency assaulted and raped a school girl on 18th, December, 1994, as a result of which she sustained bodily injuries and was treated at Consolata Hospital, Nkubu; and,
- (b) whether he is further aware that the said Assistant Chief attempted to rape and assault another lady on 11th June, 1995, as a result of which she sustained a fracture, and was hospitalised at Consolata Hospital, Nkubu; and,
- (c) when the Government will summarily dismiss the said Assistant Chief, and charge him in a court of law with the crimes of rape and assault.

**The Minister of State, Office of the President (Mr. Kones):** Mr. Deputy Speaker, Sir, I would like to seek the indulgence of this House that this Question is deferred until tomorrow afternoon.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, I am not willing to grant any further indulgence to the Office

of the President because this is the third time that this Question is coming up before this House, and we really cannot do with this kind of inefficiency from that Ministry. I would like to ask the Minister of State, Office of the President, who has already given me a written answer to this Question whether I can give him the answer so that he can read it?

*(Applause)*

**Mr. Deputy Speaker:** I am afraid if the answer is here, then you have to answer the Question, Mr. Minister.

**The Minister of State, Office of the President (Mr. Kones):** Mr. Deputy Speaker, Sir, could I ask for more time so that I can seek for more information?

*(Question deferred)*

*Question No 372*

#### DONORS CONDITIONALITIES

**Mr. Deputy Speaker:** Is Mr. Isaiah Mathenge not here? We pass his Question for the moment. Next Question, Mr. Saulo Busolo.

*Question No 470*

#### TRAINING OF PRE-PRIMARY TEACHERS

**Mr. Busolo** asked the Minister for Education:-

- (a) whether he was aware that almost all the pre-primary school teachers in Bungoma District are untrained; and,
- (b) whether he could consider starting a crash in-service training programme for these teachers and establish a training centre for the teachers at Lugulu or Misikhu schools complex.

**The Minister for Education (Mr. Kamotho):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Bungoma District had 679 pre-primary teachers manning 492 pre-primary schools in 1995. Of the 679 pre-primary school teachers, 248 teachers were trained and 431 were untrained. The percentage of trained teachers was, therefore, 36.6 per cent which compared favourably with the other districts in the country, many of which have less than 30 per cent of trained pre-primary school teachers. My Ministry's current policy is geared towards the reduction of untrained pre-primary school teachers in the whole country by 50 per cent through increased allocation of Government funding to pre-primary education.

(b) My Ministry has no intention of starting a crash in-service training programme for pre-primary school teachers in Bungoma District, or anywhere else in the Republic, as it feels that its current strategy adequately addresses the short and long term needs of pre-primary school teachers.

**Mr. Busolo:** Thank you, Mr. Deputy Speaker, Sir. In the Economic Survey of 1996, we are told that there are 29,251 pre-primary school teachers serving a pre-primary school enrolment of 988,000 pupils. Of this, only 29,251 were trained teachers. So nationally there is a big problem of pre-primary school teachers and we are aware that education psychologists inform us of the importance of the formative years of these kids. The Minister claims that his Ministry has a policy of remedying the situation. In this policy, how much money has been allocated for pre-primary education?

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, I cannot recall the actual figure off-head, but I would like the House to note that the responsibility of the training of pre-primary school teachers was taken over by the Ministry of Education, by then the Ministry of Basic Education in 1980, otherwise, before then, the training of pre-primary school teachers was the responsibility of the Ministry of Culture and Social Services. Therefore, the infrastructure for the training of pre-primary school teachers has not adequately been put in place, but as I said earlier, the Government, through the Ministry of Education, has very firm policies now to try and take greater responsibilities in the training of pre-primary school teachers.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, considering that it is now a Government policy to explore ways of improving the capacity for pre-primary school teacher training, and further considering that, currently the primary

school teachers colleges only utilise 60 per cent of their capacity, can the Minister consider turning some of those idle capacity primary school teachers training colleges into pre-primary school teacher colleges to deal with the infrastructure problem he is talking about?

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, I agree with the hon. Member and this is one of the options which the Ministry of Education is seriously looking into because, as the market for the primary school teachers becomes saturated, we are discussing the possibilities of changing some of the existing primary school teacher training colleges into training colleges for teachers for early childhood education development.

**Prof. Mzee:** Thank you, Mr. Deputy Speaker, Sir. Bungoma District is very lucky, at least, one-third of its pre-primary school teachers are trained. There are districts which are worst off and the Ministry has categorically stated that it is the Government to train and reduce the number of untrained teachers by 50 per cent. I perused through the 1996/97 Budget and there is no significant increase in the allocation for this purpose. I would like to ask the Minister, if he is not misleading this House, where the hell he is going to get this money from to cut down number of untrained teachers by 50 per cent?

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, as I stated very clearly, it is both medium and long term objectives. It is not a policy that is aiming at doing this thing overnight because of the expenditure involved. I would also like the House to note that one problem which we are experiencing right now is because of the low wages which are paid to pre-primary teachers because the Ministry's responsibility right now is only the training of those pre-primary school teachers. But when it comes to employment, remuneration and deployment, it is left to the communities, local authorities, NGOs and churches. Therefore, the wastage rate is very high of those trained teachers for pre-primary schools. The little resources that we have, we will utilise them to the maximum to ensure that we train as many pre-primary school teachers as we can.

*Question No.464*

SUPPLY OF MOTOR VEHICLE BATTERIES

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

(a) whether he is aware that Bungoma Municipal Council issued an L.P.O No.0256 dated 28th February, 1996 for the supply of two motor vehicle batteries from M/s Moghe Auto Spares Bungoma for Kshs20,700; and,

(b) why the Clerk to the Council wrote and signed Cheque No.016089 for Kshs27,485, yet the Invoice No.883 from the supplier and the Council's Payment Voucher No.00025 were showing Kshs20,700.

**The Minister for Local Government** (Mr. ole Ntimama): Mr. Deputy Speaker, I would wish that this Question is postponed for sometime, until we have got an Question from the Ministry of Local Government. One of the Assistant Ministers is supposed to answer this Question and he is not here yet.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, this is a very urgent issue which the Minister should take seriously because it involves a lot of money. This is a fraud on the part of Clerk of the Council. Could he tell us when he is going to take action or to bring a correct answer to this House?

**The Minister for Local Government** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, I have seen some papers which were supposed to be have been submitted by the hon. Member on this matter. I would like to assure him that I personally will look into this matter, including, of course, the behaviour of the Clerk of Bungoma Municipal Council and I will be able to communicate with him directly.

Thank you, Mr. Deputy Speaker.

**Mr. Busolo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to tell this House, in relation to the Question before the House, that he will communicate directly to the Member instead of coming to the House?

**Mr. Deputy Speaker:** Order, Minister! I think the Question will have to be answered here. I can only direct that the Question be put on the Order Paper at the earliest convenient time which is either tomorrow or Tuesday next week. Then by that time I am sure you will be able to get the additional information to effectively implement the promise you gave to hon. Sifuna.

**The Minister for Local Government** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, I want the record to reflect the fact that the Clerk of Bungoma Municipal Council acted irregularly---

**Mr. Deputy Speaker:** Are you answering the Question Mr. Minister? Why do you not just answer the Question then?

**The Minister for Local Government** (Mr. ole Ntimama): I beg your pardon, Sir.

**Mr. Deputy Speaker:** Are you answering the Question now?

**The Minister for Local Government** (Mr. ole Ntimama): I think I better answer the Question Mr. Deputy Speaker, Sir, at least, part of the Question.

**Mr. Deputy Speaker:** If you answer the Question now, the Question will not appear on the Order Paper again. If you want to answer the Question, you can answer it now, if you want it deferred, we will defer it to, latest, Tuesday next week.

**The Minister for Local Government** (Mr. ole Ntimama): Let me say, Mr. Deputy Speaker, Sir, that I am very much aware of the fact that there is some financial irregularity which has been going on in Bungoma.

**Mr. Deputy Speaker:** I am sorry to stop you.

**The Minister for Local Government** (Mr. ole Ntimama): I am answering the Question Sir. I want to accept that there has been some irregularity in the financial management of Bungoma Municipal Council and I think I accept some of the documents that the hon. Member brought to my notice, and I think I accept the fact that the documents that the hon. Member has are right and we are going to take appropriate action.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, while thanking the hon. Minister for his sincere answer, it is true that the Clerk of Bungoma Municipal Council issued an LPO for Kshs20,700 for supply of two batteries. The supplier gave an invoice for Kshs20,700, the payment voucher was for Kshs20,700 and the Clerk went and changed the figure from Kshs20,700 to Kshs27,000. This is a fraud and I will ask the Minister to make sure that this Clerk is not only transferred but jailed for theft.

**Mr. Farah:** Mr. Deputy Speaker, Sir, in view of the answer given by the Minister and his own admission that---

**Prof. Mzee:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! The hon. Member is asking a question. Why do you not let him finish?

**Prof. Mzee:** But I am on a point of order!

**Mr. Deputy Speaker:** But the way you are paraphrasing it looks like it is just another smart way of asking a supplementary question. What is this burning point of order? Is it about order on the Floor of the House?

**Prof. Mzee:** On a point of order, Mr. Deputy Speaker, Sir.  
Hon. Sifuna asked a question and the Minister never responded.

**Mr. Farah:** Mr. Deputy Speaker, Sir, hon. Sifuna said that the Minister should take action. He did not ask a question, everybody heard that. Now, in view of the answer given by the Minister, and his own admission that this man committed a fraud, could he tell us what action he has taken against the Clerk as of now; whether he is in jail or he is still working in the Bungoma Municipal Council?

**Mr. ole Ntimama:** Mr. Deputy Speaker, Sir, I do not know what else to say, I have accepted the responsibility for the irregularity as indicated in the document. We are definitely going to investigate. I will not tell you now what action the Ministry is taking but I am sure that some action is going to be taken.

**Mr. Obure:** Mr. Deputy Speaker, Sir, now that the Minister admits that there is fraud in the Government - now as a sign of sincerity, could the Minister be the first person to resign from the Ministry?

**Mr. ole Ntimama:** I think some of these questions like the one we have just heard are very frivolous. It is not the Government, it is the Clerk of Bungoma Municipal Council.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, while appreciating the very positive reply from the Minister, and considering that it has been brought to the attention of the Ministry that this Municipal Clerk has been cancelling titles of property in Bungoma town and re-allocating the same properties to his wife, what action is the Minister planning to take on those specifics?

**Mr. ole Ntimama:** Mr. Speaker, Sir, I have promised the House that we are going to take disciplinary action.

*Question No.363*

REPAIRS TO KAKAMEGA MUNICIPALITY TOILETS

**Mr. Magwaga** on behalf of **Rev. Ommani** asked the Minister for Local Government:-

(a) whether he is aware that public toilets at the Kakamega Municipal Market and Bus Park are not functional; and,

(b) what steps he is taking to make these facilities functional.

**The Minister for Local Government** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, I request for this particular Question to be postponed until this afternoon or tomorrow morning.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to appear in this House without a ready answer? What job does he do?

**Mr. Deputy Speaker:** Order! It is, of course, not very disagreeable conduct, but in the circumstances, I can only say that the Question is deferred to the earliest possible convenient time, which is either tomorrow or Tuesday afternoon.

*(Question deferred)*

*Question No. 178*

GRAVELLING OF SIKHENDU-NAITIRI-LUGARI ROAD

**Dr. Kituyi** asked the Minister for Public Works and Housing:-

(a) whether he is aware that the Sikhendu-Naitiri-Lugari Road was last gravelled in 1972 and has since become impassable during the rainy season; and,

(b) when the Ministry intends to implement the Bungoma District Development Committee's recommendation that this important road be gravelled.

**The Assistant Minister for Public Works and Housing** (Mr. Mwamzandi): Mr. Deputy Speaker, Sir, I beg the indulgence of the House and the hon. Member to reply to this Question next week because the reply is not yet ready.

**Mr. Mak'Onyango:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to come to this House unprepared when the Question was brought to his attention ages ago? He should have had ample time to consult and get an appropriate answer. Are we not being taken for a ride with these kind of answers from the Front Bench?

**Mr. Deputy Speaker:** I am afraid when Questions are asked, they are addressed to the relevant Ministries with ample notice, and whereas unforeseen circumstances can arise, occasionally, to make it impossible for a Minister to answer the Question on the date put on the Order Paper, I think this should be extremely rare, and I do not think it is proper that on a single day, there are three or four requests from the Government to have Questions slotted for answering at a later day. I think I have to register my displeasure with this, but beyond that, there is nothing the Chair can do except to tell the Government to avoid this kind of behaviour in future and to ensure that Questions which have been put on the Order Paper are answered when they are supposed to be answered.

*(Question deferred)*

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. Whereas I agree with your ruling, Standing Order No.39 states that even a written reply should take 14 days. These Questions were asked in the last Session, we revised them and they have been with the Ministry for months. Are these people complying with the 14 days' notice?

**Mr. Deputy Speaker:** Order! I think I did have occasion early in the life of this Parliament to address this matter. Where Members want written answers, Questions are not asked on the Floor of the House. You get the written answer from the Ministry through the Clerk's office and that is that. Now, the practice of having a written version of the answer to the oral Questions in the House is a tradition founded on courtesy. So, I am afraid that Standing Order will not apply to the Questions which have been raised this morning.

We now move on to the next Question.

*Question No. 546*

REPAIRS OF ROAD NO. D560

**Mr. Rai** asked the Minister for Public Works and Housing what urgent plans he has to ensure that Road No.D.560 Mazeras-Kaziamonzo is motorable throughout.

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

am very sorry that we will reply the Question next week because the reply is not ready.

**Mr. Kamuyu:** On a point of order, Mr. Deputy Speaker, Sir. Are you satisfied that this Minister is conducting himself appropriately to this House? Is he not joking and should he not be named? I believe all these "shadow" Cabinet Ministers here can propose his naming because he is wasting the time of this House.

**Mr. Deputy Speaker:** Order! What I said earlier regarding my displeasure to what has happened applies to the present instance as well. The Chair's position is that it is not proper for the Government side to have so many Questions on one morning unanswered. Beyond that, I think this is not a matter for naming anybody. Next Question!

*(Question deferred)*

*Question No. 132*

#### FUNDS FOR NAKURU BOXING CLUB

**Bishop Kimani** asked the Minister for Culture and Social Services how much money has been given to Nakuru Boxing Club between 1992 and 1994.

**Mr. Deputy Speaker:** Is anyone here from the Ministry of Culture and Social Services? We will leave that Question until the end then.

**Mr. Shikuku:** On a point of order, Sir. Once upon a time in this House, we had this type of behaviour, and I think the Speaker allowed us to move a Motion under Standing Order No. 45 to express our disgust. Can you allow us to do the same, Mr. Deputy Speaker, Sir? They are here and when it comes to reply, there is no answer. Can you allow us to express our disgust at this behaviour?

**Mr. Deputy Speaker:** Order! Order! Order! I am certain that hon. Shikuku knows the Standing Orders very well but, occasionally, he has to refer to the Speaker. He is not seeking to move the Motion this minute. However, he is very welcome to consult with me in my Chambers. Next Question!

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, we need to point out what is happening. We were allowed, in fact, to use the Motion to express our disgust. I could not have known they will not come. **Mr. Deputy Speaker:** Order! Order! Order! Hon. Shikuku, this is a very simple matter. We conduct our business on the basis---

*(Dr. Misoi interjected)*

Order, Dr. Misoi! We conduct business on the basis of our Standing Orders which have laid down procedures for conduct of specific forms of business like introduction of different types of Motions and so on, and what is properly within the Standing Orders will be done. So, I am telling hon. Shikuku that he is most welcome to consult with me in my Chambers. I do not think you need to ask for permission to do it now, when you know that you are not seeking to move it this minute. Let us have the next Question. Order! I am going back to Question No. 197 by hon. Murungi for the second time.

*Question No. 197*

#### ASSAULT OF SCHOOL GIRL BY ASSISTANT CHIEF

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

- (a) whether he is aware that the Assistant Chief of Nyonyi Sub-Location in Nkuene Division of South Imenti Constituency assaulted and raped a school girl on 18th December, 1994, at a result of which she sustained bodily injuries and was treated at Consolata Hospital, Nkubu;
- (b) whether he is further aware that the said Assistant Chief attempted to rape and assault another lady on 11th June, 1995, as a result of which she sustained a fracture, and was hospitalised at Consolata Hospital, Nkubu; and,
- (c) when the Government will summarily dismiss the said Assistant Chief, and charge him in a court of law with the crimes of rape and assault.

**The Minister of State, Office of the President (Mr. Kones):** Mr. Deputy Speaker, Sir, I beg to reply.

- (a) A report of the alleged assault was made at Nkubu Police Station on the 18th December, 1994, and

an inquiry file No. 2/95 was opened. The investigation report was forwarded to the State Counsel in Meru who directed that the Assistant Chief be charged with the offence of assault and causing actual bodily harm.

(b) Agatha Anigure, the lady in question did not report the matter to the police, but filed a civil suit in Meru, Suit No. 1/96 through her lawyer.

(c) The Assistant Chief was interdicted on 7th February, 1996, and since the matter is before a court of law, my office will wait for the outcome of the case, before a decision is made.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, the Assistant Chief has been treated with extreme leniency. The offence of rape is a very serious offence and one would be liable to imprisonment for life. One wonders why the Assistant Chief has not been charged with the offence of rape, even after we have given the evidence relating to it. The offence of rape, especially of school girls, has reached epidemic proportions in Meru District. I have a copy of a Meru magazine, *The Eye*, in which 13 men have been fined one bull each by the *Njuri Ncheke* for raping their own daughters.

**Mr. Deputy Speaker:** What is your question? You are not supposed to make a speech. Just ask your question.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, my question is this: Given that this epidemic rape of school girls in Meru District, and the fact that none other than an Assistant Chief has been involved, could the Minister promise this House that rather than fooling around with the offence of assault, this Assistant Chief is going to be charged with rape, and after which he might be imprisoned for life?

**Mr. Kones:** Mr. Deputy Speaker, Sir, I think it will be wrong for me to try and determine what the court will rule, but definitely, we view this offence as a very serious offence, and the Assistant Chief will go through the court of law, and he will answer all that is in front of him accordingly.

**Mr. Kapten:** Mr. Deputy Speaker, Sir, if I understood the Minister well, he has said that because there is a civil suit and the lady did not report the matter to the police, the Government has not actually taken criminal action against this Assistant Chief. Has criminal action been instituted against this Chief?

**Mr. Kones:** Mr. Deputy Speaker, Sir, I think probably the hon. Member did not get that there are two cases involved. One is an actual rape case and another one is an intended rape. Obviously, this guy must have been very active. But now, he is going to be charged with the first offence. The other one is a civil suit which he will also have to answer for. But these are two separate offenses.

**Mrs. Ngilu:** Thank you, Mr. Deputy Speaker, Sir. Rape traumatises and leaves irreparable damage to a woman. Rape in this country is on the increase, and especially, coming from Provincial Administration officers like chiefs and assistant chiefs. Can the Minister tell us whether there is proper interview done before these chiefs are employed, and is there any training conducted for them? This is because we know that there are many other chiefs who have been involved in these crimes and yet they have not been reported. What is the Minister going to do, to prevent this?

**Mr. Kones:** Mr. Deputy Speaker, Sir, the Government takes rape cases very seriously, especially those committed by members of the Provincial Administration. But unfortunately, when we are conducting interviews, there is no provision for rape. There is no questionnaire which asks if somebody is a potential rapist or not. But, what we are saying is that we take the offence very seriously, and you can be sure that an offence like this, even if suspected, whether or not they are found guilty by a court of law, we have to sack them.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, the KANU Government claims to protect the rights of women. This offence was committed in December, 1994, and an inquiry file was opened in February, 1995. Can the Minister explain, if the Government is really serious in protecting the rights of women, why nothing has been done for over two years?

**An hon. Member:** What were they doing all that time?

**Mr. Kones:** Mr. Deputy Speaker, Sir, I think the problem lies with the court and not the administration. The court will take its time and eventually come up with something tangible.

**Mr. Mulusya:** On a point of order, Mr. Deputy Speaker, Sir. The Minister is deliberately refusing and evading to answer a legitimate question from hon. Murungi. The question is: Why has it taken two years for the Government to take action against this Assistant Chief, if the Government is serious about protecting the rights of women? Can he answer that question?

**Mr. Kones:** Mr. Deputy Speaker, Sir, the Government cannot do much. Once the matter is before a court of law, there is nothing much we can do. What we have done---

**An hon. Member:** For two years really!

**Mr. Kones:** It can even take another two years. What we have done is that the Assistant Chief has since then been interdicted. That is the best we can do.



**Mrs. Ngilu:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** We are really pressed for time. Can we have the next Question by hon. Mathenge?

**Mrs. Ngilu:** Why are you giving them all this time?

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. I thought I heard you say, "Mr. Mathenge, for the second time!"

**Mr. Deputy Speaker:** Yes!

**Mr. Shikuku:** And did you hear him apologise?

**Mr. Deputy Speaker:** No. Thank you, very much, Mr. Shikuku. Did you apologise, hon. Mathenge?

**Mr. Mathenge:** Mr. Deputy Speaker, Sir, I apologise for coming late. It is because of traffic jam on the roads.

*Question No.372*

DONORS CONDITIONALITIES TO KENYA

**Mr. Mathenge** asked the Minister for Finance:-

(a) if he could outline to the House the conditions that foreign donors impose prior to releasing aid to the country; and,

(b) if he could assure the House that the taxpayers would always be made aware of the donors's requirements and the plans the Government has to fulfil them.

**The Minister for Finance** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The conditions which the donors require to be fulfilled by the Government prior to the release of foreign aid are stated in the Policy Framework Paper. The Policy Framework Paper outlines the development strategy and economic reforms which the Kenya Government has undertaken to implement and which have been discussed with and agreed upon by the donors. The thrust of the development strategy and the economic reforms is to rejuvenate economic growth and thereby allow for reduction of poverty and employment. The main elements of these reforms are:-

1. To maintain micro-economic stability by strengthening monetary and public sector finance management and by consolidating fiscal discipline.

2. To improve the efficiency of the public sector by accelerating and streamlining reform in the Civil Service and public enterprises and improving the delivery of infrastructural services.

3. Enhance external and domestic competitiveness of the economy through further liberalization of markets.

4. Address the social aspects of development particularly through targeted poverty interventions and increased access of the poor to social services.

5. To eliminate corruption.

(b) The taxpayers are already made aware of the Government's plan to meet the requirements through the publication and official launching of the Policy Framework Paper. The PFP has been distributed widely to Government Ministries, to the private sector and it is also a public document.

**Mr. Busolo:** Mr. Deputy Speaker, Sir, is the Minister aware that one of the conditions outlined in the Policy Framework Paper that he is referring to is particularly that of revamping the KCC financially by March 1996 has been flouted by the recent statements regarding that parastatal?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, the issue of KCC is separate from the overall position of the Policy Framework Paper in the context that the issues that are being discussed or debated in the media today on the KCC have a different angle as opposed to what I have stated in this reply.

**Mr. Deputy Speaker:** Mathenge!

**Mr. Mathenge:** Thank you, Mr. Deputy Speaker, Sir. I want to thank the Minister very much for giving me a comprehensive answer. But my other question is this, Mr. Minister. How are members of the public, especially those who cannot read and write, expected to understand the conditions required by the donors before aid is given, if the radio does not publicise this and educate the masses so that transparency is seen by everybody in the country? Also, what specific measures has the Government taken to eliminate corruption?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, on the first point I think, I can only agree with the hon. Mathenge that we need to be more aggressive in publicising the Policy Framework Paper, not only through the print media but also through the electronic media.

On the second point, I would like to point out that the Government, whenever there is evidence, has of late been making sure that those who are found to be involved in corruption are brought before the courts of law.

**Mr. Deputy Speaker:** The very last one, Mr. Mathenge!

*(Several Members stood up in their places)*

Order! Order! The hon. Mathenge, has the Floor!

**Mr. Mathenge:** Mr. Deputy Speaker, Sir, could the Minister tell us how many people have been tried, sentenced and jailed as a result of the scam exposed at Mombasa Port recently?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, the matter is before the courts and no conviction has been made yet. So, I cannot answer that question.

**Mr. Deputy Speaker:** The very last one, Dr. Kituyi!

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, in 1995, the Kenya Government declined to the conditionality that they allow Danish auditors to look at the accounts of KEPI without prior notice and as a price, the total funding for KEPI (Kenya Extended Programme on Immunization) was frozen for a whole financial year. In 1996, the same Government did acquiesce to that condition. What determines Government's reluctance to accept the condition in one year at much cost to the children who were to be immunized and then make the same Government change the next year?

**Mr. Deputy Speaker:** What is your question?

**Dr. Kituyi:** I have asked the question!

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I would request the hon. Member to ask a specific question on the KEPI issue so that I can have more details regarding that particular concern. But, clearly, whenever there is anything that involves ourselves and donors, we do agree on an audit mechanism that has got to be fulfilled at any one time on a specific project.

**Mr. Deputy Speaker:** Next Question! Question No.1, by Private Notice!

### QUESTIONS BY PRIVATE NOTICE

#### ISSUANCE OF NEW GENERATION IDENTITY CARDS

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

(a) How many people in each province have obtained new generation identity cards in the period up to and including 30th June, 1996?

(b) What is the Government doing to remove obstacles such as demands for unauthorised payments from wananchi by Government officers, long distances to registration centres and delays in processing registration which have adversely affected the exercise?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I am sorry to state that I have not got the answer.

**Mr. Deputy Speaker:** What are you suggesting, Mr. Assistant Minister? What are you telling the House?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I am telling the House that I seek its indulgence and would like this Question to be put on the Order Paper for tomorrow afternoon when I will be able to answer it.

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. Do you not think, in the interest of the House and the Chair, that time is ripe for you to allow me to move a Motion to show our disgust at the behaviour---

**Mr. Deputy Speaker:** Order! Order! Hon. Shikuku! You already raised that, and the Chair has already responded to you. I can only add, once again, Mr. Assistant Minister, that it is really disappointing that we should have so many Questions not answered when they are slotted and particularly that you should come again to tell us a Question by Private Notice cannot be answered today, because, it kills the whole essence of short notice Questions if they cannot be answered within the required time. Question deferred!

*(Question deferred)*

## INSECURITY IN MWEA CONSTITUENCY

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

(a) Is he aware that there is a great fear in Mwea Constituency due to insecurity in the area?

(b) Is he also aware that a Mr. Mugo of Kangai Village was picked up by Administration Police from Kandongu Chief's camp on the 25th May, 1996 and was found dead the following day and that on 22nd June, 1996 at Ndiriruku-Kimbu Village a Mr. Duncan Gichobi was shot by the police in his shop?

(c) What is he doing to arrest the culprit(s) involved in these cases and restore security in this area?

**The Assistant Minister Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, it is the same. I regret that I have not got the answer.

*(Several Members stood up in their places)*

**Mr. Deputy Speaker:** Hon. Ndicho!

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, again the same Assistant Minister has said that he has not received the answer for this particular Question. Where does he expect to get the answer from? Is it from the hon. Questioner, Bishop Njeru, or from hon. Orengo? The Speaker is the only one who can protect us from the abuse that we have been subjected to in this House by these Ministers. In fact, I think, it is not the Speaker who should be censured, it is these guys. Is he in order?

**An hon. Member:** Who are the guys?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I did not say that I have not got the answers. But I do not have them right now.

**Mr. Deputy Speaker:** Mr. Awori, did I hear you say that you do not have the answers?

**The Assistant Minister, Office of the President (Mr. Awori):** Yes, Sir, I do not have the answers, and I have requested to be allowed to answer these Questions tomorrow in the afternoon.

**Mr. Michuki:** On a point of order, Mr. Deputy Speaker, Sir. What we are witnessing in this House this morning has a pattern in itself. There appears to be some kind of embargo on answering Questions. I was wondering whether, with your permission, this House could not apply Standing Order No. 88, and regard this behaviour as conduct, unbecoming of a Member of Parliament. This is because of the deliberate withholding of information which is required by this House. Could you guide this House as to whether we cannot have recourse to Standing Order No. 88, whose enforcement you are in charge of?

**Mr. Deputy Speaker:** Order! I think I made my position very clear on the unique problem that we face regarding unanswered Questions this morning, and I do not think that I need to change that position now. If on the other hand hon. Michuki thinks that we need, as hon. Shikuku himself had suggested, to perhaps think of some other recourse, he is welcome to consult with me in my Chambers. Next Question.

## CLOSURE OF ELIYE SPRING LODGE

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

(a) Is the Minister aware that Eliye Spring Lodge in Lake Turkana has been closed down?

(b) If the answer to (a) is in the affirmative, what urgent measures is the Ministry taking to ensure that the said lodge is opened, since the closure of the lodge has deprived Government and Turkana County Council of revenue, while at the same time denying Kenyans employment, occasioned by the decision by the foreign investor M/s Heinz Schuh of Turtech Limited to invest in Tanzania?

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

(a) I am aware that Eliye Spring Lodge in Turkana District has closed down.

(b) The Lodge is the property of Turkana County Council, who are currently in the process of identifying a suitable entrepreneur to lease the premises. Once this has been done, my officers will be ready to inspect and license the establishment.

**Mr. Imana:** Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is unsatisfactory. This is because an investor was identified one year ago and the Turkana County Council asked the Ministry of Lands and Settlement to release the lease. It has now taken a year without this

lease being released. The County Council Clerk is always in the Ministry of Lands and Settlement trying to obtain the lease. Now, the investor is on his way to invest in Tanzania, simply because the lease cannot be released. Given that this is the best tourist lodge in Lake Turkana and that it gives revenue to the local authority and the Central Government, can the Assistant Minister assure this House that the lease will be released as soon as possible?

**Mr. Sing'aru:** Mr. Deputy Speaker, Sir, my Ministry is ready to issue a licence if Turkana County Council gets somebody to lease that lodge.

**Mr. Farah:** Mr. Deputy Speaker, Sir, I do not know whether you heard what the hon. Member said: He said it is one year since Turkana County Council identified an investor, but the application requesting the Ministry to grant a lease to the investor has been with the Ministry's officers for one year. The Assistant Minister is telling the House now that as soon as Turkana County Council identifies an investor, he will grant the lease. Does he know what he is talking about? Can he undertake to confirm whether it is true that the application has been with his officers for one year? Is this investor being frustrated by corruption in the Ministry? Should he not be given the lease before the end of today?

**Mr. Sing'aru:** That is not true, Mr. Deputy Speaker, Sir. If it is true, can the hon. Member mention the name of the man who applied for the lease?

**Mr. Farah:** Mr. Deputy Speaker, Sir, the investor is given in the Question. It is M/s Heizn Schuh Ltd. He knows the investor because the firm is given in the Question.

**Mr. Sing'aru:** Mr. Deputy Speaker, Sir, M/s Schuh of Turtech Ltd approached Turkana County Council with a view to leasing the above mentioned lodge. The deal did not go through, because a Mr. Mugambi demanded payment from the council for the development of the lodge, which he had undertaken in earlier years: He had not been paid.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, I have met this German investor. He was willing to invest a lot of money in Turkana District. But the Ministry of Lands and Settlement has frustrated him. He has himself told me that he has been here for more than 20 times but now, he has decided not to invest in Kenya. Is the Assistant Minister serious when he says that his Ministry will grant a lease when they get an applicant? I also know that the Chairman and other councillors of Turkana County Council have been going to the Ministry. The reason why the lease is not being granted must have something to do with corruption.

**Mr. Sing'aru:** Mr. Deputy Speaker, Sir, according to the District Commissioner, Turkana District, Mr. Mutonga, this matter has been discussed in a full council meeting. Its recommendation was sent to the Minister for Local Government, so that he could seek a new lease from the Commissioner of Lands on behalf of the council. His decision is still being awaited.

**Mr. Shidie:** Mr. Deputy Speaker, Sir, this is a very serious issue, and the Assistant Minister should not take it lightly. This lodge was employing 100 Turkanas and was generating income for the people of Turkana District. The investor was cleared by the Turkana County Council. But when he went to the Ministry of Lands and Settlement, there was a lot of dilly dallying, bureaucratic red tape and even human road blocking. Could the Assistant Minister give an undertaking here and now, that the investor will be given a lease with immediate effect? He should invest in Turkana District so that the people there can get jobs.

**Mr. Sing'aru:** Mr. Speaker, Sir, my Ministry is ready to issue a licence as soon we get clearance from the Commissioner of Lands.

#### MISUNDERSTANDING IN NAKURU MUNICIPALITY

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that there is extreme misunderstanding between Councillors of Nakuru Municipal Council and the Town Clerk?

(b) Is he further aware that his misunderstanding has caused the Council services to almost grind to a halt?

(c) If the answers to (a) and (b) are in the affirmative, what urgent steps is the Minister taking to resolve these differences in the Council?

**The Minister for Local Government (Mr. Ntimama):** Mr. Deputy Speaker, Sir, I apologise for coming back to you to say that I would be very grateful if this Question is deferred until this afternoon or tomorrow morning.

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, to start with, the House will not sit tomorrow morning. I

do not know whether the Minister came here just to vote in today's Motion. He has given me some answer, which I have here!

**The Minister for Local Government** (Mr. Ntimama): Mr. Deputy Speaker, Sir, even if hon. Lwali-Oyondi has a written answer, I will be grateful if he allows me to give a proper answer tomorrow afternoon.

**Mr. Deputy Speaker:** Well, again, what I said applies and we have no option but to defer the Question. I can only make an appeal: I hope that **[Mr. Deputy Speaker]** we will avoid this kind of situation in future.

**Dr. Lwali-Oyondi:** On a point order, Mr. Deputy Speaker, Sir. If there should be a show of inefficiency in the Government, could this not be one? And in view of this, could we not demand the resignation of these Ministers who are failing Kenyans at large?

*(Question deferred)*

**Mr. Deputy Speaker:** Next Order, Mr. Obwocha.

### POINT OF ORDER

#### MINISTERIAL STATEMENT: KENYAN ATHLETES IN ATLANTA

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement on the current saga of the Kenyan athletes in Atlanta, Georgia. We know Kenya is proud to be a sporting nation and has done very well in sports. But what we are reading from the Press are conflicting reports where some of the athletes have gone through Mississippi to practise before they go to Atlanta, Georgia, and some have been released to Europe for the Grand Prix meetings and the Permanent Secretary and *the chef de mission*, Mr. Kipchoge Keino, are giving conflicting information. Can we have a statement from the Minister for Culture and Social Services to assure this House that our athletes will participate in the Olympic Games scheduled for this month in Atlanta, Georgia?

**Mr. Deputy Speaker:** I am sure that the Minister has heard and will give his response at an appropriate time.

#### MINISTERIAL STATEMENTS:

##### CAUSE OF DEATH OF MRS. CHLORIS NDUBAI

**The Minister for Health** (Mr. Angatia): Mr. Deputy Speaker, Sir, I have two statements to make in response to Questions asked in this House. The first one was on the death of Mrs. Chloris Ndubai. I will seek your guidance on this one because the matter that I was going to comment on last week, is now before court and it has been publicised so much in the Press and I do not need to comment on it further in this House.

##### NATIONAL HOSPITAL INSURANCE FUND

The second reply I wanted to give to hon. Members who asked about the National Hospital Insurance Fund is rather a long one.

**Mr. Deputy Speaker:** I am sure it is a long one and I shall ask that you give it some other time. Next Order!

#### COMMUNICATION FROM THE CHAIR

##### MOTION: CENSURE OF MR. SPEAKER

**Mr. Deputy Speaker:** Order! Hon. Members, we have before us today a very unique and extremely rare business; that is, the Motion of censure against the Speaker of this House which is sought to be founded by its Mover on the disagreements on two specific rulings given by the Speaker from the Chair in the course of the last 30 days. The rulings involve interpretation of specific Standing Orders of the House.

As you all know, the essential ingredient of the Speakership is founded on the status of the Speaker as the servant of the House. The Speaker, as the presiding officer of the House, is entitled on all occasions to be treated with the greatest attention and respect by individual hon. Members because the office embodies the power, the dignity and honour of the House itself. Therefore, the chief characteristics attached to the office of Mr. Speaker are authority and impartiality. That is why reflections on the character of Mr. Speaker may be punished as breaches of privileges. The actions of the Speaker cannot be criticised, incidentally, in debates or upon any form of proceedings except by way of a specific substantive Motion such as the one the House is about to debate.

The framers of our Standing Orders, like the framers of similar Standing Orders of other Commonwealth Parliaments, consciously provided for this recourse to censure by hon. Members who feel particularly aggrieved by his decisions. This is not a licence for any hon. Member to throw slash, for instance, on the person or character of Mr. Speaker.

And there is another reason why the Chair will be particularly vigilant against the slightest departure from expected standards of debate.

*(Loud consultations)*

Order! I am afraid we will not proceed until I finish! I repeat, order! And there is another reason why the Chair will be particularly vigilant against the slightest departure from expected standards of debate.

A cardinal principle of our legal system is that an accused person shall be given an opportunity to defend himself, to rebut allegations against him in the context of such Motions as the one about to be debated; ordinarily, an hon. Member against whom Motion is brought is given a chance at the end of the debate to defend himself. Unfortunately, where the substantive Speaker stands accused before the House, this natural right of the accused to be heard has not been provided for in our procedures. The Speaker sits in the House only when he is in the Chair, and Speaker, Mr. Francis ole Kaparo, has decided, rightly, that he will not preside over the House today for that would amount to sitting in judgement over his own case.

*(Loud consultations)*

Order! I wish, therefore, to appeal to all hon. Members to strive to observe, indeed to ensure that the greatest decorum and courtesy in the use of language is observed; restrict their contributions for or against the Motion strictly to the four corners of the Motion before the House, framed in words whose ordinary and natural meaning should be very clear to all.

Finally, for the avoidance of doubt, let me state that this Motion is not a Motion under Section 37(1)(c) of the Constitution of Kenya.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. The understanding of hon. Members of the House is that this Motion is brought under Standing Order No.73. Standing Order No.73 states basically that neither the personal conduct of the President nor any conduct of Mr. Speaker or of any Judge, nor the judicial conduct of any other person performing judicial functions, or any conduct of the ruler or the Government or the representative in Kenya of any friendly country shall be referred to adversely except upon a specific substantive Motion moved for that purpose. This is the Motion and to my understanding, the general conduct of Mr. Speaker can be debated here.

*(Applause)*

**Mr. Deputy Speaker:** Order! In the first place, the Chair does not entertain arguments about its rulings. But given that this is a very special matter, I did give you the benefit of doubt. I want to say it very clearly to the House, for the avoidance of doubt, that this kind of Motion is very rare. It is a very special type of business---

**An hon. Member:** It is not rare.

**Mr. Deputy Speaker:** Order! It is a very special type of business to which the recourse is heard and is allowed very sparingly. I can assure you, when the Chair is faced with making the decision on allowing this Motion, he goes to great lengths to dig up from past precedents its all similar---

*(Loud consultations)*

**Prof. Mzee:** *(inaudible)*

**Mr. Deputy Speaker:** Order! Prof. Mzee, you do not argue---Hon. Prof. Mzee, I am ordering you to leave the Chamber for the remainder of this sitting.

**Hon Members:** No!

**Mr. Deputy Speaker:** Order, Prof. Mzee, you have no *locus standi* to address me.

*(Prof. Mzee left the Chamber)*

*(Loud consultations)*

Order! Order! I hope hon. Raila is listening. I was responding to his comment. When the Chair is confronted with making a decision on the admission or otherwise of a Motion of this nature, you can rest assured the Chair goes to great lengths to acquaint himself with the applicable procedure. The Chair does not just rise up to decide according to his whims what ought to be the procedure. There is ample literature on this matter, and the standard works of reference available to all Members, which have guided the Chair in deciding on what will be the accepted standards of debate.

**An hon. Member:** *(inaudible)*

**Mr. Deputy Speaker:** You are welcome to consult it. It is there in the library. But I am afraid I will not be intimidated to depart from those---

**Hon. Members:** Ah!

**Mr. Deputy Speaker:** Order! I will not be intimidated to depart from those standards.

**An hon. Member:** *(inaudible)*

**Mr. Deputy Speaker:** Order! I want to assure all and sundry that I will be very fair to all honourable members.

*(Loud consultations)*

Order! I will enforce the rules of the House as found in the Standing Orders and as established in accepted tradition without fear or favour.

So, Mr. Orengo, you have the Floor.

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

**Mr. Deputy Speaker:** Order! Mr. Orengo has the Floor.

*(Several members stood up on points of order)*

Order! I am not entertaining any further points of order before Mr. Orengo moves his Motion.

*(Applause)*

## MOTION

### CENSURE OF MR. SPEAKER

**Mr. Orengo:** Mr. Deputy Speaker, Sir, I beg to move the following Motion:

THAT, this House expresses its disappointment and disagreement with the rulings of the Speaker made on 11th June and 2nd July, 1996 regarding the Report of the Public Accounts Committee and, therefore, hereby censures the Speaker.

*(Applause)*

Mr. Deputy Speaker, Sir, let me say at the outset that the Speaker himself had made it very clear on many occasions that if there was an instance when or at which any Member of Parliament disagreed with his ruling or challenged his ruling, then the course was to move a substantive Motion, and this Motion is in line with the ruling of the Speaker himself. He has said before that if you disagree with his ruling, you move a substantive Motion. I

want to say that this Motion is not exactly rare as it has come before against a former Deputy Speaker of this House, but he honourably resigned before the matter was debated.

*(Applause)*

There have been also instances when substantive Motions have been brought against Members of Parliament. One of them was at the time against the Vice-President of Kenya on a Motion which clearly was sponsored by the Government itself, although it came through a back bencher. So, nothing should be seen strange about this Motion because if a Motion can be moved against a whole Vice-President, then there is no reason why, in accordance with the Standing Orders, we should not move a Motion against the Speaker.

Mr. Deputy Speaker, Sir, it is clear from the Motion that the rulings that I intend to draw your attention to are the two rulings stated in the Motion. But it is also obvious that some of these rulings have come at a time when we have been told that there is a process of amending the Standing Orders of this House. We should be very careful about that amendment because part of the problems we are having today is that we, as a House and a country, have refused to review the Constitution together with the Standing Orders of this House as an overall process to ensure that this House can proceed on a proper basis; on the basis of multi-party politics. But so long as we refuse to review the Constitution, to make an overall review of the Standing Orders, then even the Chair of the Speaker will be under great jeopardy because the Standing Orders as they stand now, do not relate to a multi-party system. So many of the rulings the Speaker has made have shown quite clearly--- Like these empty benches show quite clearly that there is something wrong with the Standing Orders. I am saying that the right way is not to change the Standing Orders piecemeal, but to have an overall overhaul of the Standing Orders and the Constitution.

*(Applause)*

Mr. Deputy Speaker, Sir, I want to begin from the end, and that is by the ruling of the Speaker on 2nd July, 1996.

*(Mr. Maore handed a glass of water to Mr. Orengo)*

The ruling is very short and it reads as follows:

"Hon. Members, once again, I am forced to comment on the activities of the Public Accounts Committee as I did in my ruling on 11th June, 1996. It has been brought to my attention that certain recommendations of the outgoing Committee contravene the rules of Standing Order No. 73. I have, therefore, directed the Clerk of the House, who is also the Clerk of the Committees, to make sure that the offending words are corrected appropriately. The instructions are that the words "the President" should be deleted from wherever they appear in the recommendations, and the word "Government" be substituted in place thereof."

I am indebted to hon. Raila for reading Standing Order No.73. If you look at that Standing Order and you read it carefully, you would find that what is barred by that Standing Order is to discuss the personal conduct of the President. When it comes to the Speaker, it says "nor any conduct of Mr. Speaker"; that means you cannot discuss any conduct of the Speaker - personal or otherwise, except, only on a substantive Motion.

On so far as the President is concerned, what we are not allowed to discuss is his personal conduct. The reference to the judicial conduct of the magistrates and other judicial officials makes it quite clear that there is no bar in this House, in discussing the conduct of the President in his public office or as a Constitutional office of the President. That is not barred by the Standing Orders. If you look at the Standing Orders carefully, Standing Orders Nos.14-16 shows that the President can come to this House in various capacities. Standing Order No.14 says: "The President may come and occupy the Chair of State." This is when there is a State Opening of this House for example. Standing Order No.16 says: "The president may, on ceremonial occasions, address the House from the Speaker's Chair."

**Mr. Falana:** On a point of order, Mr. Deputy Speaker, Sir. You had given a very clear ruling before this debate kicked off. The Motion is very specific. It is on the prior rulings made by the Speaker. It has nothing to do with the President.

**Mr. Deputy Speaker:** Order! Order hon. Falana! I am satisfied that hon. Orengo is just amplifying his arguments.



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

**Mr. Deputy Speaker:** Disallowed.

**Mr. Orengo:** Thank you very much for your ruling, Mr. Deputy Speaker, Sir. I was trying to demonstrate that the President can appear in the House in various capacities. When he appears in any capacity other than that mentioned in Standing Order No.14, then, he appears in this House as any other ordinary Member of this House. That is what the Standing Order contemplates.

In the House of commons, the character or the personal conduct of the Queen is not discussed because she appears in the House of commons only in one capacity. In fact, she does not at all enter the House of commons. Whenever the Queen or the King has a speech to be read to Parliament, she goes to the House of Lords. There, she does not appear in the House in any other capacity other than as head of State. Unfortunately or fortunately, in our jurisdiction, the President has various capacities.

**Mr. Boy:** On a point of order, Mr. Deputy Speaker, Sir. The substantive Motion is on the rulings of the Speaker. We have nothing to do with the President. Is he in order to drag in the name of the President when we are discussing nothing to do with the President.

**Mr. Deputy Speaker:** Order! Order! Hon. Orengo has not discussed the conduct of the President.

**Mr. Orengo:** Mr. Deputy Speaker, Sir, that is why the basic requirement of this House is that you should be having a working knowledge of English. Unfortunately--- What I am trying to point out is that the Speaker's ruling that the name of the President should be deleted from the Public Accounts Committee Report is erroneous. When it comes to discussing the Office of the President as a Constitutional office, there is no bar at all in the Standing Orders. It only comes when one wants to talk about the personal conduct of the President for example, one may want to talk about the President as a businessman, farmer or his marital status. Those are matters that are personal.

**Mr. Rotino:** The interpretation of the use of the name of the President in the Public Accounts Report must not be interpreted in a small context, because the use of the word---

**Mr. Deputy Speaker:** Order! Order, hon. Rotino. That is a point of argument. I am satisfied that, so far, hon. Orengo is dwelling on the argument for and against the reasoning in the ruling without discussing the actual conduct of the President. I will not allow him to do that.

**Mr. Rotino:** On a point of order, Mr. Deputy Speaker, Sir. The argument which hon. Orengo is trying to bring out is meant to discuss the conduct of the President.

**Mr. Orengo:** Mr. Speaker, Sir, you will realise that I am trying to be as fair and as reasonable as possible. I am making arguments which are not polemic. I am advancing arguments using the Standing Orders and the Constitution. But, if the KANU Members of Parliament want us to engage in polemics, then, I will change my speech if that is what they want.

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

**Mr. Deputy Speaker:** Hon. Rotino, you are out of order.

**Mr. Orengo:** The Speaker did say in that ruling: "Where the word President appears, it should be substituted with the word the Government." We are a Parliament and we make laws. When we make statements like those ones, we must go back to the law and find out what the Government means according to the Interpretation and General Provisions Act.

The Government is defined in the Interpretation and General Provisions Act and there is no way under that Act that you can substitute the word "Government" with the word "President" or vice-versa.

*(Applause)*

Mr. Deputy Speaker, Sir, according to the same statute, it is defined who a Minister is and a Minister according to Cap 2 means "A person appointed as a Minister of the Government of Kenya under the Constitution or the President". You can also see that even the President is a Minister and that refers to Standing Order No. 15 and 16 when the President appears in this House as a Minister and part of the Cabinet and, therefore, there is no way that you can bar this House from discussing the constitutional responsibilities of the President. That cannot be.

*(Applause)*

Even Chapter 6 which is on Privileges of Parliament, it deals with the powers of the President and not the powers of the Government and if those powers are abused then you do not say that the Government has abused

those powers but you say "The President has abused those powers".

(Applause)

So, Mr. Deputy Speaker, Sir, those rulings are not quite in order. When it comes to the rule of *sub-judice*, a lot of my time has been taken, my problem was that in an earlier ruling, when the Law Society of Kenya (LSK) took the Goldenburg case to the court, instead of storming into this House and saying that "That matter is sub-judice", the Speaker sends the Clerk of the National Assembly to the court to say that "Parliament is ceased of the matter", hoping that the court will delay the process of the hearing in court. But on the 11th of June when the issue of *sub-judice* arose, now Mr. Speaker changes his position and says that "Once a matter is *sub-judice* it cannot be discussed, and that was the end of the matter".

Mr. Deputy Speaker, Sir, you cannot have two contradictory rulings of that nature on a matter of such momentous significance. It is either this or that but he cannot have his cake and eat it. All it means is that in those instances, the Speaker is not applying the Standing Orders and Rules of this House but probably, I guess, he probably would have leased his conscience, either to the Government or to those in control in order to arrive at his contradictory ruling.

(Applause)

But if Mr. Speaker stood by the earlier rulings of *sub-judice* and stayed on course without changing course, then nobody would have a problem with Mr. Speaker's actions.

Mr. Deputy Speaker, Sir, I want to finalise by saying that out of all constitutional offices under the Constitution, you will find that they are all appointed by the President and only Mr. Speaker is elected and once elected he is an executive and presiding officer, as it were, of this House. There is no other body in this Republic which would be very proud of the Office of Mr. Speaker because that is the only instance when many of us have a chance of deciding on who presides over an important institution as Parliament. So, let it not be said that this Motion is brought on the basis that it is groundless or that we have prejudices against Mr. Speaker but on the basis that this House has a responsibility to protect the Office of Mr. Speaker. We have that responsibility and when the Speaker makes a mistake, we are duty-bound to bring that matter in the House and discuss it and arrive at a decision.

Mr. Deputy Speaker, Sir, there is a tendency for our Speaker, whenever there is a matter which he disagrees with like the name of the President being mentioned in the PAC he says that "Expunge it from the records". The practice of the House of Commons is that on matters like those, you bring it before the House for resolution before you make such a dictatorial statement.

(Applause)

It is brought before the House and if Mr. Speaker has already told the on what words to use, is that the report of the PAC or is it Mr. Speaker's and the Clerk's report?

(Applause)

What he should have said is "I overrule this word and it should not be used and take it back to the Committee to find a suitable phrase".

Mr. Deputy Speaker, Sir, with those remarks, I beg to move and ask Mr. Shikuku to second my Motion.

(Applause)

**Mr. Deputy Speaker:** Order! Order! Mr. Orengo, did you say that you are asking hon. Shikuku to second the Motion? Well, order! It was the understanding between you and me, as per the original draft Motion you brought, which was certified under the hand of hon. Wamalwa, that it is a FORD(K) Party Motion that you are proposing, to be seconded by hon. Wamalwa. That was the understanding at the Sessional Committee yesterday.

**Mr. Orengo:** I cannot be seen to be overruling you but there is nothing in the Standing Orders which says that Once a Motion, which is a property of the House, or a Question that is brought by Ford Kenya or by KANU, then you are asked to distinguish parties". It has never happened and in fact for the last three months, if

you look at the Motions which have been moved in this House you will find, like the Motion on the Repressive Laws which was moved by hon. Shikuku, it was a Ford Asili Motion and I seconded that Motion and if you want to bring new rules on the Floor of the House, then it cannot be so.

*(Applause)*

**Mr. Deputy Speaker:** Order! Well, you may say that the Speaker's decisions do make rules. I have no desire to make new rules on this matter but I think it is important that I explain why I had to raise that query. I think, considering that this is a very special type of Motion; considering also that we proceed on our business on the basis of knowledge in advance; considering, too, the fact that you did indicate that hon. Wamalwa would be your Secunder; considering, as well, the fact that the Motion itself had been certified by Mr. Wamalwa, and considering the fact that yesterday, you were not at the Sessional Committee; hon. Wamalwa who was there did confirm he was to second the Motion. I did say, when Members said that they wanted to determine who to speak, that, that is the responsibility of the Speaker.

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

Order! Order!. I did say and hon. Wamalwa is here that that is the responsibility of the Speaker which I cannot abdicate but I will definitely respect your request that hon. Orenge moves the Motion and hon. Wamalwa seconds. I did say that. So, I was frankly surprised because you could also have been courteous to come to me and say "We had Wamalwa but it is not Wamalwa; it will be Shikuku". If hon. Shikuku wants to second, then proceed!

*(Applause)*

**Mr. Shikuku:** Thank Mr. Deputy Speaker, Sir. The matter before the House is a very serious one and I must thank the hon. Members so far for behaving like real hon. Members since there has not been any heckling.

Mr. Deputy Speaker, Sir, some of us who speak on this Motion are not here to try and malign anybody but we are conscious of the importance of this august House. It must maintain its dignity and continue to remain so because it is the only institution in the republic of this country that is functioning very well so far. We are here to safeguard the future generation which will be reading whatever we say in this House. The matter before the House, as explained by the Mover, was brought about as a result of the PAC recommendations which included the word 'President'.

Mr. Deputy Speaker, Sir, let this House and the world know that we also have respect for the President and the Presidency, but we also are conscious of the Constitution of this country which states very clearly in Cap. 6, Section 18 (III), that no officer in this Government can refuse to give evidence or documents relating to any query in the PAC unless he or she has been so authorised by the President. That is how the name of the President comes in, which is Cap. 6 of the National Assembly Privileges Act. That is the law of this land. So we had to write to the President to tell him, because we had read that Act, to order his officers to give the PAC the information we wanted. He reacted publicly and dismissed our appeal to him to order his officers to give evidence to the PAC. It is only in that context, under Cap. 6, Section 18(III), that the name of the President came in. So, if he refused to order them to surrender the information the PAC wanted, we came to the natural conclusion that these officers, perhaps, were refusing to give the Committee this information because they have been so ordered by the President. That is how the name of the President came in.

*(Applause)*

Having said that, Mr. Deputy Speaker, Sir, and it has been ably argued, I would not like to go to other polemics, I have read all the 174 Standing Orders. Standing Orders Nos. 73 and 74 are not about this House, but the actual Standing Orders of this House are 172. I have not come across one Standing Order which allows the Speaker to operate outside the Standing Orders of this House. In other words, he cannot just make any rule, but he has got to operate within the Standing Orders and no Standing Order authorises the Speaker to be above the Standing Orders.

*(Applause)*

Secondly, Mr. Deputy Speaker, Sir, and I must regret this also, and confess that I also overlooked that, if

you look at Standing Order No.2, you will find there is a definition of what a Clerk is, a Minister, Assistant Minister and the Opposition. But there are two things which are amusing there. This Standing Order does not even define the Speaker, or a Member of Parliament. That is an anomaly which we shall take care of when we think in terms of---

**Mr. Deputy Speaker:** I think that is obvious, Mr. Shikuku.

**Mr. Shikuku:** Thank you, Mr. Deputy Speaker, Sir. Even the "Minister" is obvious, but it is funny. I am coming to the issue of---

**The Assistant Minister for Public Works and Housing (Mr. Mwamzandi):** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order!

**The Assistant Minister for Public Works and Housing (Mr. Mwamzandi):** The hon. Shikuku is trying to limit the Speaker only to this House. If you look at Standing Order No 1, it states that "all matters not hereinafter expressly provided for shall be decided by Mr. Speaker".

*(Applause)*

**Mr. Ndicho:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, may I draw your attention to Standing Order Number 70 (3). If you look at that Standing Order, it states and I quote:-

"In determining whether discussion is out of order on the grounds of anticipation, regard shall be had to the probability of the matter anticipated being brought before the House within a reasonable time".

This is a Standing Order that prohibits any hon. Member of Parliament in this House to anticipate a debate on any matter that is pending to come before the House. You all know that we concluded our PAC recommendations and we have written that report as a matter of fact, and it is in printing. The Speaker was wrong to anticipate a debate on a report that had not even been tabled in this House.

*(Applause)*

That, Mr. Deputy Speaker, Sir, is where I feel the Speaker was terribly wrong and I tried to point it out to him; did not he see it, but now he can hear it.

*(Laughter)*

Mr. Deputy Speaker, Sir, if you look at Standing Order No. 71, it states:-

"No Member shall refer to any proceedings of a Select Committee before the Committee has made its report to the House".

**Mr. Achieng-Onoko:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member on the Floor is addressing you, but you cannot hear him because you are busy.

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, under this Standing Order---

**Mr. Deputy Speaker:** I am capable of listening here and there.

**Hon. Members:** No!

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, that Standing Order is very clear and it is written in simple English. This is the Standing Order the Speaker violated. May I now go to the question of other rulings, for example, recent rulings. The other day, hon. Obwocha stood in this House---

**Mr. Deputy Speaker :** Order, Mr. Shikuku. I am afraid you should confine yourself to the rulings within the Motion.

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, as much as I would like to do so, I thought we are discussing the conduct of the Speaker over this ruling.

**Mr. Deputy Speaker:** I must say I feel like congratulating hon. Orenge for having obviously done research to know what would be the limits. I have not desired to restrict your freedom of speech, but I think in this matter, it is a requirement of the law and practice everywhere that the Motion be specific, and the charges were that specific. Please, confine yourself to the matters in the Motion.

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, I am bringing your attention to Standing Order No. 29, where you will find this question of expunging whatever is not palatable to the Speaker. You will find that this

Standing Order gives him that power, but it clearly states:-

"Mr. Speaker may direct any matter which is in his opinion secret or purely domestic to be excluded from the journals of the House and from the verbatim report of proceedings of the House, and to be the subject of a separate journal and separate verbatim report...".

When he is expunging these documents, I have yet to come across a separate verbatim report or a separate journal of what was expunged. He was not following Standing Order No. 29. I would also like to state here the issue of Standing Order No. 1 where Mr. Speaker can make a ruling on anything using that Standing Order No. 1 Standing Order No. 1 is very clear and it reads:-

"All matters not hereinafter expressly provided for shall be decided by Mr. Speaker".

But most of the matters are provided for, and so, Mr. Speaker cannot hide under Standing Order Number one.

*(Applause)*

Mr. Deputy Speaker, Sir, I would like to say that Mr. Speaker and hon. Members, are all human beings. The Speaker can make a mistake and I, Mr. Shikuku, can also make a mistake because we are all human beings. But the time has come when---

I beg to second, Mr. Deputy Speaker, Sir.

*(Question proposed)*

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. Since Standing Order No.33 does not provide us with the opportunity to discuss the conduct of Mr. Masya the Clerk of the National Assembly, under what Standing Order shall we bring a Motion to discuss his conduct?

**Mr. Deputy Speaker:** Order! I would want to believe that, that was frivolous. If not, frankly, I must say that I sympathise with you if four years into the life of this Parliament, you have not known how to handle your dissatisfaction with the Clerk of the National Assembly.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Deputy Speaker, Sir, let me at the very outset say that it is unfortunate that this morning we are discussing the issue of censuring the Speaker, knowing very well that the institution of the Speaker is a representation of this House. It is the dignity of this House, therefore, that it is being discussed. I have listened to hon. Orengo and hon. Shikuku. What has astounded me is the fact that although the Motion seeks to censure the Speaker on his two rulings; the one of 11th June, 1996, and the one of 2nd July, 1996, the two hon. Members have only confined themselves to the latest ruling of 2nd of July, 1996. Even then, they have not demonstrated in any way that the Speaker violated any of the Standing Orders in this book. Be that as it may, I think the two rulings have got to be read together because there is no way you can discuss the latest ruling without the background of the earlier ruling, and also what brought about the ruling. In the ruling of the Chair, much earlier on, that was on 11th, June, 1996, the Speaker made it very clear that he was making the ruling as a result of the fact that a section of the Public Accounts Committee (PAC), led by the Chairman, held a Press conference and made an allegation that the Chair had obstructed the operations of the Committee by unnecessarily upholding the *sub judice* rule. That was then the issue. The Speaker went further to express the grounds on which he took the position he did. It was on the basis of a matter that was before the PAC regarding paragraphs 34 to 37 of the 1993/94 Report of the Controller and Auditor-General. It will be recalled, and I am sure the hon. Members who serve in the Public Accounts Committee are aware of the fact that, indeed, this issue was in court. The fact of the matter was that, a section of the PAC, not all of it, wanted to interview those people who were already charged in court. The Chair advised that section of the PAC that this matter was already in court.

**Mr. Muluya:** On a point of order, Mr. Deputy Speaker, Sir. Is the Vice-President in order to refer to the Public Accounts Committee as a 'section of PAC' when the Standing Orders says that the Chairman and two other Members form a quorum of PAC? Why is he talking about a section?

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do have a copy of the Speaker's ruling right here. It was read in this House and became a public document, and it clearly talks about the Committee. He was making a ruling. I want to go further and say that when that section of PAC was informed of the fact that the matter was *sub judice*, it decided to interview the Attorney-General on the matter of *sub judice*. The Attorney-General also clearly said that this matter was *sub judice*. Therefore there was no way that this matter could be discussed in accordance with the Standing Order No.37, Section 10. Going by the ruling of the Chair, we are again informed that as soon as the PAC was

informed of this matter, it then decided to hold a meeting and at the same time discuss the conduct of the Speaker.

There are two issues here which arise; one, should the Speaker have acceded to the request by the Public Accounts Committee to allow the matter which is *sub judice* and which was barred from discussion by the House and by the Committee since it is *sub judice*? There is a Standing Order clearly barring that matter. The answer is clearly no.

Mr. Deputy Speaker Sir, the second question is; should PAC then have held a Press conference and indeed discuss the Speaker, because they actually did that? They violated Standing Order No.73; by alleging publicly that the Speaker himself had made it difficult for PAC to ensure that the matter which is *sub judice* is discussed. I submit that PAC violated the Standing Order No.73, that is very important. There is also another one. I want to go further---

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. We are very orderly and I am sorry to interrupt the hon. Member, but he is misleading the House. Question of *sub judice* came much later, because earlier on the Speaker had ruled that since the PAC, was seized of the matter he sent the Clerk to inform the court, which was explained very ably here by the Mover, and we did not see--- He is misleading the House.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Deputy Speaker, Sir I do not think that I need to respond to that one because the answers are contained here. But what I want to submit to this House is the fact that the Public Accounts Committee is in breach of two very important Standing Orders. One is Standing Order No.161 which says that matters which are before any select Committee cannot be discussed in public. Secondly, they also violated Standing Order No.73. The question that I now want to put to this House is simple. How can we censure the Speaker, when in actual fact, the Speaker was trying to uphold the Standing Orders of this House?

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. I am seeking the indulgence of the Chair on whether the Vice-President is the Government Official Responder and whether he is responding now?

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Deputy Speaker, Sir, that is true. The Question is this: Who is in breach of the Standing Orders? They had breached Standing Order No.73 when they discussed the Speaker in public. They had breached Standing Order No.161 by bringing the matter which is before the Public Accounts Committee (PAC) to be discussed in public. Why should the Speaker be censored when he draws the attention of this House to the Standing Orders of this House? We must in unison commend the Speaker for upholding fearlessly the Standing Orders of this House. It is my belief that as we proceed, we are going to show contempt on this Motion because it is unbecoming.

Let me go to the second charge which has been levelled against the Speaker which was the subject of discussion by hon. Orenge and hon. Shikuku. None of the two hon. Members have demonstrated conclusively or even half-conclusively that the Chair violated any of the Standing Orders. The ruling of the Speaker is extremely clear on this matter and on 11th June, 1996, he did give reasons for directing the expunging of the name of the President from the Report.

First of all, he said that PAC deals with Appropriation Accounts and, therefore, it is only the Accounting Officers who are called into the PAC and you cannot invoke the name of the President. He had proceeded on to make it quite clear by reading out Standing Order No.72 which states:-

"No Member other than a Minister shall use the name of the President as authority for anything that he says."

Although the hon. Members held a meeting and said that they had written to the President, it must also be brought to the attention of this House that PAC is appointed by this House and it is accountable to this House. If they had any difficulties they should have brought the Report here and discussed it in public, but not directly with the President. One thing, none of those hon. Members are Ministers and should not use the name of the President. They are all Back-Benchers and Standing Order No.72 is very clear on that. Who is in the wrong here? Is it the Speaker or the PAC?

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. You did rule at the beginning that the debate should be confined to the issues which are in the Motion. Is the Vice-President in order now to debate on Standing Order No.72 instead of confining his contribution to Standing Order No.73? In any case, Standing Order No.72 talks about using the name of the President as authority. If you are now doing that, you can mention the name of the President.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do not want to discuss the PAC Report, but there is no doubt that it must have been used as authority which should not have been the case.

I want to say that, indeed, there are no grounds whatsoever in having brought this Motion here. It appears

to me that the charge should be against the PAC for refusing to listen to the wise counsel of the Chair. They have violated all that. There is nowhere where the Speaker has violated any of the Standing Orders whatsoever.

The institution of the Speaker is important not just to the Government side, but also to all of us and we should not set a precedent here merely to malign somebody or intimidate him for no reason. Basically, this Motion is null and void and we hope that on the basis that I have given here, we are going to reject this Motion. In so doing, we are going to send the following message to the Kenyan people that, we affirm our total confidence in the Chair.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. His Excellency the Vice-President is violating Standing Order No.73 (4) by imputing improper motive on us that we are intimidating the Speaker.

**The Vice-President and Minister for Planning and National Development (Prof. Saitoti):** Mr. Deputy Speaker, Sir, I want to say the following that, one, we want to send a message loud and clear to the wananchi that this House has got total confidence in the Speaker of this House. Two, that we have total confidence in the impartiality of the Speaker and his dignity. We want to send a message to the wananchi that this House will remain firm and clear---

**Mr. Mulusya:** On a point of order, Mr. Deputy Speaker. You ruled from the onset that we shall confine ourselves to the debate before this House. Is the Vice-President now in order to start debating the confidence of the Speaker which is not part of this Motion?

**The Vice-President and Minister for Planning and National Development (Prof. Saitoti):** Mr. Deputy Speaker, Sir, with those remarks, I beg to oppose the Motion.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, it is a very serious matter that is before this Parliament. Those of us who have been in Parliament for that long know that we have not had occasion to discuss this kind of issue. The reason why it is being debated, and there is no point in trying to cover up this issue, is because the Speaker made a ruling regarding issues which are not before this House and there is no Standing Order which allows the Speaker to make that kind of ruling. It is the Speaker himself who should defend this House and not order a Select Committee of this Parliament to alter a Report which has not come to this Parliament. That is the issue.

The Speaker has powers before matters which have been tabled in this House and not matters which are still in the Committee. The matters which are not before this House are to be treated separate from the business of this House. So they had not become business of this House. So, one, the Speaker had no right and, two, because that was a Select Committee of this Parliament, he showed contempt to this Parliament by making that ruling. That is the reason why we are demanding that we censor the Speaker. We must censor the Speaker. He showed contempt to this Parliament.

**Mr. Sankori:** On a point order, Mr. Deputy Speaker, Sir. Is it in order for hon. Kibaki to say that the Speaker showed contempt to this House while it is true that it is the Select Committee of this House which went contrary to the rules of this House?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, you can see that some people do not understand Standing Orders.

*(Applause)*

It is not our fault that we have people who do not understand Standing Orders. I am insisting, therefore, that---

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

**Mr. Deputy Speaker:** Sit down, hon. Kibaki.

**Mr. Sankori:** My point of order is that I am 24 hours sober, while hon. Kibaki is 24 hours drunk!

*(Applause)*

**Mr. Deputy Speaker:** Order! Order! Order! Hon. Sankori, will you withdraw that statement about hon. Kibaki being 24 hours drunk?

**Mr. Sankori:** I withdraw, but I am very sober.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, we are mature hon. Members of Parliament and we must ignore primitive behaviour. We are trying to censure primitive behaviour. Now, the behaviour by the Speaker was out of order. Therefore, this Parliament, in defence of itself, regardless of what party you belong to, must be respected. This is not loyalty to KANU, DP, FORD (A) or FORD (K). This is a matter of Parliament, which is the supreme institution of this nation. It must be respected by the Speaker. To be respected, this Parliament

must respect itself. To respect itself, it has to protect its own dignity so that no one, the Speaker or otherwise, is going---

**An hon. Member:** Do not look at us! Address the Chair!

**Mr. Kibaki:** You can close your eyes if you are scared!

*(Laughter)*

Mr. Deputy Speaker, Sir, I am saying that if Parliament is to be respected, it must defend and show respect for itself. To respect ourselves, is to demand that the Speaker pays respect to this Parliament which elected him. One way of doing this it is to follow the rules. I know that the Speaker pretended that he was using these Standing Orders, talking about---

**Mr. Deputy Speaker:** Order! Order, hon. Kibaki. I am afraid that a long standing Parliamentarian like you---

**Mr. Mulusya:** Why are you favouring one side?

*(Hon. Mulusya moved to the Front Bench)*

**Mr. Deputy Speaker:** Order, hon. Mulusya! Hon, Mulusya, I am ordering you to leave the Chamber!

*(Loud consultations)*

Order! Order! Can you protect, hon. Kibaki's remaining time please? Hon. Mulusya, can you leave the Chamber for the remainder of this Sitting? You have no *locus standi* to address the House! Will you leave the Chamber?

**Mr. Mulusya:** I decided to sit here in honour of the Opposition in this House!

**Mr. Deputy Speaker:** Order! Order! Will you leave the Chamber now?

*(Mr. Mulusya withdrew from the Chamber)*

Proceed, hon. Kibaki.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, it is important that we clear this matter which has to do with the Standing Orders. The Standing Orders do not authorise the Speaker to make the ruling he made. These Standing Orders have to do with the debate in this Parliament. The matter over which the Speaker made a ruling was not a subject of debate in this Parliament. The Standing Orders referring to the President or any friendly nation or anything, have to do with a debate in this Parliament. The matter over which the Speaker made a ruling had not become a debate in this Parliament. Therefore, the Speaker cannot hide behind that particular shield. It does not cover him. He has nowhere to hide. He is completely naked! There is no way he can hide behind that. The Speaker should have owned up that he was trying to please the institution of the Presidency. He should own up, therefore, and say that he was trying to play the "good boy".

**Mr. Deputy Speaker:** Order! I am afraid that before the happenings regarding hon. Mulusya interrupted my trend of thought, I intended to caution you. You have so far kept strictly to the substance of the Motion. I wish you were here to receive the advice from the Chair at the beginning. Will you please uphold that?

*(Loud consultations)*

As regards the conduct of the Speaker, you will confine yourself strictly to the Motion.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I am confining myself to the words of this Motion, which refer to the ruling made, the words used by the Speaker, in making that ruling. That is what I am confining myself to: That the words he used were that the Standing Orders, quoting sections 72 and 73 or whatever, prohibit us to refer to the name of the President as authority for anything we are saying. In the Select Committee, we do not know in which words they can refer to the President in that report. How did the Speaker come to know that the President was referred to in that Report? The Report has not been tabled here in this House. Mr. Speaker is not a member of the Public Accounts Committee (PAC). Therefore, he must have been told by the Clerk of the National Assembly that the President was referred to in the Report. So, the Speaker came to this Parliament and showing



contempt for this Parliament, made a ruling based on hearsay. He said: "I have heard that a Committee outside there, is referring to matters over which they are ruling on this matter". The Speaker had no base at all---

**Mr. Rotino:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that it was Mr. Speaker who violated the rules, while in the first place, it was the Opposition led my their Chairman?

*(Loud consultations)*

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, most of our friends here need to be taken to adult education classes. This is because I am saying in simple English, that the Speaker had no way of knowing what was going to be brought before this Parliament, therefore, he made a ruling on hearsay. The Speaker's ruling does not become his dignity; it does not become the dignity of this House. Therefore, it should be ignored and it should be censured. Therefore, I--

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order! Proceed, hon. Kibaki.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, they have been trying to interrupt my speech persistently. I do not decide say how you should do your business, but if somebody who was walking here and who was not looking at you was sent out, because he did not hear what you had said, then these others, I do not know--- Something must be done about them.

**Mr. Deputy Speaker:** Hon. Kibaki, you cannot be that cheeky, at your age and with your experience in this Parliament!

*(Loud consultations)*

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, as Members of this Parliament, we respect ourselves. We are insisting that the Speaker is censured now.

**Mr. Deputy Speaker:** Order! Order! I should think hon. Kibaki was very lucky to have got away with that.

*(Several Members stood up in their places)*

Order! Order! And to those Members, like my friend, hon. Mutahi who seem not to know what is Parliamentary and unparliamentary language--- I will give---

**Mr. Mutahi:** You do not know also!

**Mr. Deputy Speaker:** Order! Order, hon. Mutahi!

**Mr. Mutahi:** How can you tell me that I do not know what I came to do in this House?

**Mr. Deputy Speaker:** Order! Order, Mutahi! I am ordering you to leave the Chamber for the remainder of this Sitting.

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

**Mr. Deputy Speaker:** Disallowed! I have given an order, and until hon. Mutahi leaves the Chamber no Business will be conducted.

*(Several Members stood up in their places)*

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

**Mr. Deputy Speaker:** Order! Order, hon. Mwiraria! Hon. Mutahi, you must leave the Chamber. I will ask the Serjeant at Arms to remove you from the Chamber! Will you leave the Chamber!

*(Hon. Mutahi walked towards the Chair)*

**Mr. Mutahi:** How can you tell me that I do not know what I am doing in this House?

*(Members from both sides of the House)*

*rushed towards the Chair)*

**An hon. Member:** They are going to fight.

**Mr. Deputy Speaker:** Order! Order, Members! Let them fight if they want to fight, they can fight! Order! Order! Hon. Members, when I accepted the responsibility to be the Deputy Speaker of this House, I gave a solemn promise that I will enforce the rules of the House without fear or favour. I have done that and I will continue to do that. If my rulings aggrieve Members, they know what to do very well and surely this morning they know what to do very well; what recourse to take. I have ordered hon. Muhika Mutahi to leave the Chamber. Has he left? I understand hon. Mutahi is there and I am asking him to leave the Chamber.

**An hon. Member:** You must stop abusing Members!

*(Mr. Mutahi withdrew from the Chamber)*

**Mr. Kituyi:** On a point of order, Mr. Deputy Speaker, Sir. Justice can only be done if it is seen to be done. Can we be given an inkling as to why hon. Rotino has perpetually interrupted debate and the Chair has not as much as warned him?

**Mr. Deputy Speaker:** Order! Order! I sincerely believed that hon. Kituyi would come up with something much more serious than that. But be that as it may, firstly I am not here to justify my explanations in those terms. In any case, hon. Rotino may have been a nuisance, which is not allowed. But hon. Mutahi was picking up a quarrel with me directly. He was in direct defiance of the Chair. For that, I have the sole responsibility to decide what excesses make an hon. Member to be expelled from the Chamber and what excesses justify a pardon. The next speaker! Hon Wako has the Floor.

**Mr. Nyagah:** On a point of order, Mr. Deputy Speaker, Sir. Whereas we respect the Chair, I think that also the onus is upon the Chair to respect this House and the Members, and particularly a person like the Chairman of the Democratic Party of Kenya.

*(Applause)*

I believe that the word that you have used against him at his age, namely that he was cheeky, was unbecoming and should not have come from a man of your standing. If I were you---

**Mr. Deputy Speaker:** Thank you very much my friend, Mr. Nyagah. If on consideration I feel that I may have gone a little overboard, you definitely know that I am capable of apologising. Firstly, on the word "cheeky", this is the word which caused a near circus. The first time I heard the word "cheeky" used against an hon. Member in this House was during Question Time. It was when I was an Assistant Minister under Mr. Kibaki. It was used by Mr. Kibaki and the Chair ruled that it was not unparliamentary. I have since used it in this House many times. Other hon. Members have also used it. I was challenged at one time in this House and I said that the word "cheeky" is not quite unparliamentary. In any case, meanings depend on the context. But what you must also understand is that the person in the Chair has to take offence when you tell him in a Motion which is not discussing him now, that you were looking elsewhere and you could see somebody who was misbehaving and going out. That was the context in which I referred to him as being cheeky. I thought that he was throwing a slur at me when I am not under discussion in the House. Mr. Wako, please.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to speak on this very important Motion. Let me first of all---

**Mr. Deputy Speaker:** Order, Dr. Otieno-Kopiyo! This debate, sensitive as the subject is, started on a very good tone. I give credit to the Mover and Seconder of the Motion for setting the tone. Let us not, minutes to ending it, damage what was the baby of hon. Orengo. Let us, as hon. Members, get to the end of it. Hon. Members want to speak and we should listen to each other. The Chair is here as an umpire. It is up to the two sides to respect each other and minimise interruptions.

*(Hon. Otieno-Kopiyo stood up  
in his place)*

Order, hon. Otieno-Kopiyo! I have said that I will not allow a point of order on this matter. I have said this very clearly, and I am saying it again now. If you stand up again you will definitely be inviting a sanction. You know it!

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to speak on this Motion. It is a Motion that touches on the dignity of this House.

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

**Mr. Deputy Speaker:** Order! Order! Hon. Otieno-Kopiyo, however you want to look at it, I have been crystal clear to you. Therefore, I have no option but to order you to leave the Chamber. That is what you want!

**Dr. Otieno-Kopiyo:** Mr. Deputy Speaker, Sir, you did not understand what I wanted to say!

**Mr. Deputy Speaker:** Just leave the Chamber.

*(Hon. Otieno-Kopiyo withdrew  
from the Chamber)*

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, this is a very important Motion. It is a pity that we should witness, in this House, what we have just witnessed today. It is only the other day when I was watching on Cable News Network (CNN), Members of Parliament in Taiwan fighting inside Parliament. God forbid that this House should be a place where Members of Parliament fight. We are here to discuss a very important subject on---

**Mr. P.N. Ndwiiga:** On a point of order, Mr. Deputy Speaker, Sir. You made a very clear ruling here. But I do not know whether you have noticed that the Attorney-General is not speaking on this Motion. He is addressing extraneous matters, and yet your ruling was very clear. Can you ask him to stick to the Motion?

**Mr. Deputy Speaker:** Order! For the avoidance of doubt, as far as the conduct of the Speaker is concerned, you stick to the wording of the Motion. That is very clear.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, in view of the fact that my time has really been "eaten" away, let me just state only three points. On the issue of the *sub judice* rule, the Mover of the Motion did state that they would have had no objection to the ruling of the Speaker on 11.6.96, but that it contradicted an earlier ruling of his on this matter, which earlier ruling had been prompted by the Law Society of Kenya case in court. I want to inform this august House that at that time, in 1994, when the Speaker made that ruling, there was no criminal case pending before the court. What was before the court was an application by the Law Society of Kenya to be allowed to institute---

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Attorney-General in order to misinform this august House when he knows perfectly well that he prepared an affidavit which he filed in court, sworn by Mr. Masya, directed by the Speaker and that the affidavit sought to stop the court from hearing the Goldenberg matter on the basis that the Goldenberg issue was before Public Accounts Committee?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, precisely, that affidavit was sworn. It was sworn in support of an application by the Law Society of Kenya to be allowed to institute criminal proceedings in court. That application, as of today, has not been finalised. Therefore, as at that time, what was before the court was an application for the court to grant the Law Society of Kenya permission to institute criminal proceedings.

**Mr. Orengo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to make the point he is making because, in so far as I am concerned, the rule of *sub judice* does not relate to whether a case is criminal or civil? It applies to all cases. And in any case, it went back to the ruling of the Speaker, it was not just the case by the Law Society of Kenya, even the case filed by hon. Raila was in court and he made reference to that case in that ruling. Is he in order now to mislead the House?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, under the Law Society of Kenya were applications seeking permission of the court to institute criminal proceedings. Therefore, those criminal proceedings were not before the court. Furthermore, the police investigations were not complete as at that time, and I did inform the Law Society of Kenya that as the police had not completed their investigations and as there was no criminal case pending in court, let us give opportunity also to the Public Accounts Committee (PAC) to investigate this matter. I said that because there was no criminal case in court and, therefore, where there is no criminal case in the court, the Public Accounts Committee consistent with what I told the Law Society of Kenya, is at liberty also to continue hearing this case. But, as soon as, the police finalises their investigations then criminal proceedings were instituted.

As far as Kshs5.8 billion case is concerned, the case was filed in court on 5th January, 1995, well before the matter came before the Public Accounts Committee in October of that year. And the Kshs5.8 billion case is under 1991/92/93 in criminal case No.2208 of 1995. Account No.1991 is Kshs1.8 billion, 1992 is Kshs2.8 billion,

1993 is Kshs1.16 billion all totalling Kshs5.8 billion---

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. I do not wish to interrupt my hon. friend, but we must go by orders of this House. Is the Attorney-General in order to mislead this House about this Kshs5.8 billion because this was not in 1995, but it was in 1994? So, it was before the Public Accounts Committee, before it went to the court.

**The Attorney-General (Mr. Wako):** The matter came before the Public Accounts Committee in October last year and in January, we had already instituted criminal proceedings for Kshs5.8 billion. Therefore, to that extent the ruling of the Speaker in setting out the various dates was the correct ruling.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to mislead the House that the matter of Kshs5.8 billion came before the Public Accounts Committee in October, when he knows very well that it came before the Public Accounts Committee much earlier when the Report of the Controller and Auditor-General was laid on the Table of the House and which Report was referred to the Public Accounts Committee?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, the report that was laid before the House did not touch on Kshs5.8 billion. It touched on Kshs13.5 billion which is part of the Goldenberg.

The Goldenberg issue can be very confusing. So I do understand the confusion. The Report that was laid before this House touched on Kshs13.5 billion. We are talking about the additional sum of Kshs5.8 billion which came before the Public Accounts Committee after the criminal proceedings had been instituted and, therefore, to that extent, the rule of *sub judice*, as practised here, as practised in the House of Commons, in UK, Australia, Canada and so on, applies *in toto!*

On the second issue of the rule No.74 and so on---

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to mislead the House over the rule of *sub judice* when he himself knows he is using the rule to basically just gerrymander? That when I went to court, he went to court and entered *nolle prosequi* so that one of the suspects could be set free, whereas here in the House, the Speaker was ruling the matter was *sub judice*?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I entered *nolle prosequi* in his case on the basis that he did not have the courtesy to inform the ultimate authority on constitutional matters on which he was taking that course of action. Therefore, in law, in accordance to such decisions, I had to assert my authority. I asserted my authority and I will continue to assert that authority.

On the issue of Standing Order No.73, what the Mover of the Motion has demonstrated is that there is another interpretation to that particular rule. I do not think he has demonstrated that the Speaker acted bona fide and so on.

Mr. Deputy Speaker, Sir, I beg to oppose.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, I would like to speak for five minutes and surrender my other five minutes to Prof. Anyang'-Nyong'o.

I think we need to get to the root of this matter. Although what is before this House this morning is the conduct of the Speaker, as a matter of fact, what is before this House is the supremacy of this House, the independence of the Speaker and the independence of this House.

What we are witnessing here is a "culture" that we have had in this country for a long time, where the Presidency is shrouded in such mystery and mystique that ordinary Kenyans cannot even mention his name!

(Applause)

And this is the "culture" which the Speaker wants to spread in this House and it is a "culture" that we, as the hon. Members of Parliament must strongly oppose!

Mr. Deputy Speaker, Sir, what we are witnessing here is the defacto, invisible, psychological, and mythical power which the President has over us in this House.

**The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi):** On a point of order, Mr. Deputy Speaker, Sir. You made a ruling that when contributing, we confine ourselves to the subject of Mr. Speaker. Is he in order to bring in the issue of the President?

**Mr. Murungi:** Mr. Deputy Speaker, Sir, this is exactly what I am talking about! These are the people who are spreading this "bad culture" and it must be excised from the hon. Members of the National Assembly! The President is a human being just like you and me!

Standing Order No.73(i) is very clear. It is only the private personal conduct of the President that we cannot discuss in this House. If the President is corrupt in his performance of constitutional duties, we can stand

in this House and say he is corrupt!

*(Applause)*

Mr. Deputy Speaker, Sir, if the President is negligent in the performance of his constitutional duties, we can stand here and say he is negligent. If he is reckless, we can stand here and say he is reckless. But as to what the President does at night with his friends, we cannot discuss in this House!

**Mr. Deputy Speaker:** Order! I know that you have only five minutes. For the avoidance of doubts, the hon. Members who spoke first set the tone. It is very clear, it is about the wisdom of the Speaker's judgement in those two rulings as far as it regards the deletion of the word "President" and replacement with the word "Government." Will you, please, try also not to provoke unduly, the other side by restricting yourself to the wisdom of that judgement?

**Mr. Murungi:** Mr. Deputy Speaker, Sir, I am trying to explain why the Speaker had to order the deletion of the word "President" from the Report, even before the Report came to this House. This is because he has great fear of the President.

*(Applause)*

The Speaker is more afraid of the President than he is afraid of this House, and this is the real issue. This happened because it was at a meeting of the KANU Parliamentary Group, chaired by the President, that the name of Ole Kaparo was proposed to be a candidate for Speaker of this House. Although it is us in the House who elected the Speaker, he was nominated with the consent and approval of the President and he feels he is responsible to the President and not to us. What I would propose is that in future, the Speaker of this House should be elected with a majority of 75 per cent, and the nomination should be made on the Floor of this House.

*(Applause)*

**The Vice-President and Minister for Planning and National Development (Prof. Saitoti):** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to claim that the Speaker is answerable to the President and that he is afraid in his ruling?

**Mr. Deputy Speaker:** Order! Order! Hon. Murungi, I rule you are out of order in that respect for the following reason: When hon. Orengo brought his Motion, there was some haggling on the scope of the wording. At one point I remember telling hon. Orengo, if you want to discuss the conduct of the Speaker, you could as well say "this House has no confidence in the conduct of Mr. Speaker", and he said, "no, we have certain specific charges, we do not have to be that general and that wholistic". On that basis, you have to confine yourself to the wisdom of his judgement in those two rulings.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, I was trying to explain the root cause of those rulings, and I think I have made my point. I will now allow Prof. Anyang'-Nyong'o to continue. Thank you.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I rise to continue with what my friend, hon. Murungi has been saying, and I request the House to give me time to express my opinions in as much as I have given them time to express theirs. Since I have not stood on any point of order on anybody, I expect this House, in the name of justice, to do me that.

One thing is certain, that what we are witnessing today is a grave matter. To mention even the word censuring a Speaker in the Commonwealth system of Parliament, is a grave matter, and it will go down in the history of the Commonwealth Parliamentary Association that this very Parliament, as an institution, has taken to task an important office of this House. Therefore, our deliberations will be scrutinised very carefully. We must take the responsibility of either going to the deep root causes of this matter and dealing with it, or pretending it is not there. I think there is a grave problem here by the mere fact that Members have raised doubts about the conduct of the Speaker, hence the word "censuring" the Speaker. But I would like to say that we here, are mere passing clouds. We shall censure the Speaker, but we shall leave Parliament as an institution behind. It is this institution of Parliament that we must build, and the Speaker is part and parcel of this institution. Hence, if at one point of the history of this institution, his conduct becomes questionable, we must look into the manner in which the Speaker occupies that Chair, and build the process of him occupying that Chair, that does not lead to a Motion of censuring. That is why my dear friend, Mr. Murungi, was referring to the process of electing the Speaker because the root cause of this problem is to be found in that process.

The Speaker must be a man of unquestionable integrity, a man who, indeed, is the weather-vane(?) of arbitrating among people; a man who must, in being an umpire in this House, be seen to be fair and exercise fairness. But if in the process of trying to exercise fairness, he is impaired by the process in which he was elected, then indeed, he himself is jeopardised. We must, therefore, protect him by ensuring that the process in which he is elected protects him. I submit to this House that the root cause of the problem stems from the process in which the Speaker was elected. If, indeed, this House had had a Pre-selection Committee of all political parties to submit to this House a group of people from which this House jointly, by all political parties, elects one person of integrity, my dear hon. Kaparo would not have been put in this quagmire.

*(Applause)*

**An hon. Member:** Correct!

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I do think that, that list of people could have included such distinguished---

**The Minister of State, Office of the President** (Mr. Kones): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Prof. Anyang'-Nyong'o to start again contravening your own rulings, that we stick to the rulings made by the Speaker? We are not going to go into the election process of the Speaker. Now, the hon. Member on the Floor is trying to challenge the election of the Speaker, which took place some four years ago. It is totally irrelevant.

*(Loud consultations)*

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, it is very unfortunate because the last phrase in this Motion says: "hereby censures the Speaker".

if you are censuring somebody, you must know why you are doing so. I am trying to protect the Speaker by saying that if we had done something else, we would not have censured him. We would have on that Chair, such distinguished personalities as Chis de Souza or P. Nowrojee. Those two people could have occupied that Chair much more competently than the hon. Kaparo, if that process had been followed. Therefore, I submit to the other side to realise that next time you are electing the Speaker, let us get men who will be protected by the very process through which they are elected.

Thank you.

*(Applause)*

**Mr. Deputy Speaker:** Order! I wish to appeal once again and, I hope Members on both sides, and everybody understands the Motion. Let us, at least, as regards the conduct of the Speaker, confine ourselves to the Motion as it is. For heavens sake, let us not, in the last sentence, try to do what you know the Speaker would not otherwise be happy with, because you know you have the last word. Let us avoid that habit.

**The Minister for Information and Broadcasting** (Mr. Makau): Thank you very much, Mr. Deputy Speaker, Sir. I think one of the things we are witnessing this morning is something unique, because there has never been a Motion censuring the Speaker since this Parliament started. Also looking at other Commonwealth Parliaments, for example, a country like Canada since 1867, it was only in 1980 that it had a Motion censuring the Speaker. I am saying so to show the seriousness of any Motion that is brought to the House questioning the conduct of the Speaker. As hon. Members, we are supposed to guard against violence and set a good example to our electorate as to what should be done. This is not in line with what has been witnessed here this morning. Having listened right from the time that the Mover and the Seconder of this Motion spoke, it is difficult to see and get a grasp of why this Motion was brought to this House. So far, no speaker from those who are supporting this Motion has adduced any evidence that shows that the conduct of our Speaker has not been up to what it is supposed to be. One of the cardinal responsibilities of the Speaker is to preside over the debates of the House and to enforce the rules of the House. This Motion has been brought by the Opposition to this House for nothing other than cheap publicity. This Motion which has been sponsored by the Opposition---

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. Are you satisfied that the hon. Member is not imputing improper motives to those who moved and seconded this Motion because he has said it is meant for cheap publicity? Is that in order?

**The Minister for Information and Broadcasting** (Mr. Makau): I have stressed and I will continue

stressing that those who brought this Motion to this House and those who moved and seconded it and the Opposition in particular are seeking cheap publicity.

**Mr. Deputy Speaker:** Order! Order! I wish, once again, to appeal for moderation of language, hon. Makau. I find it a little bit burdensome to make a ruling one way or the other. When we make moves in this House, both sides of the House are seeking publicity obviously. I want you to avoid being unduly provocative. Be courteous to your colleagues. They are entitled, as you are under the law, to bring the Motion and that is why they brought it.

**The Minister for Information and Broadcasting (Mr. Makau):** This Motion touches on two issues; issues which we are deliberating on here, to see whether the conduct of the Speaker should be questioned. This is because of the fact that the Speaker is supposed to have integrity and bring the same to this House. One issue which we are concerned with is the issue of *sub judice*. We are aware that the Standing Order No.37(10) and Standing Order No.74 are very clear on what is *sub judice*. Any matter that is in court is not supposed to be brought to this House either in a Question form or referred to in a debate in this House. So, the Speaker was right in his own responsibilities and functions to caution and say that nobody should refer to that matter. It was the Members of the Opposition in the Public Accounts Committee who appealed to the President to intervene. The President made it clear that when matters concern Parliament, he has nothing to do with them. We have the independence of the executive, judiciary and the legislature. So, the Speaker was right in what he did and we should not disagree with that.

The other issue is on the question of expunging from the records the use of the word "President" to advance an argument or support. I was surprised when hon. Kibaki said that the Speaker has no powers to delete anything from the Public Accounts Committee Report. I would like to refer hon. Kibaki and other hon. Members in this House, to Standing Order No.29 which was referred to by hon. Shikuku.

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order, for hon. Makau to misrepresent hon. Kibaki? What hon. Kibaki said is that, the Speaker can only expunge any matters in this House and not those matters that are outside this House. This is because the Public Accounts Committee is not before the House and, therefore, the Speaker cannot expunge what is not in this House.

**The Minister for Information and Broadcasting (Mr. Makau):** I am surprised by that kind of argument from hon. Shikuku, a person who claims to know all the Standing Orders. When any Select Committee of this House is deliberating whatever it is doing, the Speaker is supposed to offer advice. According to Standing Order No.29, when we talk about a verbatim report, whatever the Select Committee, the Speaker is privy to any matter that is discussed.

**Mr. Maore:** On a point of order, Sir. Is the hon. Member in order to mislead the House? Under what circumstance can the Speaker go and edit a report which is still with the Committee? Standing Order No.29 reads as follows:

"Mr. Speaker may direct any matter which is in his opinion secret or domestic to be excluded from the journals---"

Is he in order to continue misleading and confusing the House?

**Mr. Deputy Speaker:** Order! Order! No hon. Member is ever in order to confuse, mislead or misrepresent in the House. But, I think, we are not sitting to debate the rules here. You can debate the rules when it is your turn to speak. Let us avoid these points of order which keep on referring to the rules. We know these rules very well.

**The Minister for Information and Broadcasting (Mr. Makau):** When a Select Committee is deliberating on an issue, and the Clerks of the House come to a situation whereby the decision needs the guidance of the Speaker, then the Speaker should be consulted and his advice adhered to. When there is a violation of that Standing Order No.73(1), where the Back Benchers who are Members of the Public Accounts Committee wanted to use the name of the President which they are not supposed to, because they are barred to do that by Standing Order No.73(1), then the Speaker had to come in and advice that those words should be deleted. That was in order. So, I do not understand why hon. Kibaki and hon. Shikuku who have been here since Independence, do not understand that this is the responsibility of the Speaker.

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is deliberately trying to mislead this House. I explained that the name of the President came into this as a result of the National Assembly Powers and Privileges Act, Cap.6 Section 18(3) where the President is mentioned. We do not want to bring the name of the President anyhowly. It is stated there explicitly that: "Any officer cannot refuse to give any information, unless he is so ordered by the President". That is why we wrote to him.

**The Minister for Information and Broadcasting (Mr. Makau):** Mr. Deputy Speaker, Sir. Here is a

question of the Members of the Opposition in the Public Accounts Committee behaving like the proverbial orphan who killed his parents and went to court to beg for mercy as an orphan. You are the ones who went to the Press and invited the President to intervene. In the first place, you violated the Standing Orders of this House. You are not allowed to divulge what you are discussing in the Public Accounts Committee. Having committed that offence, you come here and start saying, let us have mercy on ourselves. You are the culprits and you should not continue with that.

With those few remarks, I beg to oppose.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I would like to start by saying that I fully support the rights of this House to question the conduct of every public officer, including the Speaker, the President, the judges and everybody. That is the only way in which democracy can thrive. The provisions of Standing Order No.73 are merely intended to provide a *modus operandi* of doing just that. I am not even sure that, that Standing Order, as it is now, is adequate because it gives some kind of blanket cover, so that if one does not want the Speaker or the President to be discussed, you will find excuse in that Standing Order. It is so general and broad. Therefore, I think this House should consider, in what circumstances in the future we should discuss the conduct of the Speaker, the President, the judges and everybody else.

Now, having said that, I would also like to add that the debate which is going on today may well be a debate that is trying to find a scapegoat for the failures of this Parliament; for the failures of our political system. In that case, the Speaker today may well be a victim of circumstances. The question which we want to ask ourselves is: what is the root cause of the problems of this Parliament, Government and of this Motion? And I do not think that those problems arise from that Chair. I first came here in 1974 and, we had the first African Speaker then. Since then we have had a number of Speakers. I cannot say that the Speaker today is any worse or any better than previous Speakers and yet we have these problems. So, what is the root cause of this problem?

Mr. Deputy Speaker, Sir, I think the Motion today, maybe, is intended to camouflage these problems. Now, we should not have to do that. Does the KANU side recognise the role of the Opposition side? Do they?

**Hon. Members:** No, they do not!

**Mr. Anyona:** They do not. That is why we get the kind of answers we get to our questions and that is why nobody takes anything seriously on the KANU side. Equally, does this side of the Opposition recognise the role of the other side?

Thank you sir.

**Hon. Members:** No, they do not!

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, I do thank you for giving me the opportunity to reply to this Motion.

This Motion is based on the two rulings of the Speaker. One which was delivered on the 11th, June 1996 and the other ruling delivered on the 2nd, July 1996. The ruling of 11th, June 1996 concerns the issue of *sub-judice* and before this ruling was made, the Speaker had already written an opinion to the Public Accounts Committee (PAC) which on behalf of the Committee, I discussed with him as lawyer to lawyer, whereupon he invited me to do an opinion in reply which I consequently did. That opinion was endorsed by the whole Committee and we sent it to the Speaker. What annoyed the Committee was that in response to the Committee's opinion, the Speaker just wrote one sentence that he stuck to his earlier opinion without giving any reasons.

Mr. Deputy Speaker, Sir, the memorandum of the Committee concerning the *sub-judice* rule or convention simply stated as follows:-

"That the Speaker has every right to invoke the *sub-judice* convention when a matter is before the House".

But the Committee found it difficult to see how the Speaker could invoke the *sub-judice* rule when the matter was still in Committee before it had come before the House. The Speaker gave as authority, as the practice of the British Government and we answered that the Public Accounts Committee (PAC) in Great Britain meets in the open and members of the public and members of the Press can go and follow the proceedings. In our Parliament, the Public Accounts Committee (PAC) meets in *camera* and what they discuss in *camera* has no way of reaching the public and thereby prejudicing a matter before court and the only stage it can reach the public is when the report is finally laid before the House here.

At that stage, Mr. Speaker, we can then, say, "yes, we shall not debate such and such an issue because it is before the court". What the PAC wanted to do was to get to the bottom of the Goldenberg scandal to identify the actual beneficiaries of the Goldenberg billions, and in its cross-examination of various people concerned from the financial world, the investigations led to certain banks and the Committee wanted to know what accounts or whose accounts in those banks that the money went into. It was at that stage that now we were told that we could



not solicit that information because it will be touching upon a matter which was before the court.

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

**Mr. Wamalwa:** I will not accept that, Mr. Deputy Speaker, Sir. When the report---

**Mr. Ndotto:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Leader of the Official Opposition to indicate that what is *sub judice* can be discussed in the select committees of this House whereas we know that it cannot be discussed in this House?

**Mr. Ndicho:** Just ignore Mr. Ndotto.

**Mr. Wamalwa:** Thank you very much, Mr. Deputy Speaker, Sir. The Committee felt that when the report of the Controller and Auditor-General is laid on the Table of the House, and the House subsequently refers it to the Committee, the Committee is duty bound to report back to the House on every paragraph. According to the Speaker's ruling, the Committee was being stopped from reporting on every paragraph in that Book, and that is why we felt that the stage at which the Speaker could intervene was when the report was laid before the House, and not earlier. When the Speaker finally made that ruling, the Committee was lost as what to do, and yet the Committee was discharging a great public duty, a matter in which there is tremendous public interest, a matter which involves billions and billions of public funds. The Committee, therefore, in order to do some justice ultimately decided deliberately to do a small injustice in order to achieve greater justice, and, therefore, wrote to the President because he is the confluence of the three arms of Government. He is a very special institution and he is a Member of Parliament, head of the Executive, and---

**The Minister for Information and Broadcasting (Mr. Makau):** Mr. Deputy Speaker, Sir, now that the hon. speaker who is on the Floor has accepted that they did some small injustice to in order to achieve greater justice, does that not invalidate all that we are discussing today? Is he in order to put up an argument that they used a small injustice to violate the regulations of this House?

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, this country is going through a formative period in experimentation in democracy. It needs a reform minded Speaker to create traditions and anybody who occupies the Chair must realise that he is duty bound to protect the rights and the domain of Parliament. There is no point for the Speaker to shift all territories to the court when the courts themselves have said that what is being said in Parliament does not influence them. They have made that ruling in the Goldenberg case. Why should the Speaker gratuitously surrender Parliament territory to the courts?

(Applause)

Mr. Deputy Speaker, Sir, my time is limited and I intended to give a little time to the hon. Raila Odinga. But it suffices to say that we find that this current Speaker is not the right Speaker for the kind of formative development that this multi-party Parliament now needs. He is still high bound by having habits of the old single authoritarian regime. I will give Mr. Raila a chance.

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

**Mr. Deputy Speaker:** Mr. Raila, you have only two minutes left.

**Mr. Raila:** Mr. Deputy Speaker, Sir, I have got very limited time and I pray for the indulgence of the House to be heard in silence. What hon. Wamalwa has been alluding to is exactly the crux of the matter, that we have a problem of the misinterpretation of the Constitution. Our Constitution provides a very clear separation of power between the Executive, Legislature and the Judiciary. The President exists in three different capacities and I think therein lies the problem. When is the President acting as the Head of State, when is he the Head of the Executive and when is he the MP for Baringo Central, and when is he the Chairman of KANU? The Constitution also gives Parliament absolute authority, in as far as legislation is concerned, and the Constitution also says that any law that in a way contradicts the Constitution becomes invalid in as far as that contradiction is concerned.

Again, Mr. Deputy Speaker, Sir, if you look at the Standing Order No. 74 it says:- "No Member shall refer to any particular matter which is *sub judice*". This basically was meant for the proceedings of the High Court so that they could not be interfered with by the deliberations in the House. However, when the House is meeting in camera, when for example, a Committee of the House is taking evidence which is not likely to interfere with the proceedings of the High Court, Parliament has got the powers to make exclusions to allow the matter to be heard completely. In the House of Commons, they sometimes exercise their power and deliberate on matters which are before the court so long as that kind of discussion will not interfere with the proceedings in the High Court, and there is no reason why we ourselves tie our hands here in this House from debating issues which are of public interest, which is really our authority as a Parliament.

Mr. Deputy Speaker, the Speaker himself is an *ex-officio* Member of the House, according to Section 37

(4) of the Constitution. That, therefore, means that the Speaker is subject to all the Standing Orders of the House, he is not above the Standing Orders. He cannot, therefore, make a ruling which goes against the Standing Orders. It is very clear that this ruling of the Speaker went against Standing Order Number 70 which says that no Member is allowed to anticipate a debate. A matter which was still before the PAC was not before the House, and, therefore, the Speaker had no business making a ruling to do with a matter which was before the Committee.

With those few remarks, I beg to support.

*(Question put and negatived)*

**Hon. Members:** Division! Division!

**Mr. Deputy Speaker:** I direct that the Division Bell be rung.

#### DIVISION

*(The Division Bell was rung)*

*(Question put and the House divided)*

*(Question carried by 88 to 57)*

**AYES:** Messrs. Achieng'-Oneko, Achola, Akumu, Aluoch, Busolo, Gitau, Gitonga, Icharia, Kairu, Kamuyu, Kapten, Karan, Karengé, Kibaki, Kiliku, Kimani, Kinyua, Dr. Kituyi, Dr. Lwali-Oyondi, Messrs. Mak'Onyango, Maore, Mathenge, Mbeo, Michuki, Muite, Mungai J.N., Mungai R.K., Munyasia, Murungi, Mutani, Mwangi W.G., Mwangi Githiomi, Mwaura, Mwiraria, Ndicho, Ndubai, Ndwiga P.N., Mrs. Ngilu, Bishop Njeru, Messrs. Nthenge, Nyanja, Nyagah, Prof. Anyang'-Nyong'o, Messrs. Obure, Obwocha, Raila, Dr. Odinga, Mr. Ojode, Dr. Ombaka, Mr. Onyango, Dr. Opere, Messrs. Orenge, Ruhiu, Shikuku, Sifuna, Wamae, Wamalwa.

Tellers of the Ayes: Messrs. Falana and Gitau

**NOES:** Messrs. Abdi, Angatia, Anyona, Ali, Arte, Awori, Ayah, Badawy, Biwott, Boy, Falana, Galgalo, Dr. Godana, Messrs. Gumo, Imana, Kaino, Kalweo, Kamotho, Kamuren, Kariuki, Kavisi, Khalif, Khaniri, Kiluta, Kirior, Kirima, Kirwa, Kisiero, Kochalle, Koech, Kofa, Komen, Komora, Kones, Kosgey, Ligale, Lotodo F.P.L., Lotodo J.D., Magwaga, Makau, Manga, Manoti, Marita, Maundu, Mbela D.M., Dr. Misoi, Messrs. Mohamed Farah, Mohamed H.M., Moiben, Dr. Momanyi, Messrs. Morogo, Muchilwa, Mudavadi, Mulinge, Muoki, Munyi, Musyoki, Mutinda, Mwamzandi, Nang'ole, Mrs. Ndeti, Messrs. Ndilinge, Ndotto, Ndzai, Ngala, Prof. Ng'eno, Messrs. Noor, Ntimama, Nyachae, Mrs. Nyamato, Dr. Onyanka, Messrs. Osogo, Otieno, Oyondi, Rai, Rashid, Rotino, Saina, Prof. Saitoti, Messrs. Sambu, Sankori, Shabaan, Shidie, Sing'aru, Sumbeiywo, Titi, Dr. Towett, Messrs. Wawire, Wetangula.

Tellers of the Noes: Messrs. Rotino and Munyasia.

#### ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, the House stands adjourned until today, Wednesday, 10th July, 1996, at 2.30 pm.

The House rose at 1.00 p.m