

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st October 2015

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

ADDRESS BY VISITING DIGNITARY

Hon. Speaker: Hon. Members, I have a Communication to make, but I expect Hon. Dawood to be seated. The Members who are making their way in, including those who are returning from overseas, please, take your seats.

Hon. Members, it has been reported to me that when we make several Communications, only between 15 and 20 per cent is absorbed. So, I have been advised to limit the number of Communications that I make. I have only one Communication and I hope this will be absorbed 100 per cent.

This Communication relates to a Joint Sitting of the Houses of Parliament on Tuesday, 6th October 2015 for purposes of an Address by a visiting dignitary. The Speakers of the Houses of Parliament have received a request from the Office of the President to allow His Excellency, (Dr.) Jakaya Mrisho Kikwete, President of the United Republic of Tanzania, to address a Joint Sitting of the Houses of Parliament on Tuesday, 6th October 2015. His Excellency President Kikwete will be on a State visit to Kenya.

Hon. Members, Standing Order No.25(1) states:-

“The Speaker may, in consultation with the Leader of the Majority Party and the Leader of the Minority Party, allow a visiting Head of State or other such visiting dignitary, to address the Assembly, and may, in consultation with the Speaker of the Senate arrange for a joint sitting of Parliament for purposes of an address by such Head of State or such other visiting dignitary”.

In this respect, I wish to convey to the House that having made the requisite consultations, the Speaker of the Senate and I have consented to the request. This is, therefore, to invite all Hon. Members to a Joint Sitting of the Houses of Parliament which will be held on Tuesday, 6th October, 2015 in the National Assembly Chamber, Main Parliament Buildings at 2.30 pm, for purposes of an Address by His Excellency (Dr.) Jakaya Mrisho Kikwete, President of the United Republic of Tanzania. I wish to take this earliest opportunity to request all of you, Hon. Members, to avail yourselves for this auspicious occasion.

Hon. Members, due to the enormous legislative agenda before the House particularly the various Bills with constitutional deadlines, the National Assembly will resume its ordinary sitting shortly after the address by His Excellency President Kikwete.

Thank you.

(Loud consultations)

Hon. Members, the consultations are too loud from both sides of the divide. Please, lower the decibels.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 1st October, 2015:-

The Second Quarterly Report of the Ethics and Anti-Corruption Commission covering the period 1st April, 2015 to 30th June, 2015.

The Annual Report and Financial Statements of the Kenya Meat Commission for the year ended 30th June, 2014.

The Annual Report and Financial Statements of Kibabii University College for the year ended 30th June, 2014.

The Annual Report and Financial Statements of Agrochemical and Food Company Limited for the year ended 30th June, 2014.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund Board for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Kacheliba Constituency) for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Turkana East Constituency) for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Keiyo North Constituency) for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Hon. Speaker: Very well. Yes, Hon. Mahamud Maalim.

Hon. (Eng.) Mahamud: Hon. Speaker, I beg to lay the following Paper on the Table of the House, today Thursday, 1st October, 2015:-

The Report of the Departmental Committee on Transport, Public Works and Housing on the Engineering Technologists and Technicians Bill, 2015.

Hon. Speaker: Very well. Yes, Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Papers on the Table of the House, today Thursday, 1st October, 2015:-

The Reports of the Departmental Committee on Environment and Natural Resources on:-

(1) Its consideration of the Senate Amendments to the National Drought Management Authority Bill, (National Assembly Bill No.42 of 2013).

(2) Investigation into wildlife poaching in Kenya.

(3) Petition by Mr. Geoffrey Elphas Kokonya on behalf of the Bukhaya Council of Elders regarding the construction of a dam along Suo River.

Hon. Speaker: Very well.

NOTICE OF MOTION

ADOPTION OF REPORT ON POACHING IN KENYA

Hon. Speaker: Yes, Hon. Amina.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the Investigation into Wildlife Poaching in Kenya, laid on the Table of the House today, Thursday, 1st October, 2015.

STATEMENTS

BUSINESS FOR WEEK COMMENCING TUESDAY 6TH TO 8TH OCTOBER, 2015

Hon. A.B. Duale: Hon. Speaker, Pursuant to Standing Order No.44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the Business appearing before the House the week beginning Tuesday 6th October, 2015:-

Hon. Speaker, as usual, the House Business Committee met on Tuesday this week to prioritise the business of the House. Having resumed from the long recess, the Members now are ready for the business at hand. On Tuesday next week, a Joint Sitting of the Houses of Parliament will be addressed by the President of the United Republic of Tanzania. I wish to reiterate the words of the Speaker that Members should avail themselves for this Joint Sitting. Thereafter, the House will consider the following Bills:-

- (i) The Magistrates' Courts Bill, 2015;
- (ii) The High Court Organisation and Administration Bill, 2015;
- (iii) The Small Claims Bill, 2015;
- (iv) The Court of Appeal (Organisational Administration) Bill, 2015;
- (v) The Petroleum (Exploration, Development and Production) Bill, 2015;
- (vi) The Community Land Bill, 2015; and,
- (vii) The Fiscal Planning Bill, 2015.

The relevant Committees are asked to finalise their consideration of the above mentioned Bills and table their reports in good time in order to enable Members to acquaint themselves with the contents of those Bills.

Also to be considered in the same week is the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the Crisis Facing the Sugar Industry in Kenya, among many other reports; and any other business that we would not have concluded today.

Hon. Speaker, allow me to bring to the attention of the House the 13 constitutional Bills which concern county governments, and thus will require consideration by both Houses of Parliament. The Bills ought to be considered and concluded by this House before the December recess, taking into consideration the time the Senate requires and mediation process that may arise.

The following Bills with a constitutional timeline of 27th August, 2016 have now been published and are ready for debate by this House:-

- (i) The Bill on progressive realisation of social rights (Article 43);
- (ii) The Bill on procedure on declaration of state of emergency (Article 58);

(iii) The Bill to fully actualise Article 52 on the process and procedure of referendum;
(iv) The Central Bank of Kenya (Amendment) Bill;
(v) Provision on maximum and minimum acreage of land usage;
(vi) The Historical Land Injustices Bill;
(vii) Article 173 (5) relating to regulation of the Judiciary Fund;
(viii) Section 17 of Sixth Schedule of the Constitution concerning the restructuring of the Provincial Administration.

Hon. Speaker, because next Tuesday will be a busy day for the National Assembly, we will not have the usual Question Time Session between Cabinet Secretaries and Members of Parliament. The Constitution Implementation Oversight Committee (CIOC) is required to expedite the publication of those Bills and introduce them in the House in good time.

The House Business Committee (HBC) will reconvene on Tuesday, 6th October, 2015 at the rise of the House to consider the business for the rest of next week.

I beg to table the Statement.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: Hon. Members, I hope you appreciate the information relating to the number of Bills with constitutional deadlines, which require the participation of the other House. We need to prioritise, finish with them and refer them to the Senate for their participation. It is important that the various Chairpersons of Committees accordingly try to fast-track them. I will allow Hon. Amina Abdalla to make some comments relating to one of the reports touching on a petition filed by some villagers from Bukhayo or someplace like that.

Hon. Amina Abdalla, before you do so, allow me to recognise the presence, in the Public Gallery, of students from Mutuati Bidii Academy, Igembe North Constituency, Meru County; Bisisimo Junior Academy, Embakasi Constituency, Nairobi County; and Kalundborg High School from Denmark. You are welcome to the Parliament of Kenya.

Proceed, Hon. Amina Abdalla.

PETITION

HALTING OF DAM CONSTRUCTION ALONG SUO RIVER

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. I rise under Standing Order No.225 regarding the requirement that we could have some comments on a petition. Mr. Alphas Kokoya, on behalf of the Bukhayo Council of Elders, asked the House to halt the construction of a water dam at Bunyala by West Kenya Sugar Company in Busia County.

Having gone through that Petition and made visits to the site, the Committee's findings are as follows:

- (1) There is no construction of a water dam along Suo River by West Kenya Sugar Company; instead the Company intended to obstruct water from the river.
- (2) The National Environment Management Authority (NEMA) and the Water Resource Management Authority (WRMA) did not take proactive measures to inform the communities regarding the project.
- (3) There is no evidence that the Water Resource Users Association in Nambale exists.

- (4) The establishment of sugar factories was welcomed by a majority of the stakeholders. The concern of the residents seems to be the close proximity of the two factories from each other which they think will lead to poaching.
- (5) Finally, a letter by the Sugar Board of Kenya on the unauthorised construction of a sugar company by the West Kenya Sugar Factory contradicts NEMA's assertion and requires an independent finding.

Hon. Speaker, on the prayer of the petitioners, the Committee's findings are as follows:-

- (1) There is no construction of a dam as indicated in the prayers of the petitioners and, therefore, the prayer cannot be granted. There is also enough water in the Suo River as per the submission by the WRMA to support the use by both residents and the factory.
- (2) The NEMA and the WRMA should carry out public participation, as required by Article 69(d) of the Constitution, for major projects that may affect water levels in rivers.
- (3) Proactive steps should be taken by the NEMA and the WRMA to inform the community of the intention of West Kenya Sugar Company to obstruct water at Nambale.
- (4) Finally, and this seems to be the bone of contention in this matter, the Committee recommends to the Departmental Committee on Agriculture, Livestock and Cooperatives to address, through legislation, the distances between sugar companies because this appears to be leading to unhealthy business rivalry that is not suitable for the development of the sugar sector in the region, and may be the basic issue under this Petition.

The reason why I thought it was important to raise these matters is that a lot of time petitioners have underlying issues they want addressed but their prayers raise separate issues. For example, when we reached Busia we realised that their problem was the close proximity of the factories, but their prayers did not address that aspect. Therefore, we could not answer their prayers as they wanted yet they had invested in this Petition. As a House, we probably need to mount a public awareness campaign on petitions and the importance of prayers made to this House through petitions since we cannot answer prayers not contained in their petitions.

I wish to thank you and the House for allowing us to go to the ground. If we had just listened to the petitioners in Nairobi, we would not have got the wider perspective that we got.

Hon. Speaker: Hon. Members, I wish to draw your attention to provisions of Standing Order No.227, relating to the manner in which reports on Petitions may be dealt with. It is on this that I have applied sub-section 2 thereof, because it is an exceptional matter. For that reason, I will allow a few comments lasting not more than 20 minutes. The first one on the line is Hon. Michael Onyura.

Hon. Onyura: I am Sorry, Hon. Speaker. It is not at this point.

Hon. Speaker: Okay. The next one is Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker. I want to thank the Committee for finding time to visit Nambale. I spent time with them. The Hon. Chair of that Departmental Committee forgot to say that but I went to specifically spend time with them. This Petition is a symptom of fierce resource competition. Even though it has not reached critical levels, it is potentially an explosive issue. However, it was clear that the quantum of extraction of water at the moment does not deny the other users adequate water, even in low flows. For now, that is an issue that will be resolved.

However, it is absolutely and entirely shocking that public institutions were not only contradicting each other. They were either hiding the truth or telling lies literally. That was true with regard to NEMA and the WRMA. They are sleeping on their job. They do not respond to communication. It was clear that the representatives of the petitioners had written to them and they did not respond nor acknowledge. It was also clear that they were acting in an extremely bureaucratic way. I hope, as the Chair has said, the Committee will find a way in which they can put some pressure on these institutions to provide services to the community since they report to it.

Secondly, it is clear that the institutions, including the investors were not getting clear directions from the Kenya Sugar Board (KSB). The KSB has clearly written to them telling them what to do or not to do. That has been completely ignored and the investors with clearly the connivance of a number of public servants are doing their own things. It is a representation of bad governance in that sector. I hope that the Committee will put pressure on them.

Lastly, what was emerging was that in spite of the merits of the arguments, since people are seeing factories coming up, they are taking positions in relation to expected benefits from each of those factories. This is a community but the information they were providing is partisan to some extent.

I would also like to add that the location of sugar factories in Western Kenya has been contentious. What has been happening in Malava is beginning to happen in Matayos which borders Nambale. If this continues, we will be expecting occurrence of more serious conflicts. That will largely be due to lack of capacity or people from the relevant institutions sleeping on their jobs.

I am glad and I can say with confidence that the small matter that has been raised of the water extraction, even though they talked about the dam, which is still extraction, will probably come to rest. What was also surprising for anybody who wants to do irrigation---

(Loud consultations)

Hon. Speaker: Hon. Members, there is too much consultations. We cannot even hear what Hon. Sakwa Bunyasi is saying.

(Hon. Cheruiyot stood up in his place)

Hon. Zakayo Cheruiyot, if only you would have been a little taller, I would have drawn your attention to the Standing Orders about standing between the Member speaking and the Chair, but you are lucky that even as you stood, I was able to see the Member contributing.

(Laughter)

Hon. Bunyasi: Thank you, Hon. Speaker. The other thing we should note, having experienced scarcity of water in Kenya, is that the use of water resources should be regulated. The extraction we are talking about is done in a non-technical way that you cannot reliably measure the amount of water being extracted. So, chances that the extraction can by far exceed what is approved are high since the section used to extract water is an awkward section whose dimensions are not clearly measurable.

With those few comments, I want to thank the Committee for discovering where Nambale/Matayos is, and coming to the ground. I hope that when bigger issues arise, they will come back.

Thank you very much.

Hon. Speaker: Very well. May I know whether the Members whose names appear here, want to say something on this Petition or on something else. Can I get an indication from Hon. Maanzo. Is it about this Petition?

Hon. Maanzo: *(Inaudible)*

Hon. Speaker: I thought you claimed to have learnt some law somewhere. You notice that some institutions are being closed. I am asking about this Petition. I do not want to remove your name from where it is because you are very well placed. That is why I wanted to get your--
- Hon. Shakeel, is it about this Petition?

Hon. S. S. Ahmed: Not on this.

Hon. Speaker: Not about this. Hon. Wangwe, is it about this Petition?

Hon. Wangwe: Thank you, Hon. Speaker. It is about this Petition. First of all, I want to thank Hon. Amina for bringing out the facts as they are on the ground. In the recent past, there have been many issues touching on production of sugar. What has come out clearly and the truth on the ground is lack of regulations. The fact that Hon. Amina has brought out to the Departmental Committee of Agriculture, Livestock and Cooperatives is what I want to emphasize, that we have regulations brought to this House, to set the parameters between new factories and the existing factories.

If you look at the reasons for poaching of sugarcane from Mumias Sugar Company, you will find that new factories are coming up but they do not have nuclear estates. They do not have land to produce enough cane to crush. What happens is that they end up crisscrossing into the existing farms. As a result, there are fights between new factories and the old factories.

Let us have regulations being brought to this House so that sugar factories can run in the same manner tea factories are running, but if we proceed in the manner we are doing in connection to sugarcane production, definitely we are not going anywhere. I will insist that we bring regulations to this House that will state that a 20 to 40-kilometre radius should be observed when a new sugar factory is being established.

Lastly, I would like to say that the investors should also come out clearly, should not abuse the right of investment, use the locals and take advantage of them not being informed to bring misleading petitions to us, and yet their interest is all about business. There are very many factories that are coming up not because they are interested in farming but because they want to use the locals to abuse the investment of farmers.

Thank you, Hon. Speaker.

Hon. Speaker: May I get an indication from Hon. Onyonka.

Hon. Onyonka: Thank you, Hon. Speaker. If you look at the Report that Hon. Amina has tabled in this House, it is important for Committees in this House to realise that the responsibility that is bestowed upon us is weighty. If a Committee works very well, we will resolve some of the issues that are constantly in our country. Instead of some of these matters becoming litigious and being rushed to court or creating discontent, the Departmental Committees of Parliament should sort out some of these issues.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, that should conclude that business. Hon. Lang'at, were you interested in this?

Hon. Langat: Yes, Hon. Speaker. The Chairperson seems to be saying that there was a disconnect between the prayers and what the community wanted to do. I want to request your Office to ensure that we have a desk which can be facilitating members of the public who want to prepare Petitions. This is so, so that petitions that come to the Floor of the House reflect what the members of the public want. I have always encountered the same problem where you find prayers being sought being different from what the petitioners wanted. It puts the Committees in an awkward position. I would like to thank the Departmental Committee headed by Hon. (Ms.) Amina Abdalla for bringing up this issue.

I would also like to encourage you and the leadership of the House to put up a Petition Office to facilitate members of the public so that we prepare the petitions that agree with the prayers of the public. She has requested the Departmental Committee on Agriculture, Livestock and Cooperatives to prepare the legislation on the location of sugar factories. The Committee is moving to do that and I have heard the comments of Hon. Members. We must regulate but we need to encourage competition. If we allow one company to dominate, we risk abusing the farmers. So, as the Departmental Committee on Agriculture, Livestock and Cooperatives, is going on with that, I would like to encourage Hon. Members from western Kenya to take care so as not to give one company an overall opportunity to abuse farmers.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Kathuri, may I understand whether you want to contribute to this matter or not?

Hon. Murungi: Yes, Hon. Speaker. I would also like to thank the Committee, which I am a Member, for this Petition. I want to note that this Petition was brought directly to this House by members of the community. If this community had consulted their Member of Parliament, who is in this House and has contributed to this Petition, maybe it could have been directed better on how to handle this Petition. This is because you can see that the issues that the community wanted addressed have not been addressed. I want to observe that sometimes we handle petitions, and in the process add other things as a Committee. For example, we now have several recommendations that were not part of the prayers. What should this House do with the recommendations? This is because we are not answering to the prayers and yet the Committee has some findings and recommendations to put across. What will happen to these recommendations? Will they disappear to the blues because they are not part of the Petition or prayers sought by the community?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Kathuri, I thought by this time you know we have a Committee on Implementation. It is that Committee which should take up the matter as you have rightly pointed out. The area Member of Parliament can push the Committee on Implementation to ensure that whatever was recommended is implemented. From where I sit, I do not follow anything on implementation. I think it is fair that the Committee on Implementation gets the gist of the matter.

Yes, Hon. Nooru.

Hon. Nooru: Thank you, Mr. Chairman. Mr. Chairman, I want to thank---

Hon. Speaker: Hon. Nooru, which Chairman are you addressing?

Hon. Nooru: I am sorry, Hon. Speaker. I would like to thank Hon. (Ms.) Amina or responding to this Petition. The issue at hand is that there is no vacuum in terms of regulation. The regulation is there but there are people who have failed to follow it. We have had the sugar industry being regulated by the Sugar Board. This has since been replaced by the Agriculture,

Fisheries and Food Authority (AFFA) which is now regulating the sugar industry. However, if you have listened to Hon. (Ms.) Amina on this particular issue, the regulatory body has written a letter to the effect that there is a particular investor who has put up a factory in a wrong place. That law was not enforced because the law enforcement was not only to be done by the Sugar Board. They do not enforce it in vacuum but with other Government and security agencies. There seems to be lack of co-ordination between the two agencies namely the Government security agencies and the NEMA. We will look at the regulation once again and see how the NEMA Act that is in place could cover a 40-kilometre radius.

With those few remarks, I thank you.

(Loud consultations)

Hon. Speaker: Hon. (Ms.) Abdalla, what is the issue?

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. The Coalition for Reforms and Democracy (CORD) side of the House is consulting the loudest and yet the matter we are discussing in this Petition is relating to sugar production in Kenya. They argued a lot on sugar importation and yet they are not listening. They are not listening to the problems and they will not help us legislate to solve those problems. However, we will find them in funerals talking about sugar. Is that fair?

Hon. Speaker: Well, this is a House of records. Maybe those who are busy consulting are sure they will look for the HANSARD record and see what has been said. Even if we proceed, the HANSARD record will capture what is said by the speakers. That should suffice as in any event under Standing Order No. 227 the contributions must not exceed 20 minutes which is the time we have almost exhausted.

I will direct that we go to the next Order.

BILLS

Second Readings

THE ENGINEERING TECHNOLOGISTS AND TECHNICIANS BILL

(Hon. (Ms.) Ngetich on 26.8.2015)

(Resumption of Debate interrupted on 30.9.2015)

Hon. Speaker: Order, Hon. Members! Take your seats. I am talking about those who are canvassing for something or campaigning, whatever the case may be. Those who are standing, including the brown Member from Laikipia North, and Hon. (Ms.) Wanga, take your seats so that we can proceed with business. It looks like that is what you are canvassing.

Hon. Members, we are now on Order No.8, for those who may not have heard the Clerk read out. It is on the Engineering Technologists and Technicians (National Assembly) Bill No.7 of 2015. The debate on this Bill was concluded yesterday in the morning but for reasons I am told are well known to all of you, the Question was not put.

(Question put and agreed to)

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(SENATE BILL NO. 6 OF 2014)

Hon. Speaker: Similarly, Hon. Members, what remains for me here is to put the Question. I proceed to do so.

(Hon. A.B. Duale on 29.9.2015)

(Resumption of Debate interrupted on 30.9.2015)

(Question put and agreed to)

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

(Loud consultations)

Hon. Speaker: Order, Members! Let us allow Hon. George Peter Kaluma. I think Hon Kaluma went to a place where he normally does not sit. So, his card is---

Hon. Kaluma: Hon. Speaker, I stand before you and Hon. Members of the august House this afternoon under Standing Order No.139 as read together with Standing Order No.1 to request that the Motion appearing as Order No.10 be deferred to a future date.

(Applause)

This is a very important Motion. It requires some numbers in terms of constitutional provisions. By checking through the House, I see there is a limitation in that regard.

(Loud consultations)

Hon. Speaker: The request is granted. The request is acceded to. Accordingly, Hon. Members, Order No.13, as a consequence will be transacted another date. Order No.10, at the request of Hon. Kaluma who is the Mover, is taken out of the Order Paper and as a consequence Order No.13 is similarly taken out of the Order Paper. So, we will go to Order No.11

(Committee of the whole House on the Constitution of Kenya (Amendment) (No.2) Bill deferred)

THIRD READING

THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NO.2)

Hon. Speaker: Hon. Members, as has been clearly read out by the Clerk, this is the last attempt. I am sure even your Order Papers read the same. For the convenience of the House, I will direct that the Division Bell be rung for five minutes.

Hon. Members: Ten minutes!

Hon. Speaker: You want the Division Bell to be rung for 10 or five minutes? Hon. Members, including Hon. Washiali, remember it was supposed to be only three minutes. I am the one extending. Indeed, I just wanted to get a feel of your views. It was supposed to be three minutes, but I direct that the Division Bell be rung for five minutes.

(The Division Bell was rung)

Hon. Speaker: Order, Hon. Members! Resume your seats, Hon. Members. Hon. Sumra, Hon. Keynan and Hon. K'Oyoo, take your seats. I am assuming that no Member is in the small rooms behind the Speaker because they are likely to lose their right to participate in this Division.

Hon. Members, I direct that the doors be closed and the Bars be drawn, including the ones behind the Speaker.

(The doors were closed and Bars drawn)

Hon. Members, I need to remind you the Question.

Hon. Members, I am informed – and I hope the records will bear me out – that the Bill had passed the Second Reading and also went through the Committee of the whole House. What remains now is the Third Reading, which is the final stage of the Bill. So, the Bill is to be read a Third Time and not a Second Time as it appears in the Order Paper. That is a mistake the Clerks-at-the-Table have corrected.

For avoidance of doubt, this is a Bill sponsored by Hon. Lati Lelelit. Many of you debated the Bill and you know its contents. I ask all Hon. Members to log out.

Hon. Members, Hon. Abdullswamad Nassir suggests that Hon. Sumra is still in school uniform.

Hon. Members, I am informed that some Members' cards are not working. Those with cards which are not working, please step forward with the card.

(Several Hon. Members moved to the front row)

Hon. Members, are you coming forward? Hon. Ameso, I was not too sure that you are walking this way. I thought you are just around.

Hon. Members, you now have 60 seconds to log in. Hon. Diriye, your card is showing.

Hon. Members, vote now.

DIVISION

(Question put and the House divided)

Order, hon. Members! Order, Hon. Waititu! Hon. Emasse, take your seat. Hon. Members, the following are the results. Electronically, the Ayes are 231, the Nay is one and abstention nil.

Manually, Ayes are 15, Nays are one and abstention zero. The total is Nays 2, the Ayes 246. Therefore the Ayes have it. The Bill may now be read a Third Time and thereafter referred to the Senate for consideration.

(Question carried by 246 votes to 2)

AYES: (Dr.) Simiyu, Messrs. Elmi, Mwamkale, K.K. Kinyanjui, Lempurkel, Lati, ole Kenta and Baiya, Ms. Mwendwa, Messrs. J. O. Omondi, P.E.O. Anyanga, Oyoo, Abass, Abdinoor, Aden, Dawood, Farah, Nassir, Nooru and A.B. Duale, Ms. Katana, Messrs. Mwiru, Sambu and Dido, Ms. Chae, Ms. A.W. Ng'ang'a, Ms. Abdalla, Messrs. A.T. Anyanga, Kimaru, Simba, Odera, Bady and Shill, Ms. B.N. Nyaga, Messrs. Momanyi, Shinali, Washiali, Andayi, Mbai, Kangara, B.K. Bett, Bishop R. Mutua and Otsiula, Ms. Ngetich, Messrs. Ganya, Njagagua, Gimose, Geni and Nakuleu, Ms. Ombaka, Mr. Omulele, Cpt. Wambugu, Messrs. Serem, Kubai Iringo, Anyango, Maanzo, Nanok, Sitati, Gikaria, Bowen, Karithi, Wekesa, Were and Diriye Mohamed, Ms. Kedogo, Messrs. Moindi, Lagat, Busienei, Wangwe, J.K. Chege, Ngare and Eric Keter, Ms. Mathenge, Mr. F.K. Wanyonyi, Ms. F.M. Mutua, Ms. Kajuju, Messrs. Kilonzo, Nderitu, Nyenze, Francis Waititu, Njenga, G.W. Omondi, Theuri, Irea and Mung'aro, Ms. Nyasuna, Messrs. Rai, Chea, Dukicha and Osman, Ms. Chepkwony, Prof. Sambili, Messrs. Saney, Mohamed Abass, Mustafa, Kiptanui, Rop and Macharia, Ms. Banticha, Messrs. Gakuya, Mukwe, Ekomwa, Ondicho and J.K. Bett, Prof. Nyikal, Ms. Machira, Ms. Wanyama, Ms. Teiya, Messrs. Angwenyi, Olum, Omagwa, Kipyegon, Kihagi, Serut, Waiganjo, Kobado, Nakara, Kariuki Ndirangu, J.N. Chege, J.M. Nyaga, Gitari, J.K. Ng'ang'a, Lekuton, Limo, Lomwa, M'uthari, Manje and Magwanga, Ms. Lay, Ms. Emanikor, Messrs. Njomo, Melly, Kariuki Ndegwa, Kemei, Kabando wa Kabando, Kajwang', Kanini Kega, Mbiuki, Murungi, Mirenga, Okoth, Keynan, Mwashetani, Ichung'wah, Barchilei, Moi, Bitok and ole Lemein, Ms. Korere, Messrs. Aramat, Sang, Kamanda, Mulu and Lomunokol, Ms. Keraa, Ms. Mbugua, Ms. Seneta, Ms. Munene, Messrs. S.A. Ali, Memusi, Onyura, Kisoi, M.D. Duale, Shidiye and Abdi Mohamed, Eng. Mahamud, Messrs. Cheboi and Mati, Dr. Shaban, Ms. Ibren, Messrs. Gaichuie and Ngikor, Eng. Gumbo, Dr. Oginga, Messrs. Aluoch, Ngunjiri and Njuki, Dr. Nyongesa, Messrs. King'ola, ole Ntutu, Wangamati, Kinyua, Gitau, Shehe and Rotino, Ms. Kanyua, Mr. Akujah, Ms. R.K. Nyamai, Ms. Shebesh, Messrs. Letimalo and Bedzimba, Ms. Muia, Ms. Changorok, Ms. R.N. Wanyonyi, Messrs. Onyonka, Tong'i and Mbui, Dr. Pukose, Mr. Tonui, Ms. Mitaru, Ms. Nyamunga, Ms. S.W. Chege, Messrs. Bunyasi, Koech, Mwaita, Chepkong'a, Gichigi, Arama, Chumel, Isaack and S.S. Ahmed, Ms. Shakila Mohamed, Ms. Gure, Messrs. Tiren, Ogari, Karani, Mule, Manoti, Murunga, Bosire, Wetangula and Ngahu, Dr. Munyaka, Messrs. Cheptumo and Kisang, Ms. W.K. Njuguna, Messrs. Chanzu, Abdi, Cheruiyot, Opolo, Ms. Juma, Mr. Otaalo, Ms. Amolo, Messrs. Mlolwa, Opiyo, Owour, Mwadeghu and Kaluma, Ms. F.I. Ali, Messrs. Stephen Kariuki, Lang'at, Ferdinand Waititu, Kariuki Ndegwa, Aburi, Konchella, Ms Otucho.

NOES: Messrs. Maweu and Sumra.

(The Bill was accordingly read the Third Time, passed and referred to the Senate for Consideration)

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Hon. Speaker: Hon. Members, for the convenience of the House, I wish to remind you the Question and you will go straight to voting without the need to ring the Division Bell, draw up the Bar or close doors. The Question is:

THAT, the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 01 of 2015) sponsored by Hon. David Ochieng be read a Second Time.

Hon. Members, it is a second time; it is a last attempt. I was present myself; so, I know it is a second time. If you look at the Order Paper, it is meant to be here for the second time.

Hon. Members, I think we will go straight to voting.

Hon. Members: Yes.

Hon. Speaker: Log out. Those without cards, please--- Hon. Ichung'wah, go back to your seat. Hon. Members, log out please.

(Loud consultations)

Hon. Members, just log out so that we can vote quickly. Those whose cards cannot vote, like the one of Hon. Peter Kaluma, can come to the front. Hon. Mwaura, your card can now vote. Hon. Members, make sure you log out. For those whose cards are not able to function, please come to either side of the Hon. Speaker. Those Members whose cards are not working like that of Hon. Otaalo should come here. Hon. Fatuma, this one always gets late. You will be locked out.

(Loud consultations)

Dr. Murgor, I am told you said your card is not working?

Hon. Murgor: Yes, Hon. Speaker.

Hon. Speaker: Then you do not remain there! You come here. I thought I was addressing the likes of you.

An Hon. Member: And Hon. Mwaura too.

Hon. Speaker: Is he here?

Hon. Members, I am told that you should log in now. Please, log in. Hon. Esther Murugi, log in for the purpose of voting.

(Loud consultations)

Hon. Members, you may vote now.

Hon. Members: Yes.

DIVISION

Question put and the House divided)

Hon. Speaker: Is it the end of voting? Have you finished?

Order, Hon. Members! These are the results, electronic voting, the Ayes are 201. The Nays are 21. Abstentions are 3. On manual voting, the Ayes are 15. The Nays are 3 and Abstention is 1. Total is; Abstentions are 4; Nays are 24 and the Ayes are 216.

(Question negated by 216 to 24 votes)

(Hon. Kajwang' clapped)

Hon. T.J. Kajwang, in the House, there is no clapping. You can never clap here. You should be the one to administer punishment to anybody who claps.

Hon. Members, even though the Motion has 216 in favour, it has failed to reach the threshold of 233.

(Applause)

In terms of Standing Order No.62 (3), it is, therefore, negated and lost.

Next Order.

You may open the doors.

AYES: Ms. A.W. Ng'ang'a, Ms. Abdalla, Messrs. A.T. Anyanga, Kimaru, Mwamkale, Odera, Bady, Shill, Ms. B.N. Nyaga, Messrs. Momanyi, Shinali, Washiali, Andayi, Lang'at, KK Kinyanjui, Mbai, Kangara, B.K.Bett, Bishop R. Mutua, Otsiula, Ms. Ng'etich, Messrs. Ganya, Njagagua, Gimose, Geni, Nakuleu, Lati, Omulele, Wambugu, Serem, Kubai Iringo, Anyango, , ole Kenta, Nanok, Sitati, Gikaria, Bowen, Karithi, Wekesa, Were, Diriye Mohamed, Baiya, Moindi, Lagat, Busienei, Wangwe, J.K. Chege, Ngare, Eric Keter, Ms. Mathenge, Ms. Mwendwa, Mr. J.O.Omondi, Ms. Kajuju, Messrs. Kilonzo, Nderitu, P.E.O.Anyanga, Njenga, G.W.Omondi, Theuri, Irea, Mungaro, Abass Mohamed, Rai, Dukicha, Osman, Ms. Chepkwony, Prof. Sambili, Messrs. Saney, Abass, Mustafa, Kiptanui, Rop, Macharia, Banticha, Gakuya, Mukwe, Ekomwa, Abdinoor, Kimaru, Aden, Ms. Machira, Ms. Wanyama, Ms. Teiya, Messrs. Angwenyi, Olum, Omagwa, Kipyegon, Kihagi, Serut, Waiganjo, Dawood, Nakara, Kariuki Ndirangu, J.M.Chege, J.M. Nyaga, Memusi, Gitari, J.K. Ng'ang'a, Lekuton, Limo, Lomwa, M'uthari, Manje, Farah, Ndiege, Ms. Emanikor, Messrs.Njomo, Melly, KariukiNdegwa, Kemei, Kabando wa Kabando, S.A. Ali, Kanini Kega, Mbiuki, Murungi, Mirenga, Nooru, Mwashetani, Ichung'wah, Barchilei, Moi, Bitok, ole Lemein, Ms. Korere, Messrs.Aramat, Sang, Kamanda, Lomunokol, Ms. Keraa, Ms. Mbugua, Ms. Seneta, Ms. Munene, Messrs. Maweu, Onyura, Kisoi, M.D. Duale, Shidiye, Abdi Mohamed, Eng. Mahamud, Messrs Cheboi, Mati, Chea, Ms. (Dr.) Shaban, Ms. Ibren, Messrs. Gaichuhie, Ngikor, A.B. Duale, Ms. Katana, Messrs. Aluoch, Ngunjiri, Njuki, Dr.Nyongesa, Mwiru, ole Ntutu, Wangamati, Kinyua, Gitari, Shehe, Rotino, Ms. Kanyua, Messrs. Akujah, R.K Nyamai, Ms. Shebesh, Messrs. Letimalo, Bedzimba, Ms. Muia, Ms. Changorok, Ms. R.N.Wanyonyi, Messrs. Onyonka, Tong'i, Sambu, Dr.Pukose, Mr. Tonui, Ms. Mitaru, Mr. Dido, Ms. S.W. Chege, Messrs. Bunyasi, Koech, Mwaita, Chepkong'a, Gichigi, Arama, Chumel, Isaack, S.S. Ahmed, Ms. Gure, Messrs. Tiren, Ogari, Karani, Elmi, Manoti, Ms. Chebet, Messrs. Wetang'ula, Ngahu, Dr.Munyaka, Cheptumo, Kisang, Ms. W.K Njuguna, Messrs. Chanzu, Cheruiyot, Opore, Mwaura, Mwahima, Mlolwa, Otaalo, Steven Kariuki, Opiyo, Ms. F.I. Ali, Ms. Amolo, Messrs. Aburi, Waititu Ferdinand, Konchella, Murgor, Kariuki Ndegwa, Ms. Otucho and Mr. Waititu Francis.

NOES: Messrs. Dr.Simiyu, Nassir, Simba, Mulu, Ms. Ombaka, Mr. Maanzo, Ms. Kedogo, Messrs. F.K. Wanyonyi, Nyenze, Ms. Nyasuna, Messrs. Ondicho, Prof. Nyikal, Kobado, Magwanga, Kajwang', Eng. Gumbo, Keynan, Dr. Oginga, Mbui, Ms. Nyamunga, Messrs. Mule, Sumra, Mwadeghu and Mr. Owuor.

ABSTENTIONS: Ms. Chae, Ms. F.M. Mutua, Messrs. King'ola and Kaluma.

MOTIONS

ADOPTION OF REPORT ON RESETTLEMENT OF SQUATTERS

THAT, this House adopts the Report of the Departmental Committee on Lands on the Resettlement of Squatters in Muri Farm, Mathengeta Tumutumu/Riakanau Farm, Drake Farm and Kaseku Farm, laid on the Table of the House on Thursday, 12th June 2014.

(Hon. Mwiru on 30.9.2015)

(Resumption of Debate interrupted on 30.9.2015)

(Hon. Members withdrew from the Chamber)

Hon. Speaker: Hon. Members, those of you withdrawing, please allow the House to transact business. Those of you who only came for that business, please there is much more than that.

Hon. Alex Mwiru, the Mover to reply.

Hon. Mwiru: Thank you, Hon. Speaker. Before I reply, I want to repeat a pronouncement that was made by Hon. Speaker yesterday when we were debating this particular Motion.

In terms of implementation of the same Report, having delayed in its conveyor belt to get to the Floor of the House for debate, some of the dates needed to be changed for implementation purposes. On page 18 of the same Report, there are dates that are bit contradictory, because the Report was deemed to have been debated a little bit earlier than yesterday and today. I am making this pronouncement so that you can realise the implementation; that date changes to 30th June 2015 as written on page 18 and implementation of the Report as recommended changes to 31st March 2016.

Let me first of all thank the hon. Members of this House for positively debating this Report of the Departmental Committee on Lands. We note the concerns of the Members when they were contributing.

On an issue that was raised in this Report by the hon. Member for Nyeri on a matter to do with inhuman evictions, going forward, especially as enshrined in our Constitution, it is important to note that this matter will be dealt with in the subsequent debates detailing the Bills that are going to come before this House which have constitutional deadlines. This matter will be tackled in the Land Laws (Amendment) Bill. The issue of evictions will be dealt with. Historical injustices are also forthcoming. These are matters that are going to be dealt with in detail when we debate those particular Bills in future.

On matters to do with professional squatters, yes, it is true in this country there are many squatters. There has also been a lot of invasion of farms. I think this one is contributed to by the fact that there is a skewed way of distributing land in this country. Therefore, going forward, even as a Committee and a House, we will need to make laws to govern these particular areas, which are of concern to the people of this country.

I want to thank the whole House and the Members who contributed. Going forward, I am looking forward to a time or a scenario where reports will find their way to this House in good time, so that implementation can be done in good time; some of them may require some money for implementation.

I beg to reply. Thank you.

(Question put and agreed to)

ADOPTION OF REPORT ON EAC PEACE AND SECURITY
PROTOCOL/MUTUAL PEACE AND SECURITY PACT

THAT, this House adopts the Report of the Committee on Regional Integration on East African Community (EAC) Peace and Security Protocol and the Mutual Peace and Security Pact, laid on the Table of the House on Wednesday, 29th April 2015 and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the East African Community (EAC) Peace and Security Protocol and the Mutual Peace and Security Pact.

(Hon. Kajuju on 27.8.2015)

(Resumption of Debate interrupted on 27.8.2015 – Afternoon Sitting)

Hon. Speaker: Hon. Members, this is resumption of debate. Hon. Dido Ali Rasso, you have a balance of eight minutes.

Hon. Dido: Thank you, Hon. Speaker. First of all, let me thank my colleagues for passing the Equalisation Fund Bill. That is a very important Bill; it is particularly close to the hearts of pastoralists and other people in marginalised areas.

Hon. Speaker, the idea of the East African Community (EAC), since its inception has been to bring closer the member states and their communities, so that they can work together in terms of trade as well as sharing of information and knowledge, and so that there can be a seamless movement of people, goods and services within the region.

Article 151 of the EAC Treaty empowers partner states to establish protocols as are necessary in the areas of co-operation, so that they can develop policies and programmes aimed at widening and deepening cooperation among partner states. The Article, read together with Article 5(3) (f), says that the community shall ensure promotion of peace, security and stability within the Community, and good neighbourliness among partner states. This is grounded on the idea that without peace and security, there can never be a stable EAC. Fundamentally, the EAC is established on the four pillars of common market, common tariffs, common currency, and political federation. This can only happen if the EAC partner states create a conducive environment for transacting business.

Regarding the mutual peace and security pact, as a community, we must collectively address the problems of piracy, terrorism, cross border crime to ensure that law and order prevail. As a community, if we must have a single customs territory, we can only effectively function when there is peace and security within the partner states. With good coordination within the border points, where most of the land-based trade takes place throughout the region, we can undertake trading activities without hindrance.

Under Article (8) (9) of the Peace and Security Pact--- Article 8 is on common defence while Article 9 is on security. As a Committee, we looked at this particular Report on the basis of our national interest. Do the pact and the protocol aid Kenya in achieving her national interests? The important question in this regard lies in the justification for having the regional peace and security arrangement. In the area of security, we neighbour very fragile states. We are in a region where terrorism and piracy are rampant. Kenya is actually, on behalf of the international community, “boxing” above her weight. We are carrying more load than most of the countries in this region. Therefore, bringing other partner states on board to support us in this area, in terms of co-operation and co-ordination, is in Kenya’s best interests.

In the area of economic integration, it can only succeed if security, peace and stability prevail within the region. There must be a mechanism for crisis prevention, conflict resolution and combating terrorism and piracy, as well as for tackling transnational and cross border crimes fuelled by the proliferation of small arms and light weapons. The countries neighbouring Somalia around the gulf are experiencing instability. There are collapsed nation states within that region. The major trade threats we have today are from collapsed state neighbours to the East and North-East of us. The inflow of small arms and light weapons is causing a lot of insecurity; it is undermining our domestic security. Therefore, the protocol will help EAC address that challenge.

In addition, the protocol attempts to promote good governance. Whenever there are elections in this region, there is fear as to whether a particular partner state will easily pull through. If we come together and clearly address governance issues and other issues that affect the countries in this region, we will be able to promote good governance.

Hon. Speaker, we ask ourselves whether both the Protocol and the Pact safeguard Kenya’s national interest. Do they safeguard the people of Kenya and their interests when they do business across the East African region? The answer is clearly “yes”. Therefore, both the Protocol and the Pact are in keeping with our Constitution. The treaties and conventions which have been signed must be ratified by the National Assembly, so that they form part of our statutes.

With those remarks, I beg to support.

Hon. Saney: Thank you, Hon. Speaker. First, I want to appreciate the fact that the East African Community Peace and Security Protocol and Mutual Peace and Security Pact further strengthen the Sessional Paper on Peace Building and Conflict Resolution, which was recently passed by this House.

That is an indication that it cascades security matters to a regional level. Regional problems and global issues can best be handled through concerted efforts. Issues like terrorism, illicit arms, human trafficking, drugs and narcotics, which are prevalent in this country, can only be handled if all the regional actors put their efforts together. That can only be done through bilateral relations, regional pacts as is in the case that we are debating.

In as much as I appreciate the contents of this pact, I believe it can only come to fruition if serious issues that have always been with Kenya and its neighbors are resolved. I have in mind

incursions that always happen on our soil from Somalia and Ethiopia. These issues must be resolved. There should be respect for territorial integrity and the sovereignty of this country, if we are to benefit from regional pacts on peace related matters. The issue of Migingo Island and the Elemi triangle, which have been outstanding for quite some time, are prerequisites for peace if pacts are to bear fruits.

The Pact is very good. It proposes the creation of a standing force. I appreciate that we require a standing force to respond to regional issues beyond our capacity. However, our democracies must mature if we are to benefit from such agreements. Kenya is a democratic State, but there is question as to how democratic others members of this Pact are; this is an issue that we need to further look into.

The aspect of monitoring as proposed in this Pact is good. However, it looks at fully blown conflicts other than emphasising on issues of preventive measures such as how to pre-empt conflicts and wars before they are fully blown. One good thing in this Pact is the commonalities of structures espoused. It foresees that there should be grassroots structures to build peace and resolve conflicts for the member states that are signatories to this Pact. That will be good. I am sure we will be having commonality in terms of approach and response to conflicts.

The issue of regional early warning system and response is welcome. It is a good thing. If there is a credible early warning system under which credible data is collected upfront and analysed, this will forestall bloody conflicts that we are used to. One other great aspect of this Pact is intelligence sharing. With growing regional and global threats, if there is an early sharing of credible intelligence reports, then we will be able to save lives and livelihoods.

With those few remarks, I support the Motion.

Hon. Okoth: Thank you, Hon. Speaker. I rise to also give my support to the Report, and say that I am happy the Committee has done its work. In pursuance of the Treaty Ratification Act, the Committee has brought this for consideration, blessing and support of the House as necessary. I hope that this Pact will give us a chance to address major issues such as refugee security flaws in the region. We know that past conflicts in the region have made sure that Kenya ends up with a very heavy burden of refugees, which has lasted a very long time. We have had refugees from South Sudan, Sudan and Somalia. That has brought about internal concerns and too heavy a burden that Kenyan is shouldering.

As we look at what is happening internationally, we see this is not just an issue for our region. Even the European Union (EU), which has been a more established regional cooperation mechanism for many countries in Europe, has had the same challenge; now they have refugees from places like Syria and they are struggling with how to share that burden properly while meeting their international obligations. My hope is that our diplomats and leaders in governments will be working closely with other partners in the area to make sure that even in the next crisis we will have a mechanism in place; we are not surprised and we can take care of any number of refugees according to international standards, and not in the shameful way that we have seen some European countries engaging in by locking out other people.

The second important thing that I am concerned about, and has been mentioned, is that we have had micro aggression against Kenya. I commend past leaders of this country like former President Kibaki, Prime Minister Raila Odinga and our current President for not escalating these conflicts. However, it does not mean that our citizens are happy when we think about Migingo Island. Fishermen in that region are harassed and feel as if the Government has left them alone.

The issue of the Elemi Triangle has been mentioned and has been festering for long. Recently, we had the Government of Somaliland purporting to sue Kenya at the International Court of Justice over issues about access to fishing grounds in the Indian Ocean. I hope that the coming of this Pact will help us to resolve some of the issues like the Migingo Island and the Elemi Triangle disputes, the Indian Ocean borders and access to fishing rights in those areas.

My final point is that we have to be vigilant in the national interest of Kenya and ensure that beyond this mutual security Pact, we emulate the example of the North Atlantic Treaty Organisation (NATO) for many countries like the United States of America (USA) and Northern Europe that was forged during the Cold War. We do not want - we have to be very careful - countries that are not democratic, and have long-serving leaders, who are not the example of leaders that we should follow. We should ensure that they do not push their countries into conflicts that then obligate us, through the terms of this Pact, to side with them. That is a very critical thing. Kenya, as a country, will be bold where necessary and when a neighbouring and friendly country is under threat, such a country can count on our mutual support. That would be critical, otherwise, the Pact would not make sense at all.

With those few remarks, I return my compliments to the Committee for the good work done. I hope that we will be seeing more treaties coming to this House for ratification. Of particular concern is a treaty about free trade and special economic zones agreement between Kenya and Mauritius that was signed but has never been brought to this House, yet it has great implications for our economy. If you think about the possibility of Kenyan companies setting up branches in Mauritius and operating freely as they do most of their work here--- They will declare their profits and tax obligations in Mauritius. That will have a potentially negative impact on us.

So, I urge the Committee on Justice and Legal Affairs, as well as the Committee on Finance, Planning and Trade, to look into such arrangements and bring treaties here for proper scrutiny to make sure we know what we are signing and how it will benefit Kenya.

With those few remarks, I beg to support.

Hon. Speaker: Yes, hon. Rashid Juma.

Hon. Bedzimba: Asante sana, Mhe. Spika kwa kunipa fursa hii ya kuchangia Hoja hii muhimu. Nimesimama kupinga Hoja hii kwa sababu ukiangalia mataifa jirani kama Uganda na Rwanda hayana muda maalum wa viongozi wa mataifa hayo kuhudumu. Sisi tuna miaka mitano maalum lakini wao hawana. Ni hatari sana kuungana nao kijeshi ama kiusalama. Wanaweza kutuambukiza ugonjwa huo huku kwetu.

Ukiangalia viongozi wa upinzani katika mataifa hayo, wanaishi jela na wengine kupoteza maisha yao. Hapa kwetu tuna demokrasia. Ni vyema tuungane na wao kiuchumi lakini tusiungane nao kiusalama. Kwa hivyo, mimi nimesimama hapa kupinga Hoja hii kwa sababu taifa letu lina demokrasia. Sitaki kuona mataifa mengine yakiingilia kwetu ili tufuate mfumo wao. Je ikiwa tumeungana nao katika usalama na kuwe na matatizo hapa wakati wa uchaguzi, hilo jeshi ambalo litakuwako litatumika kuja kuharibu kabisa taifa letu ambalo ni zuri, huru na liko na amani?

Kwa hivyo, nimesimama kupinga Hoja hili. Naomba Wabunge wenzangu watafakari kwa makini jambo hili kabla ya kulipitisha.

Hon. Speaker: Hon. Nyokabi.

Hon. (Ms.) Gathecha: Thank you, Hon. Speaker. I rise to support this Motion which is the Report on the East African Community (EAC) Peace and Security Protocol, and the Mutual Peace and Security Pact. We live in a community of regional blocs. There is the NATO Pact, the

EAC Treaty and various other blocs. There is no country that can afford to protect its borders on its own, or patrol its seas by itself. It is important to have regional blocs within the EAC, especially now knowing how key it is and the kind of piracy that goes on around us. We should ensure that we join other countries with like minds and interested in protecting their borders, economies and population from various enemies, whether economic or those intending to use our country as a pass way for drugs and human trafficking. It is important that countries with like minds are able to protect their citizens and economies.

A security and peace protocol will ensure that various issues are discussed, one being the issue of how they would conduct security, share intelligence and information that is key. They may not have the funds necessarily to invest in some of the systems in terms of equipment that is required, but as communities they will invest collectively and share information, troops and areas that would be of common and mutual interest, and that would enhance our economies.

When we take a look at the single threat within the East African region which is terrorism, this security protocol becomes extremely important.

There is also the issue of Islamic State in Saudi Arabia (ISIS), and the possibility of Islamic forces moving from Saudi Arabia down into Somalia using our porous borders. When we are not able to protect ourselves by having a common pact with interested nations and parties with the same mind, we open ourselves to become victims of the terrorists and those intending to destroy our countries and economies.

So, in the interest of our countries and citizenry, I support this Motion. I beg those around us to understand that we do not live in an island. It is important that we share this kind of information and the opportunities that we have with each other to ensure that we advance peace within our region.

Hon. Speaker: Hon. Members, there being no further interest and Members contributing for only two minutes, it is fair that I call upon the Mover to reply. He is represented by the Vice-Chairman of the Committee, Hon. Christopher Nakuleu, Member for Turkana North.

Hon. Nakuleu: Thank you, Hon. Speaker. The EAC Peace and Security Protocol and the Mutual Peace and Security Pact are a very fundamental tool for operationalisation of most of the tenets and aspirations of the region as an economic bloc. The integration process that EAC countries are yearning for will not take off effectively if a conducive environment for investors, economic activities, free movement of labour and free movement of goods is not achieved. It is in this light that the EAC partner states came together and thought of having a favourable framework that can facilitate all these tenets of movement. Operationalisation of this protocol and pact will facilitate joint fighting of crimes and terrorism in the region.

This is one of the regions that is hard hit by insecurity posed by terrorists. Therefore, member states must endeavour always to come up with a framework that can facilitate them to share information, fight crime and share mitigation processes. Therefore, this security protocol and mutual pact will facilitate this.

The defence, security and foreign policy for all within the realms of political federation and the East African integration process cannot be complete if the ultimate goal of political federation will not be achieved. Therefore, this peace pact and protocol will facilitate integration of the community towards that direction. The EAC, as a regional bloc, is one of the unique models of economic integration in the entire world that has a legislative framework. The framework of European Union (EU) and the Economic Community of West African States (ECOWAS) do not have legislative frameworks. Therefore, the uniqueness of the EAC should be

harnessed and tapped effectively. Therefore, this cannot be effectively done without the EAC having a peace and security framework.

Finally, I wish to thank all Members who have supported this Report. I also wish to thank your office and the Office of the Clerk for having accorded us sufficient time.

With those few remarks, I move that this House adopts the Report of the Committee on Regional Integration of the East African Community Peace and Security Protocol and the Mutual Peace and Security Pact.

Hon. Speaker: For the reasons that are glaring, the Question on this Motion cannot be put; so, we will go to the next Order.

BILL

Second Reading

THE MAGISTRATES' COURTS BILL

Hon. (Dr.) Shaban: Hon. Speaker, I beg to move that the Magistrates' Courts Bill (National Assembly Bill No. 41 of 2015) be now read a Second Time.

The main purpose of this Bill is to give effect to Articles 23(2) and 169(1) (a) and (2) of the Constitution. Article 23(2) is very clear, under the sub-heading: "Authority of the Courts to Uphold and Enforce the Bill of Rights." It says:

"Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights."

This Bill has come at a time when we have asked for extension of time so that we can meet the constitutional deadlines of making sure that we operationalise and implement what was set out in the Constitution.

Hon. Speaker, Part I of the Bill contains the preliminary provisions, while Part II provides for the constitution of the Magistrates' Courts and specifies the officers to preside over the Magistrates' Courts. It also confers criminal and civil jurisdiction on Magistrates' Courts. Part III provides for the administration of Magistrates' Courts. It provides for the appointment of a court administrator and sets out the functions of the court administrator, which include the establishment and maintenance of the court registry; the management and supervision of the staff of the magistrates' courts and facilitation of the enforcement of decisions of the Magistrates' Courts.

Part IV of the Bill deals with general matters, including sittings of Magistrates' Courts, procedure and supervision of the Magistrates' Courts and keeping of records. This Part also repeals the Magistrates' Courts Act – that is CAP. 10.

Hon. Speaker, in order for us to effectively run the Judiciary, the Magistrates' Courts have got to have the right legislation as per the new Constitution so that the Judiciary can, on behalf of our country and Government, ensure that justice is dispensed in all corners of this country. More so, this Bill comes in at a time when the Judiciary has been busy trying to establish courts in areas where we did not have Magistrates' Courts. With the expansiveness of our country, the Judiciary has tried to find ways and means of taking service to the people. With this legislation, they should be able to complete the work they have started.

With those few remarks, I beg to move and ask Hon. Priscilla Nyokabi, the Vice-Chairperson of the Departmental Committee on Justice and Legal Affairs, to second.

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

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

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much Deputy Leader of the Majority Party.

Proceed, Vice-Chairperson of the Committee.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. Let me start by thanking the Deputy Leader of the Majority Party, on behalf of the Committee, for moving the Bill. I beg to second the Bill.

The Departmental Committee on Justice and Legal Affairs had occasion to travel to Mombasa recently. In the Mombasa Retreat, one of the Bills that we looked at very extensively was the Magistrates' Courts Bill, 2015. The Committee will be filing its report on the discussions that we had and the amendments that we will be proposing. A very important aspect to the Committee was the question of jurisdiction.

The Temporary Deputy Speaker (Hon. Kajwang'): Sorry, did I hear you say that the report is still being compiled, and that it has not been completed?

Hon. (Ms.) Kanyua: The report has been compiled, but it will be tabled later.

The Temporary Deputy Speaker (Hon. Kajwang'): Do you know if it has been made available?

Hon. (Ms.) Kanyua: I know that in the Mombasa Retreat, we completed the clause by clause review of the Bill as well as the report. The only part I am not very sure of is the tabling.

The Temporary Deputy Speaker (Hon. Kajwang'): You cannot vouch for whether it is in the Table Room?

Hon. (Ms.) Kanyua: Even if it is not, I undertake that the report will be in the Table Office by Tuesday next week.

The Temporary Deputy Speaker (Hon. Kajwang'): The reason I am asking is to have Members sufficiently acquaint themselves with the provisions of the Bill and the report that the Committee has made. We are working through the committee system. It may well be that the rest of the Members of the House do not know a thing about the Bill. It is within their mandate to look at it. It is when they interact with the report of the Committee that they know what the Bill is all about so that, during the Second Reading, we can do justice to the rest of the membership of the House.

You may proceed.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. We are well guided. Just recently, the Committee had occasion to look at the Bill. We were under the impression that the particular report would take a bit of time before it could come to the Floor of the House. But, that notwithstanding, by next week, the Committee report will be available to guide the Members.

The Temporary Deputy Speaker (Hon. Kajwang'): Most obliged.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. I was on the point of jurisdiction for the Magistrates' Courts. The Committee is of the view that the Chief Magistrates'

Court is now at a position where we can increase its jurisdiction. We feel that Kshs7 million is very little for the jurisdiction of a Chief Magistrate.

Hon. Temporary Deputy Speaker, you are aware that Chief Magistrates and High Court Judges have law degrees and are Advocates of the High Court of Kenya for an equivalent period of time, if not more for some Chief Magistrates. Many of our Chief Magistrates are actually competent enough to join the Court of Appeal or even the Supreme Court of Kenya. We have Chief Magistrates with over 20 years of experience when High Court Judges join with only 10 years of experience after admission to the Bar of Advocates.

As we looked at the question of jurisdiction for the Chief Magistrates' Court, we felt that the pecuniary jurisdiction of a Chief Magistrate should now be Kshs20 million, and not Kshs7 million. The intention of the Committee is also to decongest the High Court.

Hon. Temporary Deputy Speaker, you are aware that a claim of Kshs20 million is not much for a Chief Magistrate. If we say that those cases go to the High Court, the effect of it is to continue congesting the High Court when those matters can be competently handled at the Chief Magistrate's Court. I personally was of the view that a Chief Magistrate could even handle as much as Kshs40 million, but the Committee's decision was Kshs20 million. When I was vouching for Kshs40 million, I was looking at real estate for instance. The houses and apartments in areas like Kileleshwa, Lavington and Westlands are going for about Kshs40 million. Land in Nyeri is much cheaper than that, but here in Nairobi, Kshs40 million would be in estates like Kileleshwa, Lavington or Westlands. An apartment in Kileleshwa which falls into a dispute should comfortably go to a Chief Magistrate's Court and would have no reason to go to the High Court. But as far as the Committee is concerned now, we have accepted Kshs20 million for the Chief Magistrate.

The other level is the Senior Principal Magistrate. The Committee is of the view that the pecuniary jurisdiction moves up to Kshs15 million; that a Senior Principal Magistrate can handle claims of pecuniary jurisdiction up to Kshs15 million. For a Principal Magistrate, the Committee proposes Kshs10 million. A court of a Principal Magistrate can look at cases up to Kshs10 million. Land in Nyeri would fall within this category of Kshs10 million. For the Senior Resident Magistrate, the Committee is of the view that the pecuniary jurisdiction be increased to Kshs7 million. For the Resident Magistrate, the Committee is of the opinion that the pecuniary jurisdiction be increased to Kshs5 million, but subsequently after interacting with some of the colleagues in courts, I have learnt that Kshs2 million might actually be a good pecuniary jurisdiction for a Resident Magistrate who, in many times, is a fresh graduate and there is fear that they may need experience. They should not go straight up to Kshs5 million. They could start with Kshs2 million and the Kshs3 million to Kshs7 million could go to a Senior Resident Magistrate who, many times, are advocates of about 5 to 10 years' experience. They would competently handle the cases that would go to that pecuniary jurisdiction.

Hon. Temporary Deputy Speaker, very important for the Committee was the question of succession. You are aware as a counsel that, very small estates of as low as Kshs1 million have to be filed in the High Court because of a clause in the law that says all estates above Kshs100,000 have to be filed in the High Court. The view of the Committee is that this pecuniary jurisdiction here, also relates to cases in succession. A case of succession of up to Kshs2 million estate value is handled by a Chief Magistrate. A case of an estate of up to Kshs15 million is handled by a Senior Principal Magistrate. A case or an estate of up to Kshs10 million is handled by a Principal Magistrate. A case or an estate of up to Kshs7 million is handled by a Senior Resident Magistrate and a case or an estate of up to Kshs2 million or Kshs5 million,

depending on which one will eventually pass, is presided over by a Resident Magistrate. There will be no reason for all the estates to be taken to the High Court. It is time that the Magistrate's Courts are also empowered and enabled by statute to deal with cases of succession.

Following that, we are also aware of the changes of the Constitution on land and environment. Again, with this pecuniary jurisdiction, we think that the Magistrates' Courts should equally deal with land cases within the pecuniary jurisdictions that the Committee has discussed. In Section 7, we will be proposing several amendments, and one is on the amounts in Section 7 (1).

Two, Section 7(2) will be on the succession mandate and Section 7(3) on the land and environment mandate.

Lastly, just to make it clear, cases of election petitions relating to Members of County Assemblies (MCAs) within the third jurisdiction, should vest with the Magistrate's Courts as well. We have many other provisions relating to other courts that the Committee will be tabling in its report and at the Committee stage. In the end, we are happy that the Magistrate's Courts Bill is going to be revised and it is going to usher into this country a better regime on access to justice, and a better regime on how Magistrates' Courts handle cases. In the long term as a Committee, we continue to be concerned by this dichotomy of magistrates and judges. In the long term, we hope that all of them can be judges so that we get away from this dichotomy of magistrates and judges, when the legal qualifications are the same.

We will be urging Members of this House to pass this legislation that also comes with the Court of Appeal and the High Court.

I beg to second

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Chair, with your own submissions, you now see that there are several other improvements that the Committee has made to the Bill, but to be fair to Members, they should have been able to appreciate them before they are able to discuss the Bill. I know it is not your duty but, probably, if you could get your clerk to get those reports in the Table Office, Members would get a chance to look at them.

All right! There is a Member sitting in a space that the Constitution does not allow him to sit. Nonetheless, he sat there claiming not to have his electronic device. I have allowed him to speak from that position.

Hon. Kang'ata: Thank you, Hon. Temporary Deputy Speaker. Allow me to speak so that I can guide the Members on some salient features of this Bill. The first issue that Members need to address themselves to is to appreciate that this law, as opposed to the current law guiding the magistrates, enhances the pecuniary jurisdiction of magistrates. That is very important taking into account that magistrates are almost 1,000 as compared to judges who are about 150. That means for most *wananchi* at the grassroots level, their first point of interaction with the Judiciary is with the magistrate.

If you have a matter that is above the pecuniary jurisdiction of magistrates, one is usually compelled to go to Nairobi or the nearest High Court station. As a result, it becomes quite expensive on the part of the public to seek justice before the High Court. Therefore, once we enact this Bill, we shall have a situation where a magistrate will have the jurisdiction to handle such kind of matters. We appreciate that the price of land has gone up. Evaluations of various assets have gone up. If you have magistrates with very small pecuniary jurisdictions, it will

mean that *wananchi* will not be able to access their services and they will be forced to cover very long distances to seek justice.

Secondly, this law has brought the new concept of contempt of court. Previously, it was quite a debate before a magistrate, when an issue of contempt of court arose. That is because in the current law, if such an issue happens, two things happen.

One, you make a reference to the High Court. Strictly speaking, apart from what we call contempt on the face of the court, a magistrate does not have powers to punish for contempt. Therefore, one is forced to go to the High Court to make a reference so that he can enforce a court order. Secondly, the law which the advocates or the court is going to rely upon to punish contempt will be the law that is subsisting as by that time you are going to the High Court in England. It means we were an appendage of England in so far as issues of contempt are concerned. This new law has brought specific clauses dealing with the issue of contempt of court. To that extent, I think it is an improvement and it is going to help on issues to do with enforcing various court orders.

Hon. Temporary Deputy Speaker, another key issue that I noted in this law which is quite important is to do with enhancing the jurisdiction of Magistrates' Courts in so far as succession matters are concerned. Presently, we know so many people who have passed on and left property, and their children are unable to go to court because the law says that any succession matter beyond Kshs100,000 and above is taken to the High Court. The High Court is expensive and it is located far for citizens. They are unable to reach it. As a result, there are so many properties that cannot be bequeathed to the survivors. Therefore, such people cannot access credit and title to land. Therefore, when you enhance the pecuniary jurisdiction, you are enabling estates to be divided among the beneficiaries in an easier and available manner to most Kenyans.

I have also noted that in Clauses 8 and 9 of this law, magistrates have jurisdiction to enforce matters relating to human rights abuses, employment and labour relations. In my opinion, it is a good thing on one hand because we are in a country where human rights and labour laws are quite important. However, I want to urge caution. In my own opinion, I have noted the kind of jurisdiction that has been coming out of the Human Rights Court in Nairobi, and the labour court appear to be quite suspicious. It can stall the economy and bring radical social engineering pronouncements which should be left to politicians who are duly elected. Maybe, we can enhance qualifications of people who will be handling this matter at the magistrates' level. Otherwise, I foresee danger where magistrates will start issuing some awards which are weird if at all the examples I have seen set in the High Court are anything to go by. Of course, I stand to say I personally treat them with a lot of suspicion in terms of their jurisprudence foundation. I would imagine that they would be devolved to the Magistrates' Courts.

Another aspect I have noted in this issue---

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Kang'ata, but there is the appeal procedure, of course. That, if whatever the magistrate decides is not within the conventional wisdom or the law, whichever else it might be, there is a procedure. In fact, there is an appeal to the High Court, the Court of Appeal and the Supreme Court.

Hon. Kang'ata: Thank you, Hon. Temporary Deputy Speaker. I stand guided. I would imagine that out of 100 matters decided by magistrates, maybe, only 50 per cent are appealed; meaning the other 50 will be binding upon those members who never had the occasion to appeal.

Hon. Temporary Deputy Speaker, the other aspect is the administration of the Magistrates' Court. When we were discussing the High Court Bill of 2015, we noted that there is

potential of a conflict between the functions of the Registrar in the High Court and the Chief Registrar as we know her. Therefore, the only good thing we noted in the Registrar provided for in the Magistrates' Court is the form of synergy created by this law with the Chief Registrar. I would urge that as we debate these clauses relating to administration of those courts, we take into account the need to have harmony and a reporting mechanism, so that we do not disrupt the flow of power in respect to the functions of the Chief Registrar.

Another aspect we need to take into account is the issue relating to land. Presently, there is a great confusion in practice of land matters because land matters are handled by judges in the High Court - not all judges but specific ones. As a result, for instance, in my county, Murang'a, if you have a land dispute--- I know that 85 per cent of all matters in Murang'a tend to be on land. Everyone is being told to go to Nyeri Court. We have a High Court Judge in Murang'a, but it means the Nyeri Court Judge is the only one who handles land matters in the entire Central region. It is quite expensive. We have a High Court Judge in Murang'a who cannot handle such matters. If we were to vest land matters jurisdiction on magistrates, it will be important because it is going to address a lacuna which was sneaked into the law some few years ago. We tended to create land courts and give them exclusive jurisdiction on land matters.

The other area we need to look at is on Clause 7(3)(c)(d). This is where they are saying that a Magistrates' Court shall have jurisdiction in proceedings of civil nature under African Customary Law in matters relating to seduction and pregnancy on unmarried woman or girl, and (d) talks about enticement of/or adultery with a married person. I am a moralist and I still believe some of these issues need to be punishable under the law. The only one I find funny is the one on seduction or pregnancy of unmarried woman or girl. Why? This clearly violates the key provisions of the Children's Act. Anything to do with a child should be left to the Children's Act.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Kang'ata, your time is up, but I will give you a few more minutes to wind up.

Hon. Kang'ata: Thank you, Hon. Temporary Deputy Speaker. I have seen situations where a person comes to a court of law and he is facing charges of child neglect and cites this one as a defence. It makes a lot of sense in that you cannot have two forms of litigations. If you allow this one to start, you will have a situation where children matters are being handled here exclusively and it might have the effect of ousting the jurisdiction of Children's Court. I think we need to delete this sub-clause and allow all children matters to be dealt with under the Children's Court. Otherwise, I know, for instance, some cultures where a father who neglects a child does not have the obligation to support that child, and those cultures are repugnant to our senses of morality.

With those few remarks, I support the report of the Committee, which I participated in, and will be supporting the amendments which will come.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Kang'ata, just before you sit down, drawing from your expertise as a legal practitioner, and I do not know what is in the report of the Committee, but curiously the Bill does not propose clear provision of appeal to the High Court. Have you seen that in the Bill? From the precedent I have interacted with, where there is no direct statutory power of appeal, there has been a divided opinion as to whether there is a right of appeal at all. Even though the Constitution itself gives that appeal, there should be a legislation that provides for the appeal. Is it something you want to comment on?

Hon. Kang'ata: Yes, I can comment on that. I think the Committee was minded to take into account that we have other key laws that govern appeals. If it is a civil matter, the Civil

Procedure Act can take care of that. If it is a criminal matter, we have the Civil Procedure Code (CPC). I would imagine, maybe, if it is a succession matter, there is the Succession Act. So, maybe, that was the mind of the Committee. So, maybe, this one was only dealing with the issue of jurisdiction and also the administration. That is it.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much for those submissions. Hon. Johnson Sakaja - Nominated Member.

Hon. Sakaja: Thank you, Hon. Temporary Deputy Speaker first of all, for giving me the opportunity and, secondly, for pointing out the fact that with such serious legislation, it would have, indeed, been beneficial to the Members if the Committee was able to have submitted its Report to guide our interactions and debate on this Bill. We still look forward to the Committee giving us the report.

But just from purely looking at this Bill which I have just come across as well as from the contributions - and I must thank the Vice-Chair of the Committee Hon. Nyokabi as well as Hon. Irungu Kang’ata - I am already persuaded that this is already a necessary law. Of course, it is giving effect to the provisions of the Constitution Article 23(2), as well as Article 169(1) (a) and (2) that actually provides for the enactment of some of this legislation around Magistrates’ Courts to provide specific jurisdiction and administration.

Hon. Temporary Deputy Speaker, you will note that one of the highlights of the Constitution of Kenya, 2010 – and Members like calling it the New Constitution, although I do not think it is new anymore - are the provisions under the Bill of Rights. Those provisions have been heralded and hailed as one of the most progressive in the world, mainly because of the recognition of second and third generation rights, and the fact that every Kenyan should have an opportunity to access justice. I see this Bill as enabling more Kenyans to access justice on matters that are dear to them, especially matters of human rights and property succession, as opposed to how it has been before. Why do I say this? You are aware that we have a lot of backlog of cases that have gone on for many years. I must congratulate the Chief Justice (CJ) for the efforts he has made to try and reduce the backlog. But one of the reasons we have the backlog is because, despite the fact that we have Magistrates’ Courts all over the country, there are certain matters that have become common issues or disputes that can only be resolved at the level of the High Court. Providing for the lower court, which is the Magistrate’s Court, to handle these matters is, indeed, a step in the right direction. I am sure we will see a reduction of the backlog or the congestion that we have within our courts.

It is also important to note and to appreciate the Committee’s debate and discussion on the pecuniary low jurisdiction that the magistrates have been given. I concur with Hon. Nyokabi that, indeed, there would be need to revise this upwards because of the nature of the disputes that we have today. However, I note that the Bill actually provides in Part II Section VII (2) that the Chief Justice, from time to time by notice in the *Kenya Gazette*, may revise the pecuniary limits of jurisdiction set out in the previous sub-section, taking into account inflation and change in prevailing economic conditions. I hope that the Chief Justice will get the required advice to make such decisions so that we do not have to keep on doing it through amendment. That provision is good. The base limits that have been set at Kshs7 million for the Chief Magistrate, Kshs5million for the Senior Principal Magistrate, Kshs4 million for the Principal Magistrate, Kshs3 million for a Senior Resident Magistrate and Kshs2 million for a Resident Magistrate who is basically fresh from training are okay. This is able to address a lot of matters that are taken to the high courts. These are amounts that you may not say would warrant them to be taken to such a level in the hierarchy of our courts in this country.

It is also interesting to note that, all this time, when it comes to matters of contempt, we have been relying to the English Contempt Law. This provision is probably more than 50 years and it is overdue. It is good that we now have clear provisions in Section X about the situations and circumstances that amount to contempt of court, and the fact that the Magistrates' Courts will now be able to deal with those issues in the administration of justice. Their inability to deal with issues of contempt have almost led to some form of--- I do not want to use the words "disrespect" or "disdain" on the part of either lawyers and magistrates because they know that there is only so much that the magistrates are able to do even when those lawyers or whoever it may be is in contempt of court. So, any person who may threaten, intimidate or willfully insult a magistrate, a judicial officer or a witness involved in a case in a Magistrates' Court can be punished by the magistrate for contempt of court. The magistrates must be held in high esteem. We must respect the courts. There are even those who disobey court orders and directions of a Magistrates' Court in the course of hearing the proceedings. There have been numerous cases where the Magistrates' Courts have not been taken either seriously or with the importance that they deserve just because of their inability to deal with matters of contempt.

Hon. Temporary Deputy Speaker, it is also important to note one aspect that may relate to a lot of reporting that has been coming out as a result of the cases that are going on. Now, there is power to punish anybody who publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private. We have seen that publishing some of the evidence that has been provided to be held in private, sometimes, has jeopardized the proper proceedings of that case. Once it is published and it was supposed to be private, then justice is obstructed.

It is progressive that additionally administration has been provided for. The administration of the court has been provided for and the provision of a court administrator is, indeed, important so that we can have a better coordination between the Office of the Registrar and the courts that are now all over the country. That is to ensure that they are efficient.

The underlying theme of this legislation even as we look at it in depth should be how we should make our courts more efficient and accessible. That is because access to justice is, indeed, the hallmark of human rights. If Kenyans have been provided with the right to go to court and access justice but cannot access it because of the fact that the courts nearest to them do not have sufficient jurisdiction to deal with the matters and they have to go to the High Court, then that is, indeed, denying Kenyans justice.

So, the only one thing I would like to comment on is on employment and labour relations. It is important. I would like to differ with my colleague, the Member for Kiharu, that even matters of employment and labour relations claims should be dealt with in Resident Magistrates' Courts. If you only look at it from the perspective of the big cases - whether it is matters to do with teachers, nurses or unions that are of certain stature and size in this country, then you might be a bit sympathetic to his argument.

Hon. Temporary Deputy Speaker, if you look at some of the infractions to law and disputes that have been coming; employees issues at the lowest level, they show that Kenyans are now more aware of their rights. It is very progressive that those matters can now be dealt with at that level of our courts. When it comes to appeal, if whatever has been determined by those courts can be contested, it is clear in the Civil Procedure Act and the Criminal Procedure Act. If you are not comfortable with the ruling or you do not agree with it, you should go to the High Court and thereafter go to the superior courts.

I look forward to interacting with the report of the Committee on this matter. I know very many people - both in the City and back in the village - who have had issues with cases that have taken far too long because of the congestion in our high courts. I hope this will signal reprieve for those who are seeking justice in this country.

With those very few remarks, I wish to support. Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): That was a very brilliant submission. You spoke like an accomplished law scholar.

Member for Rarieda.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. Even as I contribute, I want to echo your remarks. We should make it a good practice that before we debate Bills such as this, the Committee endeavours to give us a report. That way, Members can be properly guided on how to proceed with their deliberations. I am glad that the Vice-Chairperson of the Committee was here. She gave some highlights which should be informative, especially to people like me who do not necessarily have a legal background.

This Bill is important because much as it aims at giving effect to Articles 23(2) and 169(1) (a) and (2) of the Constitution, the underlying theme is access to justice. As long as Kenyans can access justice, it will be good for our country. As much as possible, every Kenyan should be able to access justice whenever they want and wherever they are.

The Bill talks about the Magistrates' Courts. Even as we talk about access to justice, one of the problems that we have, which impedes access to justice, is what it costs for people to file their cases before court. I have gone through the Bill, but I have not seen this covered. Maybe, it is discussed elsewhere. It would be nice for the cost of accessing courts of justice to be made as affordable as possible. Many times, people are not able to access justice because they cannot initialise the process of appearing for their cases to be heard.

I do not want to go into issues that have been talked about. The marginal note to Clause 7 provides for civil jurisdiction of Magistrate's Court. The clause sets the limits of the amounts each Magistrate's Court can handle. Clause 7(1) provides as follows:-

“A Magistrate's Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a) seven million shillings where the court is held by a chief magistrate;
- (b) five million shillings where the court is held by a senior principal magistrate;
- (c) four million shillings where the court is held by a principal magistrate;
- (d) three million shillings where the court is held by a senior resident magistrate; or,
- (e) two million shillings where the court is held by a resident magistrate.”

Hon. Temporary Deputy Speaker, some of these things tend to be very unique. For example, in rural areas where some of us come from, a piece of land may cost about Kshs3 million or Kshs4 million. But the same size of land in Nairobi would probably cost tens of millions of shillings. Perhaps, one of the ways of making this Bill neater would have been to mention that each of these courts will have varying limits of jurisdiction upon civil matters that appear before them, but provide the limits through regulations so that it makes it easier to vary the limits. In any case, Clause 7(2) provides that “The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in Sub-section (1) taking into account inflation and change in prevailing economic conditions.”

I have a problem with the provisions of Clause 10(d). I wish my sister, the Vice-Chairperson of the Committee, would advise me on this one. Clause 10 is on power to punish contempt of court. Clause 10(d) says:

“A person who having been called upon to give evidence in a judicial proceeding fails to attend, or having attended, refuses to be sworn or to make an affirmation or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being heard or taken, after the witnesses have been ordered to leave such room, commits an offence”.

That offence would draw a fine not exceeding Kshs100,000 or the person can be jailed for five days. I thought providing evidence is a voluntary exercise. I am not a lawyer, and I stand guided. Is this not making it compulsory for people to give evidence? What if you want to exercise your rights not to give evidence? Again, as I said, I am speaking on this matter as a lay person. I stand guided.

Hon. Temporary Deputy Speaker, Part III of the Bill is on the administration of the court. It derives its powers from Article 172(1) (c) of the Constitution. Looking at what the courts administrator would do, would it not be nice to provide their qualifications? This is a very substantial position that should not be left as it is. What would we require a court administrator to be? Would we require a court administrator to be somebody with a legal training background? It would be nice, as we define the role of the court administrator for the various court jurisdictions, that we also provide the qualifications of the court administrator. Looking at the roles of the court administrator, it would not necessarily be making the Bill too voluminous if we were to go ahead and include what it would require for one to qualify to be a court administrator in a Chief Magistrate’s Court, for instance. As we go to the Third Reading of the Bill, it would be good to include what it takes for one to qualify to be a court administrator.

I have noticed that the Judicial Service Commission (JSC) has, of late, been engaged in taking court services to as many parts of Kenya as possible, especially with the establishment of Magistrates’ Courts in various small stations all over the country. However, it would be nice to have criteria for establishing the courts. I do not believe there is any part of this country which does not require access to justice. I believe every part of this country requires access to justice because we have an open society where, as much as possible, people should be told why things are done the way they are done. The other day, I saw a court being taken to Mukurweini. One would be interested to understand why Mukurweini, and not Rarieda for that matter. If we can have some sort of criteria to guide the establishment of Magistrates’ Courts all over the country, it would be good.

Lastly, as people who are privileged to be charged with the responsibility of making laws for our country, much as we make laws such as this, we should also equally and actively---

Hon. (Ms.) Kanyua: On a point of information, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Just a minute, Member for Rarieda. Member for Nyeri, is this an intervention or what is it?

Hon. (Ms.) Kanyua: Thank you so much. It is just a point of information to the Member for Rarieda.

The Temporary Deputy Speaker (Hon. Kajwang’): Just a minute before you give the information. Member for Rarieda, do you require that information?

Hon. (Ms.) Kanyua: On Clause 10 (d).

Hon. (Eng.) Gumbo: Yes. From where she sits, I would not refuse.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang'): I see the Member for Rarieda is all smiles to your information. Member for Rarieda, resume your seat as you get this information.

Hon. (Ms.) Kanyua: Thank you so much, Hon. Temporary Deputy Speaker. Just to go back to the question that the Member for Rarieda had asked on having been called upon to give evidence, whether a court can compel a witness to give evidence, it is, indeed, true that once the court feels that you have information or evidence that would assist in a case and in dispensing justice, then the court can compel you. There are fairly interesting cases in the past on African wives, when they used to be compelled to give evidence. Even in the laws on compelling evidence, a wife cannot be compelled to give evidence that is shared in pillow talk. At that time, the question in court was whether a woman married through dowry is a wife or purchased. In that case, the wife who was purchased through dowry in the colonial courts then could be compelled to give evidence. But in the modern day times, a witness who is a wife would not be compelled where information is shared in very private circumstances. In many other official circumstances, for example in the fight against corruption, if you are an officer within an institution and you have evidence that the court thinks is important, you would be compelled to give that evidence and if you fail, you would then be committing contempt of court within the meaning of Clause 10 (d).

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Rarieda, stay informed.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. I thank her for the information, except to let her know that where I come from, payment of dowry is not purchase at all. It is the seal of approval of a marriage, especially if the dowry is done in the form of live animals.

The Temporary Deputy Speaker (Hon. Kajwang'): It is a seal of a covenant.

Hon. (Eng.) Gumbo: Yes, it is a seal of a covenant of marriage. Lastly, even as we embark on expanding justice to our people, let us also focus equally on alternative forms of dispute resolution. Sometimes, I think that Kenyans tend to be too litigious even in small issues that people can sit down and talk. Let us encourage a society which can talk with itself and deal with small issues. Sometimes, I see people slashing each other because someone claims another person has encroached about two or three metres into their land. If you ask them how much they have harvested in that land for the last 10 years, it is not even a tin of grains of maize. So, if we can encourage alternative forms of dispute resolution, it will be good for our country. It will also help to decongest our courts.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Member for Eldama Ravine, I can see you are on intervention. What is the point?

Hon. Lessonet: Thank you, Hon. Temporary Deputy Speaker. I just wanted to bring to your notice that we are very low on numbers to the extent that there is no quorum.

The Temporary Deputy Speaker (Hon. Kajwang'): Under Standing Order No.35, I, therefore, order that the Bell be rung for 10 minutes.

(The Quorum Bell was rung)

The Temporary Deputy Speaker (Hon. Kajwang'): Order! I order that the Quorum Bell be now stopped.

(The Quorum Bell was stopped)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Members! Because we have not been able to garner the correct quorum for the proceedings of the business which is before us, I, therefore, order that the House stands adjourned until Tuesday, 6th October 2015 at 2.30 p.m.

The House rose at 5.40 p.m.