

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 29th March, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell.

(The Quorum Bell was rung)

We now have quorum. We may commence business.

PETITIONS

Hon. Speaker: The Member for Kajiado Central, Hon. Memusi, has a Petition on waiver of debt owed to the Agricultural Finance Corporation (AFC) by livestock farmers. The Member for Kajiado Central, you cannot take time eating all the time. When the bell rings, you must finish what you are doing, and come to the House.

Proceed.

WAIVER OF DEBT OWED TO AFC

Hon. Memusi: Thank you, Hon. Speaker. I was not eating, I was around the corner.

I, the undersigned, on behalf of farmers in the Republic of Kenya, draw the attention of the House to the following:

THAT, the Agricultural Finance Corporation (AFC), an exclusively Government owned development finance institution, was established in 1963;

THAT, AFC is the leading Government credit institution mandated to provide credit for farming activities;

THAT, the role of AFC is crucial given that agriculture is the pillar of the Kenyan economy where 80 per cent of the Kenyan population, especially those based in rural areas, depend on agriculture as their main source of income;

THAT, in the last two years, in its restocking programme, AFC advanced credit to livestock farmers in Kajiado and Narok County, among other counties, but did not cushion farmers on the impending drought and climatic conditions;

THAT, farmers have incurred huge losses due to the ongoing drought and are unable to service their loans and the accruing interest;

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional body;

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Co-operatives:

(i) recommends that the Government waives the unpaid loans advanced to farmers by the AFC; and,

(ii) makes any other orders deemed fit in the circumstances of the petitioners. And your petitioners will ever pray.

I thank you, Hon. Speaker.

(Hon. Memusi crossed the Floor without bowing to the Chair)

Hon. A.B. Duale: On a point of order, Hon. Speaker. Hon. Memusi is not paying attention to the rules of the House.

Hon. Speaker: Hon. Memusi, you are not paying attention to the rules of the House. Walk straight to the Bar and bow.

(Hon. Memusi walked to the Bar and bowed to the Chair)

Hon. Memusi, you have not taken time to understand the basic rules of the House. We want to encourage you to learn quickly because there is no time left before you require a second term. Your Petition goes formally to the Departmental Committee on Agriculture, Livestock and Cooperatives.

Proceed Hon. Olago Aluoch.

BAN ON USE OF PLASTIC BAGS

Hon. Aluoch: Thank you, Hon. Speaker.

I, the undersigned, on behalf of members of the Kenya Association of Manufacturers draw the attention of the House to the following:

THAT, the Environment and Natural Resources Cabinet Secretary (CS), via a Gazette Notice dated 28th February, 2017, announced a ban on plastic bags use, both domestic and commercial, which is scheduled to take effect six months from the date of the said Gazette Notice;

THAT, polythene is one amongst materials found in the environment, and that a large portion of these waste materials are not being collected and treated in an environmentally sound manner to ensure disposal, and this is a real challenge to the environment;

THAT, the Global Waste Management Outlook for 2015, a report by the United Nations Environment Programme (UNEP) and the International Solid Waste Association (SWA), stated that “inadequate waste management has become a major public health, economic and environmental problem, with 7 to 10 billion tonnes of urban waste produced each year and 3 billion people worldwide lacking access to controlled waste disposal facilities fueled by population growth, urbanisation and rising consumption, the volumes of waste are likely to even double in lower income African and Asian cities by 2013”;

THAT, the ban imposed by the CS for Environment and Natural Resources does not resolve the problems identified by the experts or create a sustainable approach to addressing the problem;

THAT, there are over 176 plastic manufacturing companies in the country which is 3.4 per cent of all the manufacturers combined;

THAT, the cost value of the plastic manufacturing sector is in excess of Kshs88 billion;

THAT, the direct employment created by the plastic sector is over 2.89 per cent of the Kenyan employees, which is approximately 600,000, while the indirect employment through retailers, wholesalers and outlets is well over 600,000 personnel nationwide, and their annual turnover from this industry is in excess of Ksh100 billion; and;

THAT, the interference with the sector in terms of the prohibition by the Cabinet Secretary would restrict the country's competitive edge with other East African Community (EAC) countries in the region; and,

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Environment and Natural Resources:-

(i) recommends suspension of the implementation of the Gazette Notice since the notice given is too short;

(ii) recommends amendment to the Environmental Management and Co-ordination Act, No. 8 of 1999 to ensure inclusion of fiscal incentives such as Green Levy Fund, tax incentives on capital goods and tax rebates to industries promoting management, and imposition of fines for littering in unlawful places among others; and,

(iii) recommends the establishment of a waste management levy to be charged on all plastics at source (point of entry) at 1 per cent of the value equivalent to the product's cost, insurance and freight, which funds should be collected by the National Treasury, through the Kenya Revenue Authority (KRA), and allocated to the Ministry of Environment and Natural Resources and the National Environment Management Authority (NEMA).

Hon. Speaker, your petitioners will forever pray.

Hon. Speaker, I wish to add that considering the issues raised in this Petition, I humbly request that it be referred not just to the Departmental Committee on Environment and Natural Resources but also to Departmental Committee on Finance, Planning and Trade and Committee on Delegated Legislation to sit jointly.

Thank you, Hon. Speaker.

Hon. Speaker: Well, you see when a petition like that comes at this stage, obviously, I am not going to allow comments because I am aware of the numbers. You take too long on these things, and then serious business is not transacted. You are requesting that the Petition be referred to three Committees; Departmental Committee on Environmental and Natural Resources, Departmental Committee on Finance, Planning and Trade and Committee on Delegated Legislation. Will you ever get quorum unless you want each one of them to look at the various components of the Petition separately? Anyway, the core committee with regard to this Petition is the Departmental Committee on Environment and Natural Resources.

I can see that the Chairperson is happily chatting with the Vice-Chair of Departmental Committee on Finance, Planning and Trade. Our rules are that they report within 60 days just like some judges are trying to direct Parliament. Anyway, the Petition is referred to the Departmental Committee on Environment and Natural Resources to coordinate with those other

Committees. I can see they have begun coordinating. Hon. Amina Abdalla, you can coordinate the hearing of the Petition.

Next Order!

STATEMENT

MEDIA REPORT ON SEVERANCE PAY FOR MPS

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, thank you for giving me this chance. There is a story that appears in the newspapers today that is talking about Members of Parliament of the 11th Parliament being given severance pay. I want to make it very clear that in the Budget and Appropriations Committee Report on the Budget Estimates, that item is not there and it is not fair for a section of the media to impute improper motives on sitting Members of Parliament. We therefore want to confirm that the eight months severance allowance pay is not factored in the Budget Estimates as tabled in the National Assembly on Thursday 23rd March, 2017.

Article 116(3) of the Constitution says:

“An Act of Parliament that confers a direct pecuniary interest on Members of Parliament shall not come into force until after the next general elections of Members of Parliament.”

All of us sitting here know that this is a transitional Parliament. In the case filed by one Hon. Harun Mwau in 2012 in the High Court, Judge Lenaola said that the 11th Parliament will not live its full term because of its transitional nature. We want to set the record correct and media house must correct that position. There is no money we are getting for the eight months. As the Chair of the Parliamentary Service Commission (PSC), it is also good you confirm to the nation what I am saying.

Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Hon. Members, there is really nothing for me to confirm. It is only that the media houses have requested to accredit people who are sufficiently literate in the processes and reading complex documents that the House of Parliament deals with. It does not even require a kindergarten pupil to look through and see that there is nothing. Obviously, the media house runs a column called *Political Gossip*. We can consider this to part of that political gossip and several other idlers out there--- Everyday parliamentarians are giving themselves extra perks. They know very well that function belongs to the Salaries and Remuneration Commission (SRC). I therefore do not understand why a media house that has national circulation would want to keep misleading themselves and other Kenyans who delight in being misled. You can only be one of those because all you need to do is just look through the estimates as tabled by the Chair of the Budget and Appropriations Committee after hearing presentations by the Commissioners of the PSC. If people are not able to interpret complex figures, they should just engage the service of those who are sufficiently qualified but not engage in rumour mongering because that is what it is.

It is unfortunate, Hon. Duale, that that is the way it is. It is not possible. As a consequence, I am told several other segments of society are running up and down claiming that they also want to be given severance pay. This is a problem but these are exciting times. There

are some people out there who think that the best thing they can do is to besmirch the names of sitting Members of Parliament. I do not know what benefit or delight they derive in doing so. The media house concerned is advised because these days it has become difficult for Kenyan media to apologise. Even if you told them to apologise, it would be within the classified pages so it will just be as good as not offering the apology. The House can only express itself about that. There is nothing like that. Those who sit in the Budget and Appropriations Committee, and I am sure the Chair of the Committee can confirm this, know that this is hogwash.

Did I see Hon. Wamalwa wanting to say something about this?

Hon. Wakhungu: Thank you, Hon. Speaker. This is a serious matter, particularly when we are approaching elections. This is not the first time. I know we have Liaison Office and the media stays here and has access to this information. If they need clarification, they can always go to the Table Office so that they can desist from this propaganda. This is not the first time. This issue of us handling it lightly particularly when we are approaching elections--- Stern action has to be taken. Article 34 is very clear in terms of freedom of the media but that does not mean you mislead or bring propaganda against sitting Hon. Members of Parliament. I went through it and I have not seen it anywhere. That is why it has motivated the Members of the County Assembly (MCAs).

An MCA called me today. Article 177 is very clear and it has specified. He asked me: "If you people are getting severance pay, why can you not give a provision for MCAs?" We have also seen phone calls from retired teachers. This has opened a Pandora's Box. It is therefore important for that media house to apologise and it should not be in the classified pages, otherwise they should be expelled from the precincts of Parliament. This is a serious matter.

I thank you.

Hon. Speaker: The Member for Juja, do you want to say something?

Hon. Francis Waititu: Thank you, Hon. Speaker. I also support those statements. The media houses know very well that Kenyans read so much from them. As we head to elections, it is very wrong because some of us are family members. My son asked me on a table room: "Why are you increasing your pay when you know other people are suffering?" This is something that they created themselves. As the Member has just correctly said, they are next to us, we eat lunch with them, we share tea with them, but they do not speak on that issue. But when you see what they write in their newspapers, it is like they have a grudge against Members of Parliament. These are the same people who wrote that we are *Mpigs*. They are calling us any other name.

When they were told to leave the precincts of Parliament, some of us said it is right for them to be here so that they enlighten Kenyans but they are the worst people. According to my own survey, they are now number two from the other corrupt people. They are the same people who go asking for money anywhere. They should be asked to apologise. If they do not want to apologise, we forgive them, but they will never be forgiven in heaven.

(Laughter)

Hon. Speaker: Now, that will be acting in futility. I am unlikely to be able to enforce the latter bit of what happens in eternity.

Hon. Mutava Musyimi.

Hon. Musyimi: Thank you, Hon. Speaker. I can confirm that the matter of severance pay came up when we were dealing with the Supplementary Estimates. We summoned, under one roof, the National Treasury, SRC and Parliamentary Service Commission (PSC) and we had

lengthy discussions. We also mandated them to go ahead and consult among themselves and report back to us. The matter came up again when we were concluding the Report that is now before this Honourable House.

To cut a long story short, I can confirm that that figure of severance pay is not in the Report that is before this House.

I thank you, Hon. Speaker.

Hon. Speaker: Very well. I leave it to the conscience of the concerned media house. Of course, through this House, we have a law through which complaints against the media may be launched. But as you know, it is a very incestuous organisation.

Hon. Members, before we go to the next Order, allow me to recognise the presence of students and pupils from the following institutions who are in the Public Gallery: Kipkoris Girls Secondary School, Kuresoi North Constituency, Nakuru County; and Kanduri Primary School, Gatanga Constituency, Murang'a County.

They are all welcome to observe the proceedings in the House.

(Applause)

Next Order!

MOTION

COMMITTEE OF SUPPLY: APPROVAL OF BUDGET ESTIMATES FOR FINANCIAL YEAR 2017/2018 AND ALLOCATIONS TO RESPECTIVE VOTES

THAT, this House adopts the Report of the Budget and Appropriations Committee on the consideration of Estimates of Revenue and Expenditure for Financial Year 2017/18 and the Medium Term, laid on the Table of the House on Thursday, March 23, 2017 and pursuant to the provisions of section 39 of the Public Finance Management Act, 2012 and Standing Order 235(6) and (7)-

- (i) approves an amount totaling Ksh.1,633,384,660,371 made up of Ksh.642,897,327,706 to be utilized to finance Development Programmes and Ksh.990,487,332,665 to be utilised to finance Recurrent Operations in respect of the Annual Budget for the National Government, the Judiciary and Parliament during the financial year;
- (ii) allocates the funds for the Financial Year 2017/18 to the respective Votes in accordance with First Schedule; and,
- (iii) approves the proposed decreases, increases and re-allocations as contained in the Second Schedule.

(Hon. Musyimi on 28.3.2017)

(Resumption of Debate interrupted on 29.3.2017)

Hon. Speaker: Who was on the Floor? Nobody was on the Floor. Yes, the Member for Kikuyu.

Hon. Ichung'wah: Thank you, Hon. Speaker. I wish to support this Motion.

Hon. Losiakou: On a point of order, Hon. Speaker.

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

Hon. Losiakou: Thank you, Hon. Speaker, for giving me this opportunity. I rise on a point of order under Standing Order 95 on closure of debate. I would like to ask the Chair to call upon the Mover to reply on this Motion for two reasons.

One, the CS National Treasury is expected to read the Estimates in the House tomorrow. Therefore, he needs some time to prepare that report. For him to do it sufficiently, he requires this Report passed by the House in either way. Therefore, it would be good to ask the Mover to reply so that the CS can prepare accordingly.

(Applause)

Two, this Report is a conglomerate of reports from different committees. In these committees, Members had sufficient time to contribute and make their points. Putting them together and presenting to the Budget and Appropriations Committee means that we had enough time to make contributions.

Finally, of course, even up to now there are about 23 Members who have already made contributions. Am I in order to move that you call upon the Mover to reply?

I thank you.

Hon. Speaker: Well, the Member for Kikuyu, you have heard what Hon. Pkosing has said. Finish your time very quickly so that I can call upon the Mover to reply.

Hon. Ichung'wah: Hon. Speaker, I will be very brief in just one minute. I just wanted to reiterate the words of the Mover of the Motion and the Leader of the Majority Party, especially on matters to do with accountability. When Parliament appropriates money to the various Government ministries, it is incumbent upon it to supervise its use. We must realise that this is an election year, and traditionally in an election year, prior to and immediately after elections, that is when most public resources get lost.

I was particularly happy that under the Ministry of Agriculture, there are funds that we have allocated towards food security programmes. More so, even within the Department of Irrigation, I see a very good sum of about Kshs2 billion. I wanted to use this opportunity to plead with the concerned ministries, especially that of Agriculture and the Department of Irrigation. In the recent, you have seen reports of issues to do with corruption within the Department of Irrigation. The Kshs12 billion that has been allocated to this Ministry, I pray that it will be used appropriately. More so, the accounting officers in charge should use their offices in line with the provisions of Chapter 6 of the Constitution, more so on issues to do with integrity.

I am aware from the Departmental Committee on Agriculture, Livestock and Cooperatives that oversees this department that there have been issues to do with award of tenders. But I want to encourage all accounting officers in all Government ministries, especially this Department of Irrigation and the Ministry of Agriculture, to ensure that they conduct their work in line with the provisions of the Constitution and the procurement laws established by this House.

With those few remarks, I wish to support this Motion and urge all accounting officers to ensure that as we go into elections and immediately after elections, there is true accountability and transparency in the way we conduct Government affairs.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, you heard the issues that were raised by Hon. Pkosing and the reasons for which he felt that the Mover should be called upon to reply. But it is your decision, so I put the Question.

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

Mover, you have the Floor.

Hon. Musyimi: Hon. Speaker, let me take this opportunity to again thank the Members for their contributions through the various committees of this honourable House. I also thank you and the Office of the Clerk and the Parliamentary Budget Office and my fellow Committee members. I shall be very brief.

In this Report, we have proposed an allocation of Kshs250 million to facilitate what we are calling structured public debate. The structured public debate is supposed to make it possible for us to discuss the socio-economic audit.

In this Chamber, not too long ago, the President reminded the nation that 50 per cent of the revenues that we collect are being paid to 2 per cent of the Kenyan people. So, the issue of the wage bill is a serious matter. It deserves public debate. We have talked about the number of independent commissions that we have. We have also talked about duplication in elective offices. We have had discussions about agriculture.

I have listened very carefully to all the contributions. The agricultural sector has received a lot of attention here. Indeed, one point was made yesterday by Hon. Manje that we are giving Kshs24 billion to social protection and yet giving about Kshs42 billion to agriculture, including irrigation, fisheries and so on. If we give more money to agriculture and hold ourselves to account and put more imagination in agriculture, we would need less money for social protection.

The points that have been made have gone a long way, I believe, in enriching the debate. I want to thank again the Members for their contributions.

I take this opportunity to reply. I thank Hon. Members again for giving us opportunity to serve them in the Budget and Appropriations Committee in the manner that we have done. I also take this opportunity to wish them well as they go for their primaries and, hopefully, for the general elections.

I thank you, Hon. Speaker.

Hon. Members: Put the Question.

Hon. Speaker: The Member for Tharaka Nithi, do not supply water to the Chair. You are meant to only represent the people of Tharaka Nithi and not to supply water to fellow Members, especially in light of the ruling today.

(Laughter)

(Question put and agreed to)

Next Order! What is your point of order, Leader of the Majority Party?

POINT OF ORDER

CONSTITUTIONALITY OF PROVISIONS IN THE ELECTIONS LAWS
(AMENDMENT) BILL (NO.10 OF 2017)

Hon. A.B. Duale: Hon. Speaker, before we go to the Committee of the whole House, I wanted you to give guidance on Order No.11 before we commence with the Second Reading of the Elections Laws (Amendment) Bill, 2017. I want to raise two fundamental matters relating to this Order. One is the constitutionality of the provisions of this Bill. One of the objectives of this Bill is to amend the Elections Laws Act to provide that election petitions in respect to Members of the County Assemblies (MCAs) shall end at the High Court while those of Members of Parliament shall end at the Court of Appeal.

The intention of the Bill may be noble in terms of clearing the backlog of cases at our courts. However, I am afraid that the amendment may fly in the face of Article 50 of the Constitution, relating to fair hearing. I, therefore, request you to confirm whether this Bill is constitutional. This is because each and every citizen must get fair hearing in a court of law. When you tell me that I cannot appeal at any court, be it at the Court of Appeal or the Supreme Court, then the question that lingers is what that court exists for? Each and every Member sitting here, and the aspirants who are competing with us, has a right to seek justice at all judicial levels up to the Supreme Court, if need be.

Secondly, I doubt if this Bill has been subjected to proper public participation, considering that the Committee is yet to table its Report. In this regard, I request you to defer this Order until the two issues are resolved. I want you to guide us on Article 50. What legal authority does one have in this world to tell you that your matter will end at the High Court or at the Court of Appeal? We must go through all the stages of our judicial system, if necessary. Therefore, I need your guidance with a view to removing this business from the Order Paper, so that we can consult further and agree on the way forward.

An MCA can as well go up to the Court of Appeal or the Supreme Court. Who is this person? We do not care whether there will be a crisis in the Judiciary. The Judiciary itself is creating a crisis in the Legislature. This morning, a judge decided to give us 60 days to comply with the one-third gender rule. He does not know that for a constitutional Bill to be processed in this House it needs 90 days to mature upon its publication, and that it must go through both Houses of Parliament. Such Bill requires between six months and eight months to be processed fully by the two Houses of Parliament yet a judge rules that if we do not do it within 60 days, Parliament will stand dissolved. You cannot blackmail and intimidate the Legislature. That Judge can have his own Parliament. This Bill is curtailing the rights of each one of us.

We seek your guidance, Hon. Speaker.

Hon. Speaker: Technology has become a bit of a problem.

Hon. Midiwo: On a point of order, Hon. Speaker. I agree with the Leader of the Majority Party. Given the time we are left with before the general elections, I would request, as you consider his request, we declare unconstitutional only those clauses which contradict the Constitution, so that this House can enable Hon. Chepkong'a's Committee to use the Bill to clean up the Elections Laws Act. This is so that we do not have to go through the publication period since there are many things to do with party nominations, which my good friend, the Leader of the Majority Party, was so passionate about despite my well-considered advice that the Bill they were ramming down the throats of Kenyans would throw the political parties into chaos. You may have noted that even the Jubilee Coalition has kicked out their smartcard and are now talking about some lists. However, if you look at the whole architecture created by the Bill

that we passed here, a lot of things need amendments – which makes the State to interfere with the running of political parties. I beg that we deal with the provisions of the Bill that contravenes the Constitution; and not the Bill in totality, so that we can use it as a vehicle to sort ourselves out for the peaceful conducting of the general elections.

Lastly, I agree with him on his reference to the judgement by the High Court. This morning, I thought it was something out of control. However, I loved it because this House can always find solutions. This House cannot do everything for our country. We must throw some of it to the electorate. Even the figures that we have here are pleasing to the eyes of our people. We must talk about the issue of one-third or two-thirds gender rule with finality, so that we can use the Floor of this House to throw it to the people to deal with it. We must obey the court ruling.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: I thought this matter was not contentious.

Proceed, Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Speaker, I agree with the Leader of the Majority Party on the question of public participation. It looks like in our quest to have this Bill passed fairly quickly, because of the impending general elections, we may not have filed a report with the House. On that score, I like to withdraw the Motion and request that it stays, pending our filing of the Report.

With regard to the constitutionality of the Bill, Hon. Members are free to appear before the Committee to persuade us otherwise. As you know, the majority of us are lawyers. We have looked at it, and we thought there was nothing wrong with it. However, we do not want to impede any debate in this House. That is a matter we can canvas when the Bill comes back for debate. For now, we ask to be allowed to file our Report for completion of the process.

Having said that, I must express my disappointment with the judge who issued an irregular order. He also appeared not to have read the Constitution, which provides that a constitutional Bill must be published and pend for 90 days before it is brought to the House for consideration. The same Bill must also go through the Senate.

Hon. Speaker, some judges need to be taken for induction courses.

(Laughter)

It is not good to appoint a lawyer from private practice and give him pen and paper and ask him to issue a judgement. One needs to know what is happening in the country. They have to be practical. Look at what Kenyans have said in the Constitution. The problem with judges nowadays is that they believe that there is something called independence. However, any decision made must be in line with the Constitution and any other enabling legislation.

Therefore, you cannot ignore even the Standing Orders which are subsidiary legislation and then claim that you are an independent arm of the Government. You cannot be independent and do illegal and unconstitutional things. Some of these judges must be told in no uncertain terms that some of us are also lawyers like themselves. Dare I say that there are very many advocates like my good friend, Hon. Olago Aluoch! When you even see him and the manner in which he walks, you could easily tell that he can write a better judgement than this particular judge.

(Laughter)

Of course, Hon. Speaker, we will not mention her name here so that we do not impugn her character. We know they will be belittled by what we say. I, therefore, wish to request that it be withdrawn pending our filing of the Report.

Hon. Speaker: The Hon. Member for Kisumu West wants to say something. On the issue of the business, the Mover and sponsor having conceded that it be removed from the Order Paper, I do not think there is anything else to flog.

Hon. Aluoch: Thank you, Hon. Speaker. I am surprised at the turn of events. First, the point raised by the Leader of the Majority Party is a very serious one. However, as usual, whenever he raises a serious point, he ends up diluting it before he finishes. I know we have issues with the Judiciary, but I do not subscribe to the view that if the Judiciary is insolent, in our view, we should be more insolent than them. That is not the way to handle them. We can handle the Judiciary more maturely and with legislation. We do not have to throw insults at them from the Floor. If we do this, we are reducing ourselves to their level and we will not have the moral authority to say they are wrong.

I am surprised that my Chairman in the Departmental Committee of Justice and Legal Affairs and for whom I have a lot of respect, Hon. Chepkong'a, is willing to withdraw this so readily. For the last three years, the current Chief Justice, Hon. Maraga, was the Chairman of the Judiciary Committee on Election Petitions and Laws. We spent a lot of time interacting with him in order to expedite the process of petitions so that they are finalised as quickly as possible without dragging them throughout the five-year period of Parliament. That is why this Bill is coming up.

Instead of delaying the process, I humbly request you that the matter be referred to the Departmental Committee on Justice and Legal Affairs to hear representation from the Members of Parliament and the public and then address the issue that has been addressed by the Leader of the Majority Party whether the Bill is constitutional or not, but we deal with this expeditiously.

Hon. Speaker: Order, Members! Member for Sirisia, take your seat. The issue that was raised by Hon. Duale should be considered by the Committee which is shown to be the sponsor of this Bill although obviously as you expect, I am aware of the origin of the Bill. This Bill originates from the Judiciary itself; there is no secret about that. Since the Judiciary, in many pronouncements, has been talking about public participation, including the participation between Hon. Sakaja and Hon. Shebesh--- It is public participation, I suppose.

(Laughter)

The Judiciary has on numerous occasions emphasized the need for public participation in the legislative process. You cannot have your cake and eat it. Even if the legislative proposal emanates from them, as long as it lands in this chamber and Article 118 is still in place, it must be subjected to public participation. This includes and is not limited to Members serving in our county assemblies who stand to be affected by some of the proposals in this Bill. Last week I alluded to the need for comity between the three arms of government. However, it looks like, continuously, we speak to ourselves here. There is one particular arm of government that has assumed that they have no business working in consultation with the other arms.

Hon. Members I am aware of these things. If one of you looked through the provisions of Article 261 of the Constitution about the enactment of legislations to implement specific provisions of the Constitution as provided for in the Fifth Schedule, you will see that the processes contemplated by Clauses 5, 6, 7, and 8 are to be exercised with the greatest care.

I am told by the legal team from Parliament that the insistence is not on the amendment to the Constitution, which then will require that a Bill published for purposes of amending the Constitution, in terms of Article 256 cannot be read a Second Time unless it has been in publication for a period of 90 days, and that is just in one House. That is not what is anticipated in the ruling today. It is anticipated that Parliament needs to enact legislation similar to the legislation enacted to implement Chapter Six of the Constitution on leadership and integrity. It, therefore, means it is either legislation to implement specifically Articles 27 and 81(b) of the Constitution which will then mean that you go to Article 100 which states thus:

“Parliament shall enact legislation to promote the representation in Parliament of—

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and
- (e) marginalised communities.”

This means that it is still within the power of this Committee chaired by Hon. Chepkong’ a to come up with legislation that may suggest to the electorate of Kenya, notwithstanding their sovereignty in Article 1, that now you must ensure that the people you elect would not be more than two-thirds of either gender. Maybe you can come up with that kind of legislation - That is what the judge wants. So, next week you can bring one, pass it and tell the electorate to ensure that happens. How they do it is upon them. Parliament will have discharged its obligations under both the Fifth Schedule and Article 100. Now, it will be up to the sovereign to decide. If the sovereign does not, then the judges will tell us what they would do with the sovereign.

(Laughter)

This is a matter that requires a lot of sobriety when being handled. We cannot have emotions guiding both the interpretation of the Constitution with regard to this matter as well the legislative process.

Obviously, the 60 days given do not contemplate the passage of a Bill amending the Constitution because it will not be possible. That is what the Attorney-General is going to do because the order is directed at both the Attorney-General and Parliament. However, Parliament is capable, through the able leadership of Hon. Chepkong’ a, to proceed in those ways that the sovereign will decide how many marginalised persons, youth, persons with disability and persons of either gender will be elected.

That is obviously, within those 60 days or even earlier than that. Hon. Cheboi is suggesting even 20 days.

Hon. Members, as a House, we want to make sure that we obey the Constitution. I have instructed our legal team to file an appeal against that decision, but that is not to say that Hon. Chepkong’ a is not at liberty to make legislative proposals or any other Member including Hon.

Midiwo and Hon. Olago Aluoch. We need something to implement the provision related to gender so that we can get over it and make others happy.

Hon. Members, in the meantime, for reasons that the Bill has not gone through public participation, the business appearing as Elections Laws (Amendment) Bill (National Assembly Bill No.10 of 2017) is taken out of the Order Paper. This is to allow for public participation and examination of the various proposals which the public may come up with relating to the suggestions contained therein.

Thank you, Hon. Members.

Next Order!

(The Elections Laws (Amendment) Bill deferred)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

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

THE SACCO SOCIETIES (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are now handling the SACCO Societies (Amendment) Bill (National Assembly Bill No.26 of 2016). It is a fairly brief one.

Order Members! We will go to Clause 2 which is not the norm because there are no definitions in it. Chair on Clause 2.

Clause 2

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended-

(a) in the proposed new clause 27 A-

(i) in sub-clause (1) by deleting the words “Deposit-taking Sacco”, “DTS”, “DT-SACCO” and substituting therefore the words “the phrase “DT-SACCO”;

(ii) in sub-clause (2) by deleting the words “Deposit-taking Sacco”, “DTS”

(b) in the proposed new clause 27 B-

(i) by deleting sub-clause (1);

(ii) in sub-clause (3) by deleting the words “subsection (2) shall stop using the words “Deposit-Taking Sacco”, “DTS” and substituting therefor the words “ subsection (1)”

(iii) in sub-clause (4) by deleting the words ““Deposit-Taking Sacco”, “DTS”;

We want to replace the words “Deposit-Taking Sacco”, “DTS” and use the words “DT-SACCO” and harmonise.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

Clause 3

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended in the proposed new section 48A by deleting sub-clause (3) and substituting therefor the following—

(iii) was a director of a Sacco society which was involuntarily liquidated, is under involuntary liquidation or has been placed under statutory management;”

We want to expunge the entire Clause 3 but in new section 48A sub-clause 3, we are only substituting (iii).

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

Hon. Nooru: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended by deleting paragraph (a) and substituting the following new paragraph—

(a) in subsection (5) by deleting paragraph (b) and substituting therefor the following new paragraph (b)—

“(b) Sacco societies may, in the ordinary course of business and in such manner and to such extent as may be prescribed under the Banking Act, exchange such information on performing and non-performing loans as may be specified by the Authority from time to time.”

This is a regulatory body and there is an Authority to regulate it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Ken Okoth, do you want to speak to this one? Yes, Hon. Iringo. I see no interest.

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

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

(Clause 5 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Order Members! Let us have the Mover to move reporting. Yes, the Leader of the Majority Party.

Hon. A.B. Duale: Sorry, Hon. Temporary Deputy Chairman. We are doing negotiated democracy and we have a lawyer, Hon. Chepkong'a.

The Temporary Deputy Chairman (Hon. Cheboi): When Hon. Fatuma is there, it makes it a little bit confusing.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the SACCO Societies (Amendment) Bill (National Assembly Bill No.26 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE SACCO SOCIETIES (AMENDMENT) BILL

Hon. Cheboi: Hon. Nooru, you are a very senior Member of this House. On this particular one, I am the Chair.

Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the SACCO Societies (Amendment) Bill (National Assembly Bill No.26 of 2016) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Omulele): Let us have the Mover.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Adan Nooru to second the Motion for agreement with the Report of the of the Committee of the whole House.

Hon. Nooru: I hereby second, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, because of the obvious reason that we do not have the numbers, I will not put the Question.

(Putting of the Question deferred)

Let us move to the next Order.

BILLS

Second Reading

THE OFFICE OF THE ATTORNEY GENERAL (AMENDMENT) BILL

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the Office of the Attorney General (Amendment) Bill (National Assembly Bill No.1 of 2017) be now read a Second Time.

The Bill is sponsored by the Departmental Committee on Justice and Legal Affairs. As the Chair, I am, therefore, presenting the Bill on their behalf.

The gist of this Bill is to regularise some anomalies that we found to exist in the Office of the Attorney General Act that was passed in 2012. We were informed that most of those pieces of legislation were passed in a hurry and so they were not looked into in great detail.

The reason why this legislation is being amended is as a consequence of a petition that was presented by the Law Society of Kenya (LSK) in 2015 in which they sought for the removal of the Attorney-General. Although they did not have any firm grounds for the removal of the Attorney-General, the Committee found that it was incompetent to consider the removal of the Attorney-General because there were no provisions in the Act itself that provided for removal. As you know, we must act in accordance with the law. The recommendation of the Committee at that time was that it intended to sponsor a Bill to provide for the relevant provisions relating to the removal of the Attorney-General just like the removal of a Cabinet Secretary is provided in the Constitution.

As you know, the Attorney-General is a pseudo Cabinet Secretary. He is not strictly a Cabinet Secretary because he is the legal adviser to the President, yet his appointment is approved by the National Assembly. The legislation does not provide for the procedure of his removal through this House. We seek to regularise that procedure and fill in the gap that exists in the law.

The proposed amendment seeks to provide those provisions that are similar in nature to those of the removal of a Cabinet Secretary. The amendment, therefore, seeks to safeguard the National Assembly's role in reviewing the conduct of State officers and initiating the process of removal from office. As you know, that is a provision that is contained in Article 95 of the

Constitution which gives the National Assembly the oversight role over all State officers. The Attorney General is a State officer like the Cabinet Secretaries and ourselves. We are given that particular mandate under the Constitution. For us to discharge that mandate in a clear way, we, therefore, propose that the relevant Section 12 of Act No.49 of 2012 be amended by providing similar provisions like those of the removal of Cabinet Secretaries.

Some time back, we passed legislation called the “Interpretation Act” that provided that the Attorney-General has the same powers as those of a Cabinet Secretary. Unfortunately, recently, the High Court expressed itself by stating that the Attorney-General is not a Cabinet Secretary. It is, therefore, incumbent upon us, as the National Assembly, to provide for the procedure for the removal of the Attorney-General. This is because the Court has expressed itself to say that he does not perform the functions of a Cabinet Secretary yet we had attempted to provide that he was a Cabinet Secretary to cure that anomaly that was contained in the Office of the Attorney General Act of 2012. In Clause 3, we seek to provide for the grounds upon which the Attorney-General can be removed. We are also providing for the procedure to be followed in the unlikely event that a petition is presented to this House by any member of the public.

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

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

As you know, petitions are not originated by Members of this House. They are only originated by members of the public who assist us in our oversight role by pointing to us the unethical conduct of any public or State officers. It gives us an opportunity to carry out investigations and inquiry into the allegations that have been made. As you know, we have done that in the past. We have dismissed some petitions. We dismissed the other one because we did not have any enabling legislation that allowed the Committee to consider that petition. We dismissed the petition by the LSK, not on its merit, but on the technicality that the Committee and this House do not have the power to consider the removal of the Attorney-General. We are only proposing to introduce two clauses to the Amendment Bill. It is fairly simple and straight. It does not have any issues.

I would like to request Hon. Fatuma, who is the very able member of Wajir County to second. I am informed that she has decided to elevate her career and she is now vying for a constituency office. It looks like she is doing better than me. On that note, it is only fair that she seconds this Bill as the indomitable member of Wajir.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member for Wajir, you have a great supporter in the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Temporary Deputy Speaker. I beg to second the Office of the Attorney General (Amendment) Bill.

Our Chairman of the Departmental Committee on Justice and Legal Affairs is my senior in the profession although I am not a lawyer. I am an auxiliary member of the legal fraternity and I support it. It is necessary to have a clear law that defines how the Attorney-General can be removed and the procedure required. If there is none that exists as it is now, it will be a field for manipulation and can be a witch hunt. It is very necessary that the Amendment Bill came on time

when the country is working on a series of constitutional amendments to align some of the requirements of the constitutional office. As you know the AG is the Cabinet Secretary who advises the Government on legal issues, constitutional issues and international human rights obligations.

It is necessary to protect the Office of the Attorney-General in terms of having a law that will define how to remove him or her and the requirements of the process in case of a civilian petition on the removal of the Attorney-General.

I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us now hear Hon. Ken Okoth.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to this Bill because it is a rather interesting one to me. I am not sure whether to support or oppose it. But, it raises concerns to me on several levels. The Attorney-General is not formally part of the Cabinet. That is a status we need to determine. He is the chief legal advisor to the President. Like other presidential appointees, it is not the job of this House to determine at whose pleasure they will serve rather we should let the President appoint the most competent AG to work for him. If you bring it back to the House, the House does not appoint him and so, it should not be involved in removing him. I know the Law Society of Kenya (LSK) might have had its qualms in a prior battle in a few years ago to try and get rid of the Attorney-General, but because he is a Cabinet Secretary (CS) like the others who are vetted and approved by Committees of this House, we should leave it. I would like to hear the thinking of the Departmental Committee on Justice and Legal Affairs and the origin of this Bill. I used to be a Member of that Committee, but I was kicked out.

Hon. Chepkong'a: On a point of information, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): There is a point of information.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Speaker. As you know, the very able Member for Kibra, my good friend, Hon. Okoth was a very good Member of our Committee until his own party decided otherwise.

The Attorney-General, just for his noting, is approved by this House. The President appoints him with the concurrence of this House. So, he is approved by his House. It is not that the President approves him and he becomes the Attorney-General. He comes to this House, appears before our Committee and he is approved.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): That is good information for the Member so that his argument is backed by facts.

Hon. Okoth: Thank you for the point of information, my Chair. I accept the information.

The second point I want to make on this issue is if we are talking about the Attorney-General, how about the Solicitor-General? Something is being left out. The Solicitor-General also comes to that same Committee for approval but, I see nowhere here the clarification on how the Solicitor-General can be removed by a petition. I am worried that by passing this law, we will be creating a situation where the Attorney-General, who is the standing head of the Justice Department as it is - and his Principal Secretary (PS) who is the Solicitor-General - will be subject to be removed by any petition brought to Parliament yet the Solicitor-General, who is his junior, will not be. That is not the case in all the other ministries.

Those are the points and I am happy that I have not made up my mind on which way to vote and I will be eager to hear what arguments Members raise in support or against this Bill before the time for voting comes. I have raised by points.

All in all, the key point is that this House is the representation of the Kenyan people and their sovereignty. We need to observe who is appointed to senior Government positions, what their qualifications are and under what terms they serve. When they are about to be removed, what is the proper procedure for removing them and are the threshold of complaints raised to this House worthy of accepting a petition to remove him? It is not just an issue of removing the Attorney General as we are talking about this amendment Bill. A few years ago, there was huge pressure on the Controller of Budget mostly on political grounds. Just a few weeks ago, there was pressure to remove the Auditor-General. There are many issues that we need to be concerned about.

Often times, the Senate has been considering petitions for removal of governors. In general, we need to know, as the Houses of the Parliament; the National Assembly and the Senate, what the thresholds are. This proposal here is to bring a petition for removal of the Attorney-General. We noticed that there is no consistency among the coalitions on the issues they support on who will be removed and who will not. We have seen this House handle petitions for removal of the Ethics and Anti-Corruption Commission (EACC) commissioners twice. A lot of pressure was put to the point that when something has been brought to this House, you find that people are ready to resign.

When we asked for the removal of the Independent Electoral and Boundaries Commission (IEBC), as Members of the CORD Coalition, we thought they had many questions to answer concerning the last elections; its preparations for the upcoming elections and in having the confidence of the public. When we brought that, this House was not very amenable and it took a long time. We had to go to the streets where people were injured, businesses were shattered and a lot of tension was raised before Members of this House and the Senate finally sat together in a joint committee and found a graceful way to let them go. Although it is a little bit expensive for my test, but we let the older IEBC to go and got the new one. To me, it raises a lot of issues. This House, again, as we deliberate these issues, is the voice of the Kenyan people and their voice is important and it matters.

We have had a critical issue that has been brought as a petition where the CS for Environment and Natural Resources had banned plastics by saying that in six months they should no longer be used. A *mama mboga* in Nairobi who sells vegetables and wraps them in plastics or a *cucu* who is carrying her shopping in a plastic bag could be jailed for up to four years and fined Kshs4 million. I am thinking that we need to amend this Constitution and maybe bring back the Attorney-General to this House, and have someone like Hon. Chepkong'a. I am going a little bit on a point to say that our system has gaps and some things have to be amended. The court just ruled today that we have just 60 days to pass legislation for the two-thirds gender rule that I have been championing for four years. We are now at the tail end and we are given 60 days to do something that is very hard.

We need to sit in a bipartisan way, put politics aside and look at the pieces of structure of Government that we adopted under the Constitution. What is the place of the Attorney-General and his security of tenure? What is the place of the Auditor-General, the IEBC and all these independent offices and critical offices of our Government? Under whose pleasure do they serve? What type of CSs do we have? Do we want to have CSs who are not in touch with reality where one CS says shut down the plastic industry and close down 60,000 jobs to save the

environment and another CS - today we have approved the Budget Report he will be reading for us tomorrow - tells us how we need to grow our economy and create jobs.

The President was here telling us that we need to put our young people to work. Unemployment remains not just an economic issue but also a social and security issue. There are very many unemployed people in this country. If you close the plastics industry we will lose 60,000 direct jobs in manufacturing and associated services like jobs in the supermarkets such as Nakumatt. You want to close down the plastics so there will be no one bagging there. Where will those low income jobs that keep people honest come from? How will we replace them? We set up a Constitution that is mostly very good. We all agreed there was 20 per cent that needs to be fixed. It is clear in our history if we look back five years, everybody said that the Constitution was good but there was 20 per cent that needed to be fixed but, we never agreed what that 20 per cent is.

It is high time we realised that the 20 per cent that needs to be fixed is in the structure of our Government and in how we will use our Constitution to create a stable environment that protects our planet, like one Cabinet Secretary (CS) wants to do with the environment by banning the use of plastics. This is meant to ensure that the unemployed young people in Nairobi, factory workers in the plastic companies and the young people who do recycling in places like Dandora will still have their income. Sustainable development comes on three legs. It is not just one thing of "Let us save the planet." It is also the other side of let us keep these jobs and have social security. Let us make sure the economy is working. There are three pillars to sustainable development, namely, the economy, the environment and the social aspect. Even our Vision 2030 says it. When I mention the rulings of the CS and the threat to shut down plastics within 60 days, I love the environment. I want to preserve the environment, but I will be honest with you. I have just come from the USA and I stopped in Amsterdam. The western nations which are the most advanced biggest economies do not operate the way we do. Of all the 196 countries in the world, less than 10 have experimented with a plastic bag. Kenya does not have to rush to be among the winners there. There is no gold medal for that. We must think in the back of our minds why even in the USA, you can still use plastic and get it at the supermarket.

In Amsterdam, if you stop at the airport to shop, you will pay a little bit extra to get a plastic bag. So, it is the opportunities there and there is a middle ground to these things and make sure that we are fighting for a space that works for us.

I am happy to contribute and to learn more why this Office of the Attorney-General (Amendment) Bill is needed and to hear from the other Members. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay, Hon. Member. I now give the Floor to the Member for Nyeri County, Hon. Priscilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. I am also happy to contribute to this Bill on the Attorney-General and the Office of the Attorney-General (AG). To just get back to the last speaker, Hon. Kenneth Okoth, who is a good friend, on many of the things that the western world has taken a lot of time to change, I do not think we should take an equal amount of time. I do not think if they took 100 years, we should equally take 100 years. We should move faster. We are the ones in the Third World. They belong to the First World. We should continue to move faster and Bills like this help us to come closer to where we are moving to.

The Office of the AG under the new constitutional dispensation remains a very interesting office. It is the animal that we say is neither a bird nor a bat. It is neither a CS's office nor is it an elected office. It is a difficult office in terms of the new constitutional dispensation.

The AG is one of the permanent members of the Cabinet together with the President and the Deputy President. As the Constitution continues to get unpacked and implemented, there must be questions on that office and whether the processes that are adopted for that office become closer to the ones that are used for CSs or become even wider like an election.

In some countries like the USA and other states, they have considered election of an AG because of the centrality of that office in terms of governance. Here in Kenya, the AG is appointed, serves as a consequence of that appointment, but the law did not give the terms under which he can be removed and the terms of discussion or debates on any of the processes that can be used for the removal. A removal process helps to work as a check on an officer. As officers implement the duties that are on their table and follow the laws and the Constitution, they are always aware that if they make mistakes warranting a removal, there is, indeed, a removal process that they can be taken through.

To the extent that this is what this Bill provides for, I find favour and I support it. My only fear, and I have learnt to fear this Parliament as we know it, I hope there is no urgency to remove the current holder of this office. I hope this is not a law geared at the removal of the current Attorney-General who is a professor of many of us. He has taught us the law. Many of us are in this House courtesy of the work of Prof. Githu Muigai. I hope this particular law does not suggest any urgency, whatsoever, in the removal of the current AG. What I hope the law is going to do is to provide a process through which if there is need - and I hope there is not, at the outset - but should there be any need, Attorney-Generals, Prof. Githu Muigai and others who are going to serve this country, if there is ever need for the removal of the AG, there will be a law to resort to. This particular law that we are debating is not geared at the removal of the current Attorney-General.

We are going into an election. A lot of guidance is required in the electoral process. In the guidance that is required as we proceed to election, the Office of the Attorney-General becomes very central. Just today, the court has pronounced itself on the two-thirds matter. I know men in this House are not happy, but let me use the Floor of this House to say that women of this House are very happy with that decision. We support the court. The court has ruled that we have 60 days to pass a law on the two-thirds matter. It is difficult in the sense of some of the provisions of the Constitution. We are aware that there are Bills that can be revived, that the Speaker can exercise his powers under Standing Order No.1, and he has very wide powers. We ask the House to have an open mind on the matter of the two-thirds. In that open mind, there can be solutions. Duale 1 was brought to the Floor and it was voted upon, namely, the Constitution (Amendment) Bill No.4. Duale 2, Constitution (Amendment) Bill No.6, was never brought to the Floor and was not voted on. This House has a chance in Constitution (Amendment) Bill No.6, which is christened Duale 2, to exercise and to follow what the court is asking us to do. In any case, the Speaker has correctly ruled that we cannot bring other pieces of legislation that implement the two-thirds matter including a time like now when parties, including my own party Jubilee, are processing candidates to bring to the IEBC a list of candidates that meet the two-thirds threshold. It will be left to the party to see what to do and how to get the women elected in some of their strongholds. All this debate is guided by law and by the courts and most importantly, by the Office of the Attorney-General that holds true to our Constitution as a living document that we can achieve most of these things.

As I end my contribution, I want to urge that this particular Bill does not just look at the removal process of the Attorney-General, but expands to the functions of that office. There is a judgement that speaks to the role of the Attorney-General in so many other statutes. The

Attorney-General has been operating as a CS in some of the statutes that this House has passed. On matters like human rights, companies and registration of societies and many others, the Office of the Attorney-General is the line Ministry. There is need for this Bill to be amended to look at what the courts have said in the matter of discharge of the duties of the Attorney-General as far as the statutes are concerned and as far as his duties as a CS or similar to a CS are concerned. This is the Bill where that can be corrected.

As we pass this Bill, we would be looking at bringing amendments that look at the functionality of the office and in particular address the role of the Attorney-General in the statutes that have been passed by this House, which number in excess of 20. That matter is fairly urgent. There would be no need of having two Bills on the Office of the Attorney-General. Now that this one is on the table, it would be ideal that the issues of the Office of the Attorney-General are brought into this Bill as well and the Departmental Committee on Justice and Legal Affairs that I sit in, will have occasion to look at the amendments to see whether there is merit in introducing further amendments to the Office of the Attorney-General's functionality and to this Bill to cover the issues of removal, should there be any reason at any point in time in future for the removal of the Attorney-General. More importantly, it will also cover the issues that have been raised by judges in the various decisions that have been issued. More importantly, also looking at the way the officers operated, I am sure they too, in the public participation process, should come forward and guide Parliament in enactment of this law, so that if there are issues that they need Parliament to address at such a time as we are passing this in the National Assembly, they should call attention of the House to those issues.

Hon. Temporary Deputy Speaker, I am also happy to note that the Office of the AG has other functions that require a little more attention by Members of the House. Even as we pass this Bill, let us pass a Bill that would stand the test of time and secure the Office of the AG, but also, and in particular, address the functionality of the AG in a way that attempts to clear whether he is a CS or not, whether his functionality becomes closer to that of the CS for the purposes of the other laws that are under his implementation.

In doing that, we should note that he has a *sue generis* office, as we say in law. He has an office like no other and one that is included in our Constitution to assist the country in matters of law. His office also assists the Government in power for the period that they are in power.

I hope the National Assembly realises the difficulties around this office; that in one way, you are the AG of Kenya, but in another way, you are the President's Chief Legal Advisor, in this case and for the time being, His Excellency President Uhuru Muigai Kenyatta. Therefore, as we debate the law, let us be alive to all those issues so that we can pass a Bill that passes the test of time.

Thank you, Hon. Temporary Deputy Speaker. I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Makueni, Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute on this very important Bill. It is a very unique office in that the AG is actually the lawyer for the President. So, how does an individual hire a lawyer for himself and when you hire a lawyer for yourself, how do you sack that lawyer? He is also the lawyer for the country. The office is actually like a big law firm running the matters of the State from drafting of laws for the country to doing litigation on behalf of the State. That is why the Office of the AG is sued in a lot of suits. When the Government is in breach of something or is about to be taken to court, then, you sue the AG on behalf of the Government. So, it is a very unique office.

The history of the Office of the AG is known. Senator Wako was there for 20 years having been appointed by former President Moi. Now we have come up with a method of sacking an AG. The original law said that the President may remove the AG or the Solicitor-General from office for serious violation of the Constitution and things like that. However, in the amendment, this is what we want to amend now. We have forgotten the Solicitor-General. The Solicitor-General is actually the deputy of the AG. In the Government structure and in terms of Ministries, because at times these officers operated as Ministries, the Solicitor-General is actually the Principal Secretary (PS) or equivalent.

One time, I sued a former Solicitor-General and I was just about to commit him to jail when he paid sums owed to my client which he had refused to pay deliberately for a long time. However, when he saw that he was going to be put in jail, he quickly decided to pay. I did not sue the AG himself. I sued the Solicitor-General as the PS of the institution then. Then, it was the Permanent Secretary. He had that capacity.

Therefore, this office needs to be looked at very carefully. If you look at the manner of appointment, it is similar for the AG and the Solicitor-General. You have now come up with a provision for removal. I am also hoping that this is not skewed or calculated to remove the current AG, Professor Githu Muigai, who was my professor of criminal law and a great friend of mine. In fact, I will tell the President that he has the best lawyer in town for now. There may be challenges and differing opinions because legal opinions differ.

Of late, I have seen a lot of Government departments purporting to seek advice from the AG. We have a different office now which is assisting with that sort of scenario in the Government. The AG's office in the new Constitution is not like what used to happen. I even saw the Independent Electoral and Boundaries Commission (IEBC), which is supposed to be independent, purporting to have sought an opinion from the AG. Of course, they got a very good opinion, but we realised that they left out a very important body, the Law Review Commission, which has now taken most of the duties of what the AG used to do. This matter is complicated. It is not as it is cheaply put in this Bill.

In fact, the Justice and Legal Affairs Committee needs to go back to the drawing board, give us a better law and make serious amendments to include the Solicitor-General too, but also bear in mind that this is the President's lawyer. So, how does the President hire his lawyer? It is through this House. How do you sack this lawyer and for what reason? What really constitutes misconduct? Is it a badly prosecuted case and if that is the case, is it this House to deal with the AG, the Law Society of Kenya (LSK) or the other necessary tribunals which are there for lawyers? This is not an office you can put a non-member of the LSK. You have to put a qualified lawyer in that office with a profession and with a legal body which deals with matters of an association of members.

Therefore, it is a Bill which needs serious thought. It should not be brought here in bad faith. It should not be looking for a way of sacking the AG because somebody feels maybe a certain advice he has given to the President and his deputy may not have suited the political climate.

There is a story told of a famous lawyer, Sir Thomas More, who was supposed to change the law. He was supposed to change the law to suit the king so that divorce could be allowed. The AG was silent on the matter and his silence was loud because it was obvious. Of course, he was executed for disobeying the king. It became treason. That was like 500 years ago. AGs have been there for many years. We need to look at the practise in other jurisdictions similar to ours like the Commonwealth jurisdiction. You have quoted an American system. It could be slightly

different from what is the practise in the Commonwealth jurisdiction. What happens in other countries which have similar constitutions as ours? What is the practise in other countries with the previous constitution we had?

We should come up with a free and fair manner of dealing with the matter, so that the moment the President feels that his lawyer is not advising him well or there is a proper way to believe that he is not conducting the activities of that office well, then he can be removed. There is his PS, who is the Solicitor-General. Therefore, the administrative matters do not squarely fall on the AG. He is not the Accounting Officer of that department. At times, when you have a Ministry for Justice, that particular office acquires a boss. The CS of Justice becomes the boss of the AG. However, right now, the situation is very different. Is he a CS? Does he sit in every Cabinet meeting? Yes. He no longer sits in Parliament. So, if he sits in every Cabinet meeting, he is actually a CS. So, does he get accommodated as a CS? In many ways, yes, because the moment the President is out of office, his CSs are also out of office and automatically the AG will also get out of office.

I have looked at this Bill and it looks like the moment the Committee begins investigation and on the face of it thinks the AG has not done anything which is contrary to the Constitution, then, the proceedings cease at that moment. So, at what point, then, do you deal with it differently? How do you deal with the removal of the Chief Justice or a judge? I think this Bill should be similar to those of other constitutional offices like the Chief Justice. It should be at that level, but it should not be at this level you have given it as a Committee. In fact, this is giving it more confusion than it should have been. I believe a process similar to the one of the Chief Justice is the one which should apply here, but, obviously, the tenure ends when that particular president leaves office or when he feels that you have differed with him politically and there is reason to be removed.

You know what happened to the Chair of the Ethics and Anti-Corruption Commission (EACC) and the IEBC commissioners. Are we going to use that method simply because you have ganged up some Members of Parliament, there is a majority in the House, there is a vote in the House and there is a Committee which has been put together? The matter must be deeper than this.

This should be to a higher level, not just like a tribunal. In this particular case, there is no provision where the President appoints a tribunal to investigate further. That tribunal is chaired by a judge. We have many other smaller offices than the Office of the AG, which enjoy that sort of privilege. I believe the Office of the AG has been belittled and I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Nakuru East, Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to air my view regarding this Bill.

When I was listening to the Chair of the Departmental Committee on Justice and Legal Affairs, I got a little bit confused. I heard him say the court has already pronounced itself regarding the AG not being a member of the Cabinet. So, the only way of removing an AG is by the President himself, unlike when you want to remove a CS.

Article 152(1) of the Constitution talks about the Cabinet and says it consists of:

- (a) The President;
- (b) The Deputy President;
- (c) The Attorney-General; and
- (d) Not fewer than fourteen and not more than twenty-two Cabinet Secretaries.

I am a little bit confused as concerning the court pronouncing itself and yet the Constitution is very clear. The court says that the AG is not a member of the Cabinet and yet under that Article he is. If the AG is present, will he be counted as contributing to the quorum of the Cabinet or not? These are some of the issues that I really wanted the Chair of Departmental Committee on Justice and Legal Affairs to let us understand.

Secondly, the process of removal has been squeezed to either the President or Parliament. The question that arises is if a member of the public would want to have the AG removed, then what is the process? The process of removing an independent office holder is stipulated in the Constitution. It is through a petition. If a member of the public would want the AG removed as per the law, they have no opportunity of doing so.

If you look at this law, it is a little bit confusing. First, it talks about a third. Then it talks about a quarter of the Members supporting. If you look at the law, for a CS, you need to have a certain number for you to remove them. If you look at the law, at some point, it talks about a third and in some other places, it talks about a quarter. Again, it becomes more confusing as to the number you are supposed to have to remove the AG through a Motion in Parliament.

I am saying this in the context of Article 156(7) which says that the AG can act as a person or can delegate to his subordinates. This is a case where one of the issues being raised by the Member of Parliament who wants to have the AG removed was undertaken by a subordinate staff. Will that also be part of what the AG has will take responsibility for? The Article clearly states that he can act as a person or delegate.

I am saying this in line with what happened just the other day. The Auditor-General was summoned and there was a petition. One of the issues that were raised in that meeting which is very fundamental is that, maybe, sooner, we will be asking the Speaker to give a directive or a ruling regarding this. When you summon the Auditor-General, do you summon him as a person or the office? One of the issues that were raised in that meeting was that when the Auditor-General was asked, he said:

“Some of these things were done by my deputy and I am not the one who did them. Because I am here as a person and not as an office, I cannot ask my deputy to come and answer some of the questions. If you want, then, the Committee is the one that is supposed to call.”

Later, we will be asking for your substantive direction. If somebody is being summoned, is he or she being summoned as a person or as an office? Those are some of the very fundamental issues that we wanted to ask the Speaker. The selection process of a Select Committee is not pronounced. This House has a majority party and a minority party and there are independent candidates. How are you going to compose that Committee? Will it involve only one side? Is it at the discretion of some people? If it has to be, then, it has to be specified that it has to have this number of Members from this side and this number from the other side. We should not just leave it for a few people the way it happens when we constitute a Select Committee; that I decide I am going to propose some names and if they are accepted by the House, then it is approved. Again, we must have a specific number from the majority and the minority parties and the independent Members. This is how the Committee is going to be composed.

My second question, and I would have wanted the Chair to be here, is why a Select Committee and not the Departmental Committee on Justice and Legal Affairs? Again, it becomes pointless for us to have a Select Committee of 11 yet we have a substantive Committee that is supposed to be handling these matters. I tend to believe that these are fundamental issues that are

supposed to be amplified in this amendment. In the Committee of the whole House, we will be proposing some amendments.

I am also confused when I read about Clause 3 on the procedure for the removal of the AG. It says that immediately you give notice of a Motion, the Speaker should have three days. Later, it says seven days to be approved by Parliament and yet the Committee has another 10 days. I am a little bit confused regarding the number of days. Upon a Member moving a Motion, what are the specific days?

If you look at Clause 3(2)(b), it says by the House within seven days of a Member giving notice and if not, such Motion shall be deemed to have been withdrawn and shall not be moved again in the same session. I was trying to consult the Clerks-at-the-Table to understand a session of Parliament. We know that if anything is defeated on the Floor of the House, then it takes six months to be reintroduced on the Floor of the House. Now, when you say a session, we would want to know whether it is a contradiction of the tradition of the House under the Standing Orders? If a session is shorter, then what happens?

Clause 5 says that any signature appended to the list as provided under Paragraph (4) shall not be withdrawn. I think this is draconian. If I append my signature because of false information that I have and tomorrow I get the correct position, I have a right to withdraw my signature. So, when you tell me that I cannot remove my signature after getting the facts, this is draconian and these are some of the issues we are supposed to articulate.

If you look at Clause 6, again, it is a repetition of what is ahead there. So, these are some of the issues we will be raising in the Third Reading to try and do a few amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give a chance to the Member for Mbita, Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak on this Bill.

From the outset, I am very reluctant to support this Bill because I do not know what purpose it serves. Having been privileged in the Parliamentary Select Committee that came up with the Constitution, I know what the letter and the spirit of the Constitution is in relation to the Office of the Attorney-General. We went through a pure presidential system of governance and we agreed that through that system, there are very clear Presidential appointees, and one of them is the Office of the AG. When we again bring the AG back to Parliament, we are curbing some of the powers of the President and do not see the need for Parliament to be involved in a position which is purely a presidential appointee. We made a clear choice for a pure presidential system and if we want to change that, then, we need to go to the heart, which is the Constitution, and do an amendment to the Constitution, so that we then go either through a parliamentary system, semi-parliamentary and presidential system or a *sue generic* system for Kenya. We have deliberated on that and we are very sure that, that is what we want.

However, the people of Kenya were very clear that there are some positions that we gave absolute power to the President and one of them is the Office of the Attorney-General. When I speak about the presidency, it is not even about a person. It is about the office that we created through a presidential system. The President has more powers in some areas and we curb certain powers in some areas. One of the areas we left the President is the Office of the AG. The reason is that the AG is the chief advisor of the Government under a presidential system. So, for us to start subjecting such a person to this House, it beats own purpose.

I do not know and unless the Mover of the Bill can tell us what mischief they are trying to cure, I will not support. I have not understood the politics behind it because sometimes, we

also bring Bills with politics in mind. Maybe somebody wants to remove my good teacher, Prof. Githu Muigai. I do not know the politics behind it. However, if somebody wants to remove Githu Muigai, all they need to do is to appeal to the President to fire him. I do not see what is so difficult there. You just need to write a letter. And in any event, if you are talking about petitions, there is already a system of petitions. We are not stopping people if they wanted to. However, to document it legally that we are providing a different way for removing the AG is that we are in some way trying to shield that office and give it some level of protection which was removed in the Constitution. So, I am not persuaded unless the Mover gives me the reason or the mischief they are trying to cure.

I will not support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member, I now give the Floor to the Member for Ugunja Constituency.

Hon. Wandayi: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to express myself on this Bill. Without a shade of doubt, I want to oppose this Bill. I read serious mischief in its conception and the manner in which it has been brought to this House.

As things currently stand, the President has the sole prerogative under the Constitution and the relevant laws to fire the AG. Indeed, that is in line with the principle underlined under pure presidential system which Kenya embraced by passing this very progressive Constitution of 2010.

I do not see why the President needs the assistance of Parliament to execute his mandate as per the Constitution. It is a way of trying to hide behind Parliament. A decision has been made elsewhere to fire the AG and then you want Parliament to stamp authority yet the power vests with the President. This is one of such ways of misusing Parliament; an abuse of Parliament.

Hon. Temporary Deputy Speaker, if you are old enough - I think I am old enough to recall in 1982 or thereabout when Parliament changed the Constitution to make Kenya a *de jure* one party state. At that time or thereabout, there was an amendment in the Constitution to remove the tenure of office of none other than the AG. By that time, I think it was Justice Mathew Muli.

An Hon. Member: Njonjo!

Hon. Wandayi: It was not Njonjo, but I do not remember very well. What we are doing now is akin; has a serious resonance with what happened then. We are trying to essentially emasculate the Office of the AG, so that as he continues with his day to day duties of advising the Executive, he must always keep on looking at his back. That is one of the things we do not need in this country. The AGs office, in my view, instead of being watered down in the manner proposed in this Bill, should have been strengthened. In fact, I would have proposed that the AGs office be elevated to a level of the Auditor-General's office. This Government has been at pains to remove Mr. Edward Ouko, who is the Auditor-General for their own interest, but has been unable to do it because of the provisions and the way the office has been entrenched in the Constitution. They have been struggling to remove Mr. Ouko because they do not like him and because he continues to expose their corruption deals every now and then.

If you reduce the Office of the AG much lower than what it is currently, through a Bill in this House, you will have done a lot of disservice to this country. In fact, as you do so, you seem to be entrenching the Office of the Solicitor-General, who is supposed to be the deputy of the AG. I am told he is supposed to be the Accounting Officer in the State Law Office. By the stroke

of a pen, you are making the AG subordinate to the Solicitor-General. You make it so easy for the AG to be removed from office that it makes a joke of the whole essence of security of tenure.

The AG advises the Government. I do not think anyone in their right minds would want to go for the AG. If there is a problem, an act of omission or commission which anyone thinks is against the Constitution or against the wish or the best interest of the citizens of this country, you can deal with the authority. In this case, the authority is the Executive, which is headed by the President. You do not go for the messenger. In fact, the AG is a mere advisor. He just advises. He does not compel the President or the Cabinet to go by his advice or opinion. He simply advises. So, you are making this Parliament to become a tool to be used to go for the messenger. To go for the advisor and leave the implementer. The buck must stop where it rightfully belongs.

Hon Temporary Deputy Speaker, the buck must stop with the Executive which is headed by the President. In my honest opinion, I do not think in this day and age, this Parliament needs to entertain this mischievous Bill.

I am also aware that the Government's Executive headed by Hon. Uhuru Kenyatta has been very uncomfortable with one Professor Githu Muigai. I do not know him very well at a personal level. The only time I encountered him closely was when he appeared before the Departmental Committee on Administration and National Security to make a presentation on claims by some Ugandans and Rwandese on Post-Election Violence (PEV) losses. I saw in him a very progressive and patriotic Kenyan who goes about his duties very objectively. I think that is the cause of his problems. This administration seems to be very uncomfortable with him and is, therefore, looking for a way to get rid of him. I wonder why they are trying to get rid of him this late in the day when the time for this Government is ending. In about four months, this regime is going home. Why would you want to settle scores with Professor Muigai simply because you do not like him and yet you know that your term of office is ending? You are going home on 8th August this year. We cannot afford to allow this Parliament to be misused to settle personal scores.

Everybody knows that in this administration, the Office of the Solicitor-General has become too powerful. In fact, it has made the Office of the AG appear a paper type or some powerless structure which does not make any sense. That was not the intention of the drafters of this Constitution. The drafters did not envisage a scenario where the Solicitor-General is more powerful than the Attorney-General. We cannot continue to govern at the altar of political expedience. We cannot let that office direct or dictate the manner in which we govern a nation. So, Parliament must rise to the occasion and say no to this mischief by the Executive, which is being forced down our throats by the Departmental Committee on Justice and Legal Affairs.

I ask for two minutes more so that I continue with my contribution. If you could indulge me, please. This Parliament cannot go down in the history of this country as a Parliament that abetted flagrant abuse of power by the Executive. You cannot use the Parliament of this Republic to settle personal scores. If you have an issue with Prof. Githu Muigai, send him home. I challenge President Uhuru Kenyatta, if he has an issue with Prof. Githu Muigai being his Attorney-General, then, he should fire him tomorrow. He has the power to do so. Why do you want to hide behind Parliament? Why do you want Parliament to assist you to fire Prof. Githu Muigai? Fire him and appoint whosoever you think is fit to serve in that office!

We cannot allow this to happen. This country has come a long way and if we can afford to entertain this kind of mischief, we shall be assisting henchmen to return this country to the dark old ages of tyranny by the Executive. We shall be going back to imperial presidency and dictatorship. We cannot allow that to happen as we watch.

As I conclude, there is no hurry in enacting this kind of a Bill. Even if there was rationale, which I doubt there is, there is no hurry. The term of this Government is ending in four months' time. It will be going home on account of corruption, tribalism, nepotism and dictatorship. This Government is going home. Why is it using Parliament to do mischief when it is going home?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Wandayi, I have given you enough time. I now give the Floor to the Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Speaker. I also add my voice to this proposed amendment to the law. The importance of the Attorney-General's office cannot be gainsaid. It is so important that there is no government that can run without a competent Attorney-General. The holder of the office at the moment is one of the most competent lawyers that we have in this country. He is internationally recognised and has done a lot for this country. Any person who knows what is happening knows that there is something afoot. We must know that the AG is the one who connects us with the world as far as international agreements and concessions are concerned. We also know that the AG has tried to prevent corrupt activities, especially when it comes to international agreements. The Government cannot pay money without the legal opinion of the AG.

I know he has stepped on many toes. Of course, there are cartels fighting the current Attorney-General. That we know. We know that there is need for us to respect the doctrine of separation of powers. We do not want to do what the law gives the President to do, neither do we want the President to do what this Parliament is supposed to do. Let the President do his job and Parliament do its job. This amendment is so shallow and so casually presented that it is unbelievable. It should not have come to the Floor. It is not justifiable and possible to accept this kind of an amendment.

The Constitution gave the President powers to appoint and fire the Attorney-General for reasons that are well documented, for example, if the AG violates the Constitution and he is liable of gross misconduct. Why does he need to bring this to Parliament with a view of making it his guillotine? He wants us to be the hangmen! Let him hang whoever he wants to hang through the power he has, but not through us. As somebody said, the Attorney-General's office has been eclipsed by the Office of the Solicitor-General who is supposed to be the Accounting Officer. We have observed many instances where that office has been usurping the work and powers of the Attorney-General. The other day in Voi, we heard the President castigate the Attorney-General with regard to registration of some churches. The Attorney-General said there must be regulation of churches. There is a small area I know of where there are more than 100 churches in one compound. He said people are making business out of Kenyans in churches and he suggested to have that regulated. However, because of the money that is raised and the populist approach to issues, the President admonished his Attorney-General in public. That was quite embarrassing.

I believe we should respect the Office of the AG because it is there forever as long as this country exists. Holders of this office will come and go. In fact, my colleague, Hon. Wandayi, gave an example of a judge who removed his own security of tenure during the Kenya African National Union (KANU) days. We are retrogressing and going back to those days and that is something we should try to save this country from.

I believe this Amendment Bill should be withdrawn and something serious brought to Parliament which will not infringe on the presidency and give us a job which the Constitution has not given us. We should first amend the Constitution and then bring this Amendment Bill.

Thank you, Hon. Temporary Deputy Speaker. I oppose the Amendment Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Nambale. Is he in the House?

Hon. Bunyasi: Yes. Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this proposed Amendment Bill. In the first place, senior staff like the AG or CSs are selected at the will and wish of the President and serve at his will. However, the position of the AG is very special even though he is chosen by the President. He is expected to provide unbiased advice once in office. He is expected to be as objective as possible, so that the President can get honest guidance on legal affairs and the country can treat its citizens within the law and the Constitution. But interpretative issues are usually done without inherent political bias when advice is given.

Shortly after the AG accepts office, he knows he will give honest advice to the Government and will serve during the tenure and will of the President. Looking at this Bill, I believe at face value, the motivation for drafting it is stated in the Memorandum of Objects and Reasons and find that there must be something sinister being planned. If that is the case, I think they should deal with it politically and not use the National Assembly's legislative processes and powers to achieve that goal.

This should be rejected in totality and if we go about doing things this way, we are going to destabilise honest public servants from being able to discharge their duties in accordance to their conviction and guided by the law and the Constitution. If such advice is unpalatable, the President has an opportunity of calling the AG quietly and telling him if he goes that direction, he will be leading him to a corner. He can do that, because this is his officer. We should avoid public spats against officers who are doing their work honestly. We should avoid using institutions such as Parliament to create frameworks which legalise destabilising and retrogressive approaches.

We had two previous AGs who served for a long time. One was Charles Njonjo and the other Amos Wako. I am sure they had many ups and downs with their bosses as they served, but they tolerated them so that over time, there was an element of continuity. However, the President had an opportunity, if he so wanted, to express displeasure and the AG would probably have left quietly. What is being proposed is unnecessary. As my colleagues have said, if this is passed, it will mean the current AG is targeted and people have a lot of respect for him as an eminent and learned person. We saw the role he played in defending the President and his deputy at the International Criminal Court (ICC) not long ago. This is not the time and nor are we the right people to be used to pass this kind of an amendment Bill. I reject and oppose it and ask the House to reject it in totality.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Member for Ugenya, Hon. Ochieng.

Hon. Ochieng: Thank you, Hon. Temporary Deputy Speaker. I sit in the Departmental Committee on Justice and Legal Affairs where this Bill seems to have originated. I want to start by saying that I oppose this Bill for the simple reason which appears on the Memorandum of Objects and Reasons. It says: "That the Constitution of Kenya establishes the office of the Attorney-General as the principal legal adviser to the Government." That Act provides for only one mechanism for removal of the AG by the President who is the appointing authority and can remove him at his pleasure.

We are addressing no problem because the current AG does not have what the former AG used to have, the security of tenure. It is long gone, the moment we made the AG the legal adviser to the President. I know this Bill came about because there was a time when someone came up with a petition to remove him and we had no legal provision for doing so as Parliament. As the Constitution envisaged, this is not a matter which Parliament has a role to play because this person serves all the time purely at the pleasure of the President. So, if he fails, the President fails. If he succeeds, his appointing authority succeeds. I think we need to leave it at that.

The position of the AG is not like that of a CS. It is very special in the Government. He advises everybody in the Government, the presidency and concerned Ministries. You can imagine that in his line of duty, he goes through so many things. What is interesting about this Bill is why it is going through Parliament. The other cases which concern lawyers or these kinds of positions like the Auditor-General and judges go to tribunals. That as Parliament we should sit down and select 11 Members and then purport to prosecute a matter of removing the AG, it is wrong. We should sit in a case where we are the prosecutor, judge the person concerned and ask the President to fire him. Therein tying the President's hands because once we ask him to fire him, he has to do so. That is not the way it works. If someone does not like the current AG, he just needs to take tea with him and iron out their issues, but we cannot make a law for a single day or a season. Laws are made for posterity. It is also interesting because we never called the AG to give his opinion. He is not there forever, but being the occupant of that office, he probably has his own opinion on how his removal from office should be handled. We never called him and, in fact, it is like we are trying to create a law behind him. We usually do vellum to the President and ask him to prepare the necessary documents for his signature.

The way we make our laws in this country should be such that they add value. We are in a very silly season in politics and in the way we run our affairs in this country where we look forward to removing everybody from office. Today, some us want to remove the Chairman of the National Land Commission (NLC). Yesterday, it was the Auditor-General. The previous day it was the CS for Youth Affairs and the Controller of Budget. Why do we always want to remove people from office? I thought probably we could be strengthening the Office of the AG and making it more functional.

We passed three very important laws in this country last year. We have a new Insolvency Act, Companies Act and a new law which deals with business registration. What we need to do is to strengthen this office to enable it to undertake, enforce and implement the laws we pass and not try to weaken it by providing an officer who will always be trying to pander at the whims of Parliament. Assuming a Member of Parliament is to bring a petition here, where will it be from? Where will he get the data, so that he is able to come before this Assembly to tell us that he or she has this peculiar information?

One person out of the 349 of us has this peculiar information that she could present before us to make us remove the Attorney-General from office. This Member of Parliament is the same one who will prosecute the matter before her fellow colleagues. The law says that the Assembly shall appoint a Select Committee of 11 Members to investigate the matter. So, a Member comes before this Floor, this Member then goes to appear before his fellow colleagues and Members to prosecute a matter on the removal of the AG. It does not work like that. It is totally illogical. This one should just be thrown out. We have better things to do as a country.

Finally, the offices of the AG and the Solicitor-General are two offices that work together. We should not try to make them undermine each other. We should ensure that the head of that department is called the AG. The person who acts almost as the PS in that department is

the Solicitor-General. What we should do is strengthen how the two offices work together and not try to provide for how you can remove one and leave the other.

With those remarks, I will be voting against this Bill. I will probably ask Hon. Chepkong'a to withdraw this, so that we can do better things.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Meru, Hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Speaker. I stand to support this Amendment Bill.

Before I go into the Bill, today is a special day for women because the High Court has passed judgement determining the process of the two-thirds gender rule that this Assembly must make legislation that will provide for women within 60 days. History will judge us harshly if we do not comply with that law. Today is our day. It is a day for the Kenyan woman to celebrate. I thank Judge Mativo for being man enough to know that Parliament had failed to do that. Time has come for Parliament to pass a law, so that the next Parliament takes care of the two-thirds gender provision.

As a Member of the Departmental Committee on Justice and Legal Affairs, a petition was brought before the Committee by the Law Society of Kenya (LSK). One of the issues that we had to deal with in as far as the removal of the Attorney-General is concerned is whether there is that provision in law. We could not have entertained a petition seeking for the removal of the AG without the necessary provisions of the law. We found as the Departmental Committee on Justice and Legal Affairs that there is a lacuna or a legal gap where the removal of the AG was not clearly stipulated as per the law. When we look at the other constitutional offices such as the Office of the President, there is a way in which the President can be impeached if need be. There is a way in which CSs can be impeached if need be. But when we looked at the Office of the AG, we realised that there was no process upon which we could have relied for the removal of the AG. The spirit of this amendment of the law is not targeting any individual sitting in that office or any other who might take up that office. We understand, especially as lawyers, that there must be a law that fits in with the processes that we have. One of them is that there must be a process through which the AG can be removed if need be.

The beauty of this amendment is that there are various ways and processes that must be undertaken before a final decision is reached. It is very clear that a Member must prepare a Motion and then that Motion will be taken to the Speaker. It must be supported by a quarter of the membership of the Assembly. When it comes before this House, a Select Committee is formed, which must then give the AG, who is seeking to be removed from office, an opportunity to defend himself against such allegations that have been made against him. Fair administrative justice demands that someone must be given that opportunity to defend themselves. This law clearly says that this Select Committee will give such an AG the opportunity to be heard. Once a decision is reached, this House will still have the opportunity to vote either for or against the decision. If it accepts the decision, it will be taken up and forwarded to the President for removal of the AG.

We have established a mechanism through which the AG can be removed just like we have a process through which the President, the Deputy President, a CS, any other State officers and even chairmen and commissioners of commissions can be removed. I do not foresee a situation where anyone would plead that this is a case targeting any one individual. It is a lacuna that must be addressed. There is no other body that can address that legal gap. It is only this National Assembly. We must bite the bullet and say that this is how things must be done. Just

like the court said today that this Assembly must make a decision on the legislation that takes care of the two-thirds gender rule, the letter and the spirit of the law must be met in each and every circumstance.

I, therefore, support the Bill.

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

Hon. Anyango: Hon. Temporary Deputy Speaker, I would like to support this Amendment Bill. The Members opposing have not seen the reasoning behind this amendment.

First, the Constitution did not provide for the removal of the AG. It was left to the Office of the Attorney General Act to provide for his removal. When we came up with the Office of the Attorney General Act, we made a mistake by saying that the President may only remove the AG following a serious violation of the Constitution or the law, gross misconduct and other reasons.

You realise that other CSs are removed in two ways. One of them is by the President on his own initiative. He does not have to disclose any reasons for doing so. But when it came to the AG, we posed a very bad challenge for the President by saying he has to give reasons why he is removing the AG, either for gross and serious violation of the Constitution or any other law that we have enumerated there. There was no other provision. If the President tried to remove the AG without satisfying the conditions, he could be subject to a court process. If you removed the AG, you are supposed to satisfy the Republic that he had violated the Constitution. There was the provision of gross misbehaviour or that he was bankrupt. This was a very serious challenge to the President to exercise those provisions of the Office of the Attorney General Act in the process of removing the AG who is, otherwise, just a member of his Cabinet like the other CSs.

It then became necessary to provide for the second method of removal of the AG because the first method put an onerous task on the President to remove the AG. When this Amendment Bill was introduced, it said that not any citizen would petition. It has to be a Member of the National Assembly; a process which we use to remove CSs. The two provisions are now complete, so that unless the gross violation of the Constitution or the law or gross misconduct, misbehaviour or bankruptcy are so obvious that it may not be possible for anybody to challenge a decision by the President to remove the AG, we would have to refer the matter to a Member of the National Assembly to initiate the removal of the AG. This amendment is necessary.

We are still protecting the Attorney-General in the sense that it is not any citizen who will initiate, through a petition, his removal. It has to be a Member of the National Assembly. But after the Member of the National Assembly has thought it wise to initiate the process, it is exactly identical to the manner through which we impeach other CSs.

Hon. Temporary Deputy Speaker, I support this Amendment Bill. It is filling up a lacuna in law which was making it onerous for the President to remove the AG on his own initiative and which required him to prove one, two, three or four before he could act. The Attorney-General could even go to court to challenge the President on his removal. So, the current removal process of the holder of the Office of the Attorney-General is too onerous for the President to exercise freely the manner he would have exercised the dismissal of other CSs.

So, we said the best way is not to open it up to all citizens, but to leave it to the National Assembly, following a process which it uses to impeach other CSs. That is what made it necessary for this Amendment Bill to be brought up. It is to fill that vacuum, so that the President is not subjected to the onerous task of proving violation of the law, misbehaviour, bankruptcy

and all those other things listed under Clause 152 of the Office of the Attorney General (Amendment) Bill.

So, it is necessary that the second option, like there is a second option in the removal of other CSs, be introduced under the Office of Attorney General Act to provide for removal other than on the President's own initiative.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to the Member for North Horr.

Hon. Ganya: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the Office of the Attorney General (Amendment) Bill of 2017.

From the outset, I support it. It only gives Parliament the powers, if necessary, to undertake the role of removing the Attorney-General. That is the practice which is common with all other constitutional office holders like CSs and many other senior officers in the Government.

Unlike some previous speakers who saw some mischief in this Amendment Bill, I do not see any. As the National Assembly, we have powers given to us by the Constitution and we can use them where necessary. The Constitution, as it is, did not provide for removal of the Attorney-General as it has done for other State officers. While it is possible for the President to remove the Attorney-General, if he wishes, there is nothing wrong in giving the National Assembly, the people's representative in this great country, power to undertake that role wherever it becomes necessary. Because of that, I do not see any mischief in the Amendment Bill. It is a good Bill. It will just make the operations of the Office of the Attorney-General smooth. I do not see any reason why we should oppose it.

With those few remarks, I support the Amendment Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I now give the Floor to the Member for Wajir West.

Hon. A.O. Ahmed: Thank you, Hon. Temporary Deputy Speaker. From the outset, I support this Amendment Bill that provides for a mechanism for the removal of the Attorney-General. This Amendment Bill which has been brought by Hon. Chepkong'a-led Committee is a straight forward one.

There was no clear provision in our Constitution on the removal of the Attorney-General. While we know that the Attorney-General works under the Office of the President, as much as he has the authority to dismiss him knowing that we have other independent wings of the Government, litigation is always a problem and somebody can go to court to challenge that act. You do not expect an officer who works with the President, and they are not in good terms, to sit in the same office because of litigation issues. We have seen this happen. Sometimes there is the necessity of a particular officer leaving office. You remember what happened when we had insecurity and there were issues with the Inspector-General of Police. It was a bit difficult. I am sure as time goes by, there will be issues here and there within our Constitution that need to be fine-tuned. This is in order. The process through which the Committee has suggested, through the National Assembly, a Member has to get, at least, a quarter of the Members to second that. The particular officer or Attorney-General is given a fair hearing through the Committee. If there are no clear grounds, that is enough and if there are grounds, then it is in order for that particular officer to give way so that we can have another officer with integrity to serve Kenyans.

This Amendment Bill is in order and I support it. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I now give the Floor to the Chair of the Committee to reply.

Hon Chepkong'a: Thank you, Hon. Temporary Deputy Speaker. I want to thank all the Members who have contributed to this Bill. I was only surprised to hear some Members opposing these clear provisions which provide for just a procedure. As the last speaker, my very good friend, has mentioned, for a person to bring a petition, he must raise a minimum of 25 per cent of all the Members in this House for the removal of the Attorney-General.

I was very surprised that someone said that they are in opposition to these very clear provisions unless we are saying that we do not believe in accountability in this country. That you can be given a job, it becomes permanent and nobody should question you.

The Attorney-General is the Minister for Justice. So as the CS for Justice, are you saying that he cannot be removed? He is vetted by this House and approved by this House. So, for some people to say that that cannot happen, it is hilarious. I am just surprised that clear provisions of the law are being opposed by some quarters. I do not believe it is being done in good faith. This was a unanimous proposal from the Departmental Committee on Justice and Legal Affairs. As you know, we are composed of two Coalitions and all Members supported this.

We were very disappointed when the Law Society of Kenya brought the petition. We were not able to look at its merits because there was no law that provided for the removal of the Attorney-General and we could not equate the Attorney-General to a CS. So, we could not go to the provisions that are contained in the Constitution. We are not targeting anyone. Maybe, you are looking at Prof. Githu Muigai. He has done no wrong. He has just been performing his job. But what we are saying is that if someone wants to question Chepkong'a, it should be provided for in the Constitution on how you can remove a Member of Parliament. I am surprised that someone can say that someone cannot be removed when there is a procedure for his own removal yet he is elected. So, it is very surprising, but I guess it is being spoken out of turn and it was not meant to be opposition to this very worthy proposal.

I, therefore, beg to reply to the Office of the Attorney General (Amendment) No.1 of 2017. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question this time. We will put it at the next appropriate sitting of the House.

(Putting of the Question deferred)

Next Order!

Second Readings

THE NAIROBI INTERNATIONAL FINANCIAL CENTRE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I see this is to be moved by the Leader of the Majority Party. I do not see him in the Chamber. So, we defer the Bill.

(Bill deferred)

Next Order!

THE PRESIDENT'S AWARD BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Again, this is to be moved by the Leader of the Majority Party. I do not see him in the House. We will move it to the next available sitting of the House.

(Bill deferred)

Next Order!

THE LEGAL METROLOGY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Again, the Leader of the Majority Party is not in the House. So, we move that particular Order to the next sitting of the House.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 5.21 p.m., this House stands adjourned until tomorrow, Thursday 30th March 2017 at 2.30 p.m.

The House rose at 5.21 p.m.