

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 3rd September, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### DEATHS OF CONVICTS REMANDEES AT KODIAGA GK PRISON

**Mr. Olago:** Mr. Speaker, Sir, I beg to ask the Vice-President and Minister for Home Affairs, the following Question by Private Notice.

(a) Is the Vice-President and Minister for Home Affairs aware that in the recent past, there have been deaths of 18 convicts/remandees at Kodiaga GK Prison in Kisumu caused directly by lack of sufficient food, drugs, overcrowding, unhygienic conditions and poor water and sanitation?

(b) What action is he taking to punish prisons officers who are responsible for this state of affairs?

(c) What action is he also taking to ensure that all prisons in the country are not death-traps?

**Mr. Speaker:** The Vice-President and Minister for Home Affairs is not here? We will revert to that Question a little later.

Next Question, Mr. Ruteere!

#### POLICE ASSAULT ON MR. NICHOLAS MURIITHI

**Mr. Ruteere:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security, the following Question by Private Notice.

(a) Could the Minister explain the circumstances surrounding the brutal assault on a taxi driver, Mr. Nicholas Muriithi, by police in Imenti North on 14<sup>th</sup> August 2009 and the subsequent blocking of Meru/Maua/Nanyuki Road at Makutano Shopping Centre by demonstrators on 22<sup>nd</sup> August 2009?

(b) What justified the use of excessive force by the police on Mr. Muriithi, who was unarmed?

(c) What disciplinary action will the Minister take against the traffic officers concerned?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) On 21<sup>st</sup> August, 2009, at about 4.00 p.m., two traffic police officers on duty at the Meru/Maua/Nanyuki Road Junction found a motor vehicle registration No.KAJ 351L

Nissan Sunny taxi, parked in the middle of the road picking passengers and loading goods thus causing obstruction to other road users . The two officers No.56981 Cpl. Richard Wachira and No.79463 PC Susan Musyoka arrested the driver, Mr. Nicolas Muriithi, and instructed him to drive to Meru Police Station. However, the driver drove off at high speed along Njuri Ncheke Street, Standard Street and later Moi Avenue with the officers on board. The driver who was driving recklessly at high speed hit a pedestrian by the name Wilfred Marete. The impact forced him to apply emergency brakes and in the process, hit the steering wheel with his forehead. The pedestrian sustained injuries on the left leg while the driver sustained injuries on the mouth. Following the accident a crowd gathered up and started throwing stones at the officers. They were rescued by other police officers guarding a nearby bank. The pedestrian and the taxi driver were taken to Meru General Hospital and admitted in fair condition. The driver was charged the following day.

(b) The police officers did not use any form of force on the taxi driver. He was injured in the accident while in flight after defying orders to drive to the police station, an act which is also in contravention of the Section 52(1) of the Traffic Act Cap.403, Laws of Kenya, which says:-

“The driver of a vehicle shall at all times obey any directions given, whether verbally or by signal, by a police officer in uniform, in the execution of his duty.”

The officers were at the time executing their duties of enforcing the law as traffic police officers.

However, the taxi driver complained of having been assaulted by the two officers during the arrest. He was issued with a P3 form medical examination and the OCS opened an inquiry file. No disciplinary action has been taken as the matter is still under inquiry vide file No.2/2009 with a view of establishing facts in relation to the allegations of the assault. The file will be forwarded to the Attorney-General upon completion of the preliminary investigations for the necessary action.

**Mr. Ruteere:** Mr. Speaker, Sir, the Assistant Minister has attempted to mislead this House in his answer because this is misrepresentation of the facts as they were. The answer he has not given so far is why there was a big demonstration causing the police to fire in the air to quell the demonstrators. I personally witnessed the demonstrations. It is the OCS who prevailed upon me to ask the demonstrators to open the road which I did after he assured me that he will take action on the same two traffic officers and that they will not be given traffic duties because of assaulting that taxi driver. I went to see the taxi driver in hospital and there are no streets as mentioned here. There is no Standard Street and Moi Avenue in Meru. So, he is giving false information. Why is it that the police are left to assault people? The traffic officers have their own vehicles that they want to protect and get others out of the road.

**Mr. Lesrima:** Mr. Speaker, Sir, it is true that Mr. Ruteere tried to assist during those demonstrations. It is also true that there was a crowd demonstrating against the arrest of the taxi driver. It is also true that the taxi driver had parked on the wrong side of the road as by law and, in fact, he also committed a number of other traffic offences. As to the streets, I am not very sure about the streets that are mentioned there. This is the answer that I have been given and I cannot confirm at the moment whether those streets are there, but this is the report that I got from the police.

**Mr. Chanzu:** Mr. Speaker, Sir, how will the Assistant Minister ensure that there is fairness in this matter, bearing in mind that the same policemen who were involved in that assault are the same ones who are supposed to issue a P3 form to the same driver?

**Mr. Lesrima:** Mr. Speaker, Sir, in this particular case, a P3 form was actually issued and investigations are going on.

**Mr. Speaker:** Member for Kamukunji!

**Mr. Mbugua:** Mr. Speaker, Sir, it has become a habit by traffic officers to trump up charges against innocent citizens of this country. It has also become a habit by traffic police officers to take bribes. Could the Assistant Minister assure this House that they will change the uniforms of traffic officers into pocket-less shirts and trousers, so that, in future, they do not take bribes?

**Mr. Lesrima:** Mr. Speaker, Sir, I do not think that the problem is the availability of pockets. Pockets can also be contained in the current M-pesa money transfer system. I do not think we will solve the problem by changing the uniform. I think what is important is to ensure that officers who commit such crimes are arrested and disciplinary action preferred against them.

**Mr. Speaker:** Last Question, Mr. Ruteere!

**Mr. Ruteere:** Mr. Speaker, Sir, it is very sad because the Assistant Minister has been given the wrong information about the traffic officers. They will continue with their impunity in Meru. Now that I was personally there and I saw the issues that are involved, I am sure the traffic officers assaulted that person. The Officer Commanding Station (OCS) confirmed to me that the taxi driver was assaulted. He also assured me that he will take action. Now that the Assistant Minister has given a contrary answer from what I was assured, if those people demonstrate again because of what happened, I will ask the Assistant Minister to consider transferring those officers!

**Mr. Olago:** Mr. Speaker, Sir, I have heard what Mr. Ruteere has said. He witnessed all that happened in those proceedings. Would it not be in order for him, in such circumstances, to go and record a statement and become a witness instead?

**Mr. Speaker:** That looks to me like a question. Proceed, Mr. Ruteere!

**Mr. Ruteere:** If I am asked to be a witness I will not mind. I want to ask the Assistant Minister whether he could consider transferring those traffic officers from Meru?

**Mr. Lesrima:** Mr. Speaker, Sir, I want to urge my colleague to continue in the spirit of community policing relations to support us in our efforts to quell any possible future demonstrations in the area, since investigations are going on with regard to the assault. Charges have also been preferred.

Let us leave the due process of law to take place. I can assure you that we shall investigate the allegations on the question of competition between *matatus* owned by the police and those owned by *wananchi*. That is also under investigations and if it is found to be correct, disciplinary action will be taken against such police officers if they are, indeed, involved in that competition. We do not want confrontation. I want to appeal to you, because the OCS is acting on the matter, to calm down the situation on the ground.

## ORAL ANSWERS TO QUESTIONS

*Question No.036*

DELAYED IN FILLING OF VACANT POSITIONS  
IN ADMINISTRATIVE UNITS

**Mr. Letimalo** asked the Minister of State for Provincial Administration and Internal Security.

(a) why the Government has not filled the ten (10) vacant positions at the administrative units (locations and sub-locations) in Samburu East District, thus creating a huge gap in the delivery of services to the people; and,

(b) when the vacancies will be filled.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) The Government has not filled the ten (10) vacant positions at the administrative units (locations and sub-locations) in Samburu East District, because the process has not been completed. However, the vacant posts were advertised. The process of recruitment and selection is on-going.

(b) The vacancies will be filled when the process is completed. It is expected that the process will be completed by next week.

**Mr. Letimalo:** Mr. Speaker, Sir, while I appreciate the initiative taken by the Government to fill the vacant posts, I would like to ask the Assistant Minister how many administrative units have not been advertised and when they will be advertised?

**Mr. Lesrima:** Mr. Speaker, Sir, all of them have been advertised and the names of qualified candidates are being processed. We expect Mr. Letimalo to get letters sometimes next week

**Mr. K. Kilonzo:** Mr. Speaker, Sir, could the Assistant Minister tell us how long it takes to employ chiefs and sub-chiefs? In some places, it takes a shorter period and in others places, it takes a longer period. What is the acceptable period so that Members of parliament do not keep on asking the same Questions?

**Mr. Lesrima:** Mr. Speaker, Sir, the accepted period is between one and two months, depending on the circumstances. That is because permission must be granted for the vacant positions to be advertised. It takes about 21 days for the Board to be convened. Applications have to be considered. The interview panel at the District Commissioner's office processes applications; forwards the three recommended names to the area Provincial Commissioner, who will then forward them to the Permanent Secretary. There are cases where queries may arise as to the qualifications, age and other matters. That, sometimes, causes delays. In the case of Samburu East, for example, like many other pastoral areas, there were delays because during the first round of advertisement, nobody could meet the qualifications as per the current scheme of service. We had to go on round two and take the best available candidates within the community. That is what caused the delay in this particular case of Samburu East.

**Mr. Chanzu:** Mr. Speaker, Sir, that problem is not only in Samburu East. I think it is rampant in the country. I want to say that the position of a district commissioner is very high. There is a standard scheme of service. Could the Assistant Minister consider employing chiefs and assistant chiefs at the district level rather than the head office? That is because the Permanent Secretary is very busy with national security and other issues.

**Mr. Lesrima:** Mr. Speaker, Sir, I agree with the hon. Member that the chain is rather long. I must admit that we do have a critical shortage of personnel officers in the districts and we intend to also rectify that position. But I think we need to streamline the bureaucracy from the districts to Nairobi. But in any case, most of the time the recommendation from the ground is taken into account at the headquarters and there are very few changes that take place.

**Mr. Letimalo:** Mr. Speaker, Sir, I would like the Assistant Minister to confirm whether Luseisa Sub-Location is among those ones which have been advertised, because I think that is the complaint I have got from the constituency.

**Mr. Lesrima:** Mr. Speaker, Sir, I would want to request the hon. Member to visit us in the office so that I can confirm this, because I do not have that information right now. What I know is that we are handling this matter very effectively and efficiently.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Next Question, Mr. Were!

*Question No.217*

DISMISSAL OF POLICE CORPORAL RICHARD OMBWAYO NERIMA

**Mr. Washiali** asked the Minister of State for Provincial Administration and Internal Security-

(a) if he could explain the circumstances under which police Corporal Richard Ombwayo Nerima (Force No.53135) was dismissed from the service; and,

(b) if he could State whether due procedure was followed in his dismissal.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) Police Corporal Richard Ombwayo Nerima, was in January, 2003, stationed at Thika Traffic Patrol Base, Central Province as a driver. On 10<sup>th</sup> January, 2003, he was on duty manning traffic along the Thika-Nairobi Highway and Garissa Road. While on duty, he was captured on video by media personnel from the Nation Television receiving bribes from matatu drivers and conductors operating along those routes. He was also captured on video carelessly brandishing his firearm at passengers, conscious of the danger it posed. The video clip was later aired on NTV. Consequently, the officer was dealt with in Orderly Room Proceedings and was charged with offences under discipline as provided for in the Force Standing Orders. He was found guilty, convicted and, subsequently, dismissed from the force on 24<sup>th</sup> January, 2003.

(b) The due procedure as provided for in Chapter 20 of the Force Standing Orders was duly adhered to and fully complied with.

**Mr. Washiali:** Mr. Speaker, Sir, I would like to take this opportunity to thank the Assistant Minister for that answer. In his supplementary information, in the last statement, he said: "The officer appealed against the court decision and has not been paid as we are yet to receive the decision of the court in relationship to the appeal". I want to lay two letters on the Table from the Attorney-General which have advised, and I want to quote in part. They have recommended that you reconsider an out of court settlement and

even possible reinstatement of the plaintiff back to the force. I want to lay these letters on the Table because the Assistant Minister has completely ignored the advice of the Attorney-General.

*(Mr. Washiali laid the documents on the Table)*

**Mr. Lesrima:** Mr. Speaker, Sir, I am not privy to that information, unfortunately. I know that certain rulings were made by the court to pay certain payments with regard to leave and the officer appealed against that ruling. As far as I am concerned, the matter is still in court.

**Mr. Washiali:** On a point of order, Mr. Speaker, Sir. In view of what the Assistant Minister has said and now that he has received the letters from the Attorney-General, we will also insist that he produces the video clip that he used to sack this officer. Can we, then, request that you defer this Question until when he brings that information, because even the victim still has the identification card of the police?

**Mr. Speaker:** Order, Mr. Washiali! Order! You have made your point.

**Mr. Washiali:** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Before I give any directions as to whether or not I will defer the Question, I will want to acquaint myself with the letters that you have laid on the Table.

Is there anybody else interested, in the meantime?

Proceed, Mr. Olago!

**Mr. Olago:** Mr. Speaker, Sir, Police Force Standing Orders provide for Orderly Room Proceedings for police officers who are supposed to have misconducted themselves. But these are some of the proceedings under the Police Act that are misused by the police because the officers who conduct these proceedings do not understand procedure and they do not know human rights. Is the Assistant Minister satisfied that in these Orderly Room Proceedings, the video clips were actually produced and the cameramen came to give evidence?

**Mr. Lesrima:** Yes, Mr. Speaker, Sir. I think this matter was also in the public domain as it was aired on television. It was quite clearly in the public domain. So, I do not understand what the hon. Member wants.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. I heard the Assistant Minister say that he does not understand why I raised the issue. But we are not asking about proceedings or media reports. We are talking about proceedings under the law, and there is a procedure for doing it, which I expect the Assistant Minister to know. So, is he in order to say that he is not aware of what I am asking?

**Mr. Lesrima:** Mr. Speaker, Sir, I can say that I am satisfied with the Orderly Room Proceedings as conducted by the Police in the Orderly Room and also the procedure for appealing, which allow the Commissioner of Police to deal with officers from the rank of constable to senior sergeant.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, it is very clear that the issues of corruption have become the order of the day in the police force. What mechanisms has the Ministry put in place to ensure that they deal with these matters other than to wait for these issues to be captured by the media on telecast so that they can just come and act abruptly? What else do you have to ensure that this corruption is rooted out from the force?

**Mr. Lesrima:** Mr. Speaker, Sir, through close supervision by senior officers on patrol and also through taking disciplinary action whenever these incidents take place. When they take place, we take very firm action.

**Mr. Speaker:** Order, hon. Members! I have acquainted myself with the two letters which have been laid on the Table by the hon. Member for Mumias. I am satisfied that the letters are authentic and they relate to interventions by the Attorney-General in this matter through letters dated 23<sup>rd</sup> May, 2005, and 8<sup>th</sup> May, 2008. The Attorney-General is making certain recommendations and asking for a response from the Assistant Minister. So, I will defer this Question only for the purpose of the Assistant Minister responding as to what action he has taken on the recommendations of the Attorney-General. I defer this Question for two weeks.

*(Question deferred)*

*Question No.099*

COMPENSATION FOR KAPTERIK/SHABAN CLANS IN KAPSOWAR

**Mr. ole Lankas**, on behalf of **Mr. Kaino**, asked the Minister for Lands:-

(a) what compensation, if any, was given to members of Kapterik and Shaban clans in Kapsowar for the developments they had done in their original homes following their relocation in 2004; and,

(b) when they will be given land titles for their current homes as well as the requisite compensation.

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, before I reply, I want guidance from the Chair. This Question was dropped yesterday by the Chair, but I am willing to answer it, depending on your decision.

**Mr. Speaker:** That is obviously a genuine concern. If this Question was dropped yesterday then it has no business appearing on the Order Paper. I do not even understand how it is on today's Order Paper! Institutional memory, are you able to explain this to me?

*(Laughter)*

*(Mr. Speaker consulted with the Clerk-at-the-Table)*

Order, hon. Members! The information I have is that there is no evidence that this Question has been reinstated. So, it will remain dropped until this House is persuaded otherwise. So, Mr. Assistant Minister, you need not respond.

*Question No.269*

NON-REFUND OF SUGAR  
LEVY TO CANE FARMERS

**Ms. Karua:** Mr. Speaker, Sir, I seek your indulgence. This Question was deferred to today so that the farmers union could consult with the Minister and compare documents. I confirm that one meeting has taken place and another one will take place on Tuesday. I seek your indulgence so that this Question can appear on the Order Paper after two weeks to enable those consultations. The Minister for Agriculture is agreeable.

**Mr. Speaker:** Hon. Members, I am duly informed and that practice is valid. So, the Question is deferred to two weeks from today.

*(Question deferred)*

*Question No.210*

#### IMPLEMENTATION OF TOBACCO CONTROL ACT

**Mr. Were** asked the Minister for Public Health and Sanitation what steps she has taken to ensure the Tobacco Control Act, which came into effect on 8<sup>th</sup> October, 2007, is implemented and defaulters arrested and prosecuted.

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Mr. Speaker, Sir, I beg to reply.

The Ministry has taken the following steps:-

(i) Set up Tobacco Control Act Operationalization Committee to prepare the implementation plan for the Act.

(ii) Issued a notice of nine months which expired on 8<sup>th</sup> January, 2009 for the tobacco manufacturers to implement various requirements of the Act such as labeling of packages with health warning.

(iii) Sensitized the public through the print and electronic media. This involved schools and other civic society organizations to mobilise communities to understand the inherent dangers that tobacco consumption or smoking has on their health.

(iv) My Ministry commemorated "World No Tobacco Day" marked on 31<sup>st</sup> May, 2009, by hosting a successful media meeting in Nairobi and several major towns held the same function in various other ways to mark the occasion.

(v) Inaugurated the Tobacco Control Board on 4<sup>th</sup> May, 2009. The Board will develop the regulations geared towards strengthening enforcement of the Tobacco Control Act, among other activities.

(vi) Public Health Officers nationwide have been instructed to crack down on all tobacco products that do not meet the requirements of the Act and also arrest those who do not comply with the Act. The vigilance of Port Health Officers has been heightened, to prevent illicit trafficking of tobacco products that do not comply with the Act.

(vii) The Ministry has planned to train 1,000 enforcement agents drawn from various Ministries. In the last week of April, 2009, the Ministry trained 15 Trainers of Trainers (ToTs) who will be charged with the responsibility of training enforcement teams from 10 leading towns in Kenya as the first phase of action. So far 200 enforcement officers drawn from various sectors in Nairobi, Nyeri, Mombasa and Eldoret have been trained. Another group of 150 officers in three other towns will be trained by mid September, 2009.



(vii) My Ministry has taken a multi-sectoral approach with relevant Ministries and other stakeholders in order to fully implement and ensure compliance with the requirements of the Act.

Mr. Speaker, Sir, my Ministry has instituted the following actions to arrest and prosecute the offenders:-

(i) Commenced legal proceeding on a Tobacco company that flouted the law by sponsoring tobacco advertisements in November, 2008.

(ii) During the month of August, 2009, Port Health Officers in Eldoret International Airport seized 22 kilograms of various tobacco products that were being smuggled into the country. All ports of entry have been instructed to maintain high surveillance to tackle illicit trade on tobacco products.

(iii) One person who was generating noxious fumes from tobacco curing that was affecting the people in the neighbourhood has been prosecuted. The matter is before the Magistrate's court, Kuria District.

(iv) Business people whose premises are painted with tobacco products advertisements have been ordered to deface such writings/materials or face prosecution.

(v) In Nairobi and other major towns, my Ministry has constituted tobacco control enforcement teams to arrest and prosecute offenders.

**Mr. Were:** Mr. Speaker, Sir, when the Bill to introduce this Act came into Parliament in 2007, there was a lot of enthusiasm and excitement from the Ministry. Why has it taken too long for the Ministry to enact this law?

**Dr. Gesami:** Mr. Speaker, Sir, we did not have enough funds when this Act was established. In fact, it has taken us long to constitute the Board because of lack of funding. However, we have funds and we would like to enforce the Act vigorously.

**Mr. Were:** Mr. Speaker, Sir, in the Assistant Minister's answer, he indicated that there is the Tobacco Control Act Operationalization Committee which is working on the implementation of the Act. At the same time, he has said that he inaugurated the Tobacco Control Board in May, 2009. What is the time frame within which these two bodies will finalise the regulations so that this Act can be implemented immediately?

**Dr. Gesami:** Mr. Speaker, Sir, we now have funds to operationalise this Act. We will do it immediately.

*Question No.077*

CONSTRUCTION OF SURGICAL THEATRE  
AT MATILIKU DISTRICT HOSPITAL

**Mr. Kiilu** asked the Minister for Medical Services when his Ministry will construct a surgical theatre and provide other necessary facilities and equipment at Matiliku District Hospital to reflect its new status as a district hospital.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I beg to reply.

There is no facility known as "Matiliku District Hospital" among gazetted public hospitals in the country. Currently, the major public health facility in Matiliku is

“Matiliku Health Centre” which local leaders are proposing to be elevated to a district hospital.

Following the recent creation of more than 100 additional districts in the country, the Ministry has received many requests to upgrade lower level facilities like Matiliku Health Centre to become district hospitals in all the new districts. However, the Ministry’s annual development allocation of about Kshs300 million is insufficient to meet the upgrading needs averaging Kshs500 million per facility. In view of this inadequate budget, the Ministry will progressively prioritise construction of key infrastructure in the facilities earmarked for upgrading within the available budget. The proposed Matiliku District Hospital will be given consideration within this framework alongside other proposed district hospitals.

**Mr. Kiilu:** Mr. Speaker, Sir, I am rather taken aback by the Minister’s answer when he says that the health facility in Matiliku is not a district hospital. Indeed, Matiliku District Hospital is the only district hospital in Nzaui District which was created in 2007. This district was not among the 100 new districts created last year. I would like the Minister to tell us if, indeed, this is not a district hospital, under what circumstances the current District Medical Officer, Dr. Ndambuki who is operating in this district was posted to that hospital.

**Prof. Anyang’-Nyong’o:** Mr. Speaker, Sir, those are some of the steps that are taken on the way to a facility becoming either a sub-district or a district hospital. It is quite possible that the common nomenclature used by the people is to call it a district hospital, which is fine but, officially, it has not been gazetted as such. In order for it to be gazetted as such, it needs the facilities that the hon. Member is asking for. That is one of the reasons as to why we are appealing for resources, to ensure that facilities such as Matiliku get the requisite facilities that would make them function as district hospitals. Indeed, it may have a doctor treating people, because of the catchment area of the health facility. But in order for it to be a fully-fledged district hospital, it will need much more than the facilities it has at the moment. Our heart is with the hon. Member, to make sure that Matiliku becomes a fully-fledged district hospital, but we have to be very transparent and say that, at the moment, it has not been gazetted as such, and that it needs many more facilities such as the one that the hon. Member is asking for, for it to gain the status of a district hospital.

**Mr. I. Muoki:** Mr. Speaker, Sir, the Minister has, on several occasions, lamented about being given Kshs300 million only in the Budget. It is the role of the Minister to source for funds from either the Treasury or donors. What is he doing to make sure that he gets enough resources? Facilities in this country require infrastructure. It is his duty to do exactly that.

**Prof. Anyang’-Nyong’o:** Mr. Speaker, Sir, I fully agree with my colleague, Mr. I. Muoki. Indeed, that is what I am doing. That is why I said that we will progressively prioritise construction of key infrastructure in these facilities. What I am saying is that we are looking for concessional funds. Indeed, this year alone, we have found some concessional funds and we are working on 23 sub-district and district hospitals across the country to upgrade and give them sufficient facilities. However, from our own baseline survey of all health facilities with regard to human resources availability, capital and infrastructure, the Ministry needs not less than Kshs570 billion to bring these hospitals to where they should be in this day and time.

**Mr. Speaker:** Last question, Member of Parliament for Makueni!

**Mr. Kiilu:** Mr. Speaker, Sir, as I said earlier, Matiliku District Hospital serves a population of close to 200,000 people, and it is the only big facility in that district. Out of the Kshs300 million that the Minister has this financial year, how much is he allocating to improve the facilities and make this hospital operational?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, let me be very transparent with the hon. Member. It will, perhaps, be useful if I could invite him to come to the Ministry, so that we can meet the officials who are charged with the use of this money to know exactly how much we can allocate to Matiliku to respond to some of the very urgent needs of the hospital on its way to becoming a fully-fledged district hospital. I will work with the hon. Member to try our best to meet his concerns and needs.

**Mr. Speaker:** Hon. Members, the Member of Parliament for Kitui West is away in Tanzania on Parliamentary business. Therefore, Question No.285 is deferred to Thursday, next week, at 2.30 p.m.

*Question No.285*

IRREGULAR PROCUREMENT OF ENTERPRISE  
RESOURCE PLANNING SYSTEM

*(Question deferred)*

**Mr. Speaker:** Next Question by the Member of Parliament for Mutito!

*Question No.267*

ALLOCATION OF NZAMBANI ROCK TO PRIVATE DEVELOPER

**Mr. K. Kilonzo** asked the Minister of State for National Heritage and Culture:-

(a) under what circumstances and by whom Nzambani Rock, the most significant site and monument in Nzambani District, was allocated to a private developer; and,

(b) whether he could degazette the allocation and return the rock to the community.

**The Minister of State for National Heritage** (Mr. ole Ntimama): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry of State for National Heritage and Culture is not aware under what circumstances and by whom Nzambani Rock was allocated to a private developer. This is because allocation of land does not fall under the Ministry's jurisdiction.

(b) The Minister cannot degazette the allocation due to the reasons given above. However, since it has come to the notice of the Ministry that Nzambani Rock is a significant national monument, we will definitely consider protecting the rock, and, probably, gazette it. But this has to have the support of the community and, probably, the hon. Member of the area.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I want to thank the Minister because of that good answer. I am happy that there are Ministers like Mr. ole Ntimama, who are willing to ensure that the property of Kenyans does not get into the hands of private developers. My question is: Is the Minister aware that Kitui County Council did allocate this historical rock to a private developer and leased it for 60 years? The developer now collects money from anyone who wants to climb that rock. If he is not aware, what is he doing about it now that I have made him aware?

**Mr. ole Ntimama:** Mr. Speaker, Sir, I am prepared to support the hon. Member. If Nzambani Rock is identified by the community and by himself, we will definitely protect it as a national monument.

**Mr. I. Muoki:** Mr. Speaker, Sir, indeed, Nzambani Rock is a historical site that was used during the wars in Kitui. For your information, this is one rock in respect of which there is a legend that if you went round it seven times, you would change your sex. Owing to this legend, it is a very important rock for the people of that area of Ukambani. I know that the Minister is capable. Could he take urgent steps to make sure that the ownership of this rock reverts to the community, so that the community can gain from the money that will come from tourism by use of this rock?

**Mr. ole Ntimama:** Mr. Speaker, Sir, I will say again that we will protect the rock if the community supports the protection of that rock for purposes of being made a national monument.

**Mr. Speaker:** Last question, Member of Parliament for Mutito!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, it is a big joy for me to be dealing with such an efficient Minister! Could the good Minister volunteer to visit Nzambani Rock, popularise it and reassure the local people that he is, indeed, fast tracking its gazettelement as a national monument?

**Mr. ole Ntimama:** Mr. Speaker, Sir, definitely, I am prepared to go there but, as you know, for many years I have been identified as a man. Hopefully, nothing is going to change me to something else.

*(Laughter)*

**Mr. Speaker:** Order! Order, hon. Members! The Minister is aware of the risk that he will be running!

Next Question by the Member of Parliament for Eldama Ravine!

*Question No.363*

COMPENSATION FOR LANDOWNERS ALONG  
ORINIE-KAPSETEK-NAKURTAKWEI ROAD

**Mr. Lessonet** asked the Minister for Roads:-

(a) whether he could confirm that part of Orinie-Kapsetek-Nakurtakwei Road runs on private property; and,

(b) what plans he has to compensate the affected farmers, considering that the road has now been blocked by farmers.

**The Minister for Roads** (Mr. Bett): Mr. Speaker, Sir, this Question was deferred. It is a referral Question.

I beg to reply.

(a) I confirm that an access road between Orinie and Muserech measuring 1.8 kilometers runs on private property.

(b) My Ministry has no immediate plans to compensate the affected farmers since there is an existing alternative road. The road in question was opened up by the farmers as a short cut to Muserech and for their own use.

However, my Ministry is in the process of undertaking a road inventory and condition survey on all unclassified roads and re-classification of all road networks in the country. When this exercise is complete, we will then consider a request from this hon. Member as to whether to classify that road or not.

I want to confirm what he said last week that the road had been maintained by Government funds. Yes, I hereby confirm that, indeed, the District Roads Engineer, Nakuru, has used more than Kshs3 million on that road and the District Road Engineer, Koibatek District, has used more than Kshs1.3 million.

All this was an effort to make sure that produce within that area was delivered to the market. My Ministry was being kind and exceedingly responsible in giving the people of Muserech and that neighborhood a road that will assist them deliver their farm produce.

**Mr. Lessonet:** Mr. Speaker, Sir, I want to thank the Minister for the good answer he has brought to the House today. He has indicated that he will do an inventory of all the roads so that he can make an appropriate decision regarding these roads. When does he expect to complete this exercise?

**Mr. Bett:** Mr. Speaker, Sir, a couple of months ago, we appointed a consultant to look into the classifications of our roads. I have been assured by my officers before I came to the House that the classification exercise has now been finalized. I will allow that classification to take care of what the hon. Member wants me to consider. I will release the new classification of our roads any time now.

**Mr. Lessonet:** Mr. Speaker, Sir, I think the hon. Minister has actually come with an acceptable answer. Therefore, I will wait for his communication.

**Mr. Speaker:** Since the hon. Member is satisfied, Mr. Minister, you need not respond.

Next Question.

*Question No.291*

OPENING OF BYPASSES THROUGH MARIAKANI-KALOLENI-  
KILIFI/SAMBURU-KINANGO-KWALE ROADS

**Mr. Yakub** asked the Minister for Roads:-

(a) if he could open up by-passes through Mariakani-Kaloleni-Kilifi and Samburu-Kinango-Kwale to ease the traffic congestion in Mombasa District;

(b) when the works will start for the two by-passes; and,

(c) if he could indicate when the construction of the Mombasa/Mtwapa dual carriageway will commence.

**The Minister for Roads** (Mr. Bett): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry is according close attention to opening up of bypasses around major towns, municipalities or cities in the country in order to enhance the flow of transit traffic.

Mr. Speaker, Sir, as I address the House, two bypasses are under construction; these are the eastern bypass in Nairobi and northern bypass.

In this regard the Mariakani-Kaloleni-Kilifi Road is being upgraded to Bitumen standard. I recently inspected this road and the works are in progress. In the meantime, the Samburu-Kinango-Kwale Road, that is D545 should be prioritized. I want to request the Member of Parliament to prioritize that road for maintenance under Roads Maintenance Levy Fund so that it remains motorable.

I may also wish to announce here that we are collapsing District Roads Committees to Constituency Road Committees.

(b) The works on Mariakani-Kaloleni-Kilifi Road are in progress and they have already commenced.

(c) The Ministry has completed the design for upgrading to dual carriageway of the Mombasa-Mtwapa Road and is sourcing for funds for implementation of the project. We will also look at the Kilifi Bridge.

**Mr. Speaker:** Last question, Mr. Yakub.

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

Order, Mr. Gunda. You stood up too late. That is so, much as you are gesturing in protest.

Proceed, Mr. Yakub.

**Mr. Yakub:** Mr. Speaker, Sir, this is my first question, not last.

**Mr. Speaker:** Okay, proceed.

**Mr. Yakub:** Mr. Speaker, Sir, I would like to thank the Minister for Transport. My Question was on the issue of the two bypasses whereby one goes to Malindi, Tana River and Lamu. I thank the Minister that the work has already commenced on the one bypass from Mariakani-Kaloleni-Kilifi.

Driving through Mombasa Island is a nightmare. My Question was not about maintenance, it was about opening up the bypass. Could the Minister tell the House when he will open or bridge up second bypass of Samburu, Kinango and Kwale to ease up the traffic jam in Mombasa Island.

**Mr. Bett:** Mr. Speaker, Sir, I want to correct the hon. Member. I am the Minister for Roads and not the Minister for Transport.

Mr. Speaker, Sir, I want to repeat what I said. I am requesting the hon. Member on which the Samburu-Kinango-Kwale Road traverses to prioritize it for the Constituency Roads Committee funding.

We, as a Ministry, also have priorities. I know the hon. Member will allow us to finish Mariakani-Kaloleni-Kilifi Road then we will come to Dongo Kundu bypass also. That is our second road to do after Mariakani-Kaloleni-Kilifi Road. I am seeking the indulgence of the hon. Member to allow the Ministry to go through its priorities. For the

time being, I urge the Member of that area to prioritize that road for it to be in a motorable state.

**Mr. Speaker:** Member for Bahari, I beg your pardon. The Chair was abt occupied by the Member for Mathira. For a moment, I did not quite follow the proceedings.

You may now proceed.

**Mr. Gunda:** Mr. Speaker, Sir, is the Minister satisfied that the works on the Mariakani-Kaloleni-Kilifi Road are ongoing when this particular road was supposed to have been completed by November, 2009? The contractor has not even gone quarter-way.

**Mr. Bett:** Mr. Speaker, Sir, the contract was awarded on 7<sup>th</sup> September, 2007 to Dhanjal Brothers Limited at a sum of Kshs2.6 billion. I agree with the hon. Member; my office has noted the speed at which the road is being done. That is why I have authorized for second contractor to be contracted in order for us to finish that road construction on time.

**Mr. Yakub:** Mr. Speaker, Sir, I am not satisfied with the answer given by the Minister on part “c” of the Question. The dual-carriageway is almost 100 kilometers from Mtwapa to Malindi. It takes almost one hour to drive that distance. It takes more than 40 minutes to drive from Mombasa to Mtwapa which is less than 25 kilometres. People living on that side of North Coast are suffering due to the heavy traffic. Could he inform the House when the construction of this dual-carriageway will commence?

**Mr. Bett:** Mr. Speaker, Sir, definitely it will not start this financial year. However, we will place it on top of the agenda of the Ministry next financial year. I wish to inform the hon. Member that every effort is being made by the Ministry to address the traffic jams in Mombasa City. Various studies have been conducted and as I speak now, a consultant Mouchel Parkman Engineering Services has been appointed to carry out studies on ways and means of easing congestion in Mombasa.

The roads that will be looked at include Miritini Township–Dongo Kundu-Tungomeni bypass, access road to Moi International Airport, access road to Port Reitz Hospital, Mombasa Island, Western Reef Road which includes Mbaraki, Mnazi, Archbishop Makarios Road, Mwalingo Road and Street and the Makupa Causeway. I would want the Member to help us on Makupa Causeway where there is a lot of encroachment at the moment.

Mr. Speaker, Sir, my Ministry is extremely concerned about the traffic congestion in all our cities. That is why we have employed a consultant to look into the state and situation of traffic flow in the city of Mombasa.

**Mr. Speaker:** Hon. Members, we will now go back to Question No.1 by Private Notice.

### QUESTION BY PRIVATE NOTICE

#### DEATHS OF CONVICTS/REMANDEES AT KODIAGA GK PRISON

**Mr. Olago:** Mr. Speaker, Sir, I beg to ask the Vice-President and Minister for Home Affairs the following Question by Private Notice.

(a) Is the Vice-President aware that in the recent past there have been deaths of 18 convicts/remandees at Kodiaga GK Prison in Kisumu caused directly by lack of

sufficient food, drugs, overcrowding, unhygienic conditions and poor water and sanitation?

(b) What action is he taking to punish prisons officers who are responsible for this state of affairs?

(c) What action is he also taking to ensure that all prisons in the country are not death traps?

**Mr. Speaker:** Hon. Members, the position is that the Vice-President and Minister for Home Affairs has been caught by an abrupt personal emergency and so he is not able to be here this afternoon to respond to this Question. The Vice-President's Assistant Minister has been caught by a sudden emergency of a nature that I am unable to describe. However, I have information that it is an emergency. So, both of them are not here to respond to this Question. I am satisfied that the explanations given are adequate because I do not want to delve into first, the personal emergency and second, the abrupt emergency.

Therefore, this Question is deferred to Thursday next week. Members of this House are respected and their word is taken as honourable.

*(Question deferred)*

Hon. Members, that brings us to the end of Question Time!

Next Order!

**Mr. Speaker:** Is there any Statement which is ready? Apparently, there is none which is ready for delivery this afternoon.

Are there any requests?

### POINT OF ORDER

#### COMMITTAL OF GAZETTE NOTICE ON REAPPOINTMENT OF DIRECTOR/ASSISTANT DIRECTORS OF KACC TO COMMITTEE ON DELEGATED LEGISLATION

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. I rise on a matter that has been of great public and Parliament interest. This is the question of appointment or otherwise of the Director of the Kenya Anti-Corruption Commission (KACC). It has raised serious concerns in the House. For the past two days, we have not been able to come across the relevant Gazette Notice. However, here with me is one.

Mr. Speaker, Sir, Standing Order No.197 (4) which is about the Committee on Delegated Legislation says:-

“The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled”

Mr. Speaker, Sir, I wish to request that you direct that this particular Gazette Notice be committed to the Committee on Delegated Legislation to look at it and report back to the House within the next seven days as to its validity or otherwise.

*(Applause)*



**Mr. Speaker:** Fair enough! I had earlier intimation of this concern and I would want to find out from the Chair of the Committee on Delegated Legislation if it has the capacity and ability to inquire into and Table a report within the next seven days.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. M. Kilonzo!

**Ms. A. Abdalla:** Mr. Speaker, Sir, we were looking for this Gazette Notice. We will be having a joint meeting with the Committee on Justice and Legal Affairs tomorrow at 2.00 p.m.

*(Applause)*

**Mr. Speaker:** Fair enough! That is to confirm that you can carry out this exercise within seven days.

**Ms. A. Abdalla:** Mr. Speaker, Sir, in fact, with the amount of work that has already been done by the Committee on Justice and Legal Affairs, we can Table a report on Tuesday.

**Mr. Speaker:** What is your point of order, Minister for Justice, National Cohesion and Constitutional Affairs?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, is Mr. Ruto in order to mislead the House that the law giving rise to the reappointment of the Director is subsidiary legislation? In light of Section 8(7) of the Anti-Corruption and Economic Crimes Act (2003), Act No.4 that was published on 2<sup>nd</sup> May, 2003 - I give the date because this is a very important subject - I would need to seek your guidance and description because it is causing unnecessary misunderstanding and misinterpretation in the country.

Mr. Speaker, Sir, allow me to read Section 8(7) of that law I have referred to:-

“8(1) – The Commission shall have a Director who shall be the Chief Executive Officer of the Commission and who shall be responsible for its direction and management.

“(7) – The First Schedule shall have effect in respect of the staff of the Commission”

Mr. Speaker, Sir, the First Schedule appears at page 104 of that law and it says clearly, on the right in brackets – I wish the Clerk of the National Assembly could give this Statute to you so that you see what I am talking about. You will notice that these are not regulations made by the line Minister who happens to be me. I certainly did not make Schedule Eight, or my predecessor or her predecessor who is Mr. Murungi. Mr. Murungi is here and can confirm this. This was a schedule expressly forming part of the original Statute.

Mr. Speaker, Sir, I, therefore, need your guidance because this is a very important subject. Is the hon. Member in order, because I believe he is not, to ask a Committee to sit in vain interpreting a Schedule of an Act that is not subsidiary legislation? I seek your guidance.

**Mr. Speaker:** In view of what appears to be the gravity of the matter, as rightly said by the Minister for Justice, National Cohesion and Constitutional Affairs, I will take

a few more points of order on this matter to enable me to give an exhaustive direction on it.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. With all due respect to my learned friend, I believe that the point of order raised is meant to derail this House from correcting what is, obviously, making Kenyans angry.

*(Applause)*

Senior Counsel, hon. M. Kilonzo has chosen to bury his head in the sand when His Excellency the President has purported to make an appointment under Section 8(4) and First Schedule to the Act; he is clearly exercising delegated legislative authority. He is acting under the specific provision of the Act, Section 8(4). So, what His Excellency the President has done cannot amount to a lawful act by itself. It is an exercise under the provision of the law, and it is, clearly, indicated in the legislation. If that is not what it is, then I do not know what it is.

Clearly, you can see that the purpose of this point of order is to take away from the Committee on Delegated legislation, on which I have the privilege of serving, the right to look at the legality of what the President has done. It is not being anticipated. It is not being said that looking at the legality of what the President has done, the Committee will come up with the specific findings. We are going to look at the law and report to the House. What the Standing Orders give as authority is to recommend to the House to annul or confirm what His Excellency has done. That is what the House wants to do. Under these circumstances, I would like to request, with all humility, that the point of order by my learned Senior Counsel be ruled out of order.

*(Applause)*

**Ms. Karua:** Mr. Speaker, Sir, the Standing Orders are very clear. The mandate of the Justice and Legal Affairs Committee is clearly spelt out in the Second Schedule to the Standing Orders. The Committee is very properly within its mandate to look at the legality of the appointment as published in the *Kenya Gazette*. I would like to remind the Minister for Justice, National Cohesion and Constitutional Affairs that he is a Member of Parliament, and he is bound by these Standing Orders. If he has submissions to make to support the appointment, as a Member of this House, he can appear before the Committee. He can take his submissions to the Committee, but he cannot pre-empt the work of the Committee.

Now that he is accusing other hon. Members of misleading the House, he, himself, and the Executive, have misled this House; this is because in a similar appointment of Assistant Directors, Messrs. Sholei and Mutonyi, the matter underwent right procedure. The Advisory Board made its recommendation, it came to this House and we approved it, and then the appointments were made by the President. Why has it been different this time? That is the inquiry that my learned friend is trying to pre-empt. Let this House not be gagged by one of its Members, and let it not be misled the way the Government has continuously been misled. I would also like to challenge my colleague to declare his interest in this matter, especially with regard to who should be the Director of the Kenya Anti-Corruption Commission (KACC).

**Mr. Abdikadir:** Mr. Speaker, Sir, I wish to answer the question as to whether the Gazette Notice is delegated legislation or not. I will invite my learned colleague to look at the Act that deals with interpretation, Cap 2. It is the Interpretation and General Provisions Act. He should familiarize himself with it once in a while.

*(Applause)*

Delegated Legislation, or Subsidiary Legislation, means - this is in the definition – “any legislative provisions, including a transfer or delegation of powers or duties made in exercise of a power conferred by any written law by way of by-law”. The operative word is “notice”; this is a Gazette notice, a legal notice, notice order, proclamation, regulation, rule, rule of court or other instrument. It is not just about rules and regulations. Let me then read the President’s notice.

“In exercise of the powers conferred by Section 8(4)—“

That is what subsidiary legislation means. It is legislative provisions in exercise of powers conferred. This is subsidiary legislation.

**Mr. Mungatana:** Mr. Speaker, Sir, it is very unfortunate that a Member of this House, hon. Mutula Kilonzo, can try to come in between the exercise of the legitimate powers of a Committee of this House. The powers that the Committee on Delegated Legislation is trying to exercise are clearly spelt out in Standing Order No.197. In particular, it will look at Standing Order No.197(2). If you look at that one, it gives this Committee power to look at whether a Gazette notice or subsidiary legislation, is consistent with the parent legislation. Was the act of appointing the Director of the KACC consistent with the parent legislation? This is the question; this is what we want the committee to look at and bring a report. Hon. M. Kilonzo will have a chance to visit that Committee and make his ideas known. The House will be given an opportunity to debate that report. It is wrong, it is unfortunate, and it is a hindrance of the exercise of legitimate powers of this Parliament and its Committees.

I want to appeal to my Senior learned colleague, please, do your work in the Executive and let us do our work, as a Parliament, on behalf of the people of Kenya. Do not be a hindrance. Do not go into the history of this country as one of the Ministers once did; he was hindering Parliament in exercising its legitimate mandate.

*(Applause)*

**The Minister for Energy (Mr. Murungi):** Thank you, Mr. Speaker, Sir. The request that is being made is to refer the Gazette Notice to the Committee on Delegated Legislation. The fundamental basis on which this request is being made is on assumption that the subsidiary legislation conveyed by the Gazette Notice itself is illegal and, therefore, offends some provision of the parent Act. Therefore, there would be no basis on which a Committee on Delegated Legislation can deal with this matter.

What comes up is the interpretation of Section 3(1) of the First Schedule made under Section 8(7) of the Anti-Corruption and Economics Crime Act. I am familiar with this Act, because I am the one who introduced it to Parliament when it was passed, way back in 2004. If you look at Section 3(1) you will find that the reading is very simple. It reads as follows:

“The term of the Office of the Director or an Assistant Director shall be five years.”

Section 3(2) reads:

“A person who has held office as Director or Assistant Director may be reappointed, but may not serve as Director for more than two terms or an Assistant Director for more than two terms.”

If you read further down, Section 5(2), the language is different. It says:

“The President, on the recommendation of the Advisory Board, may terminate a person’s appointment as Director or Assistant Director.”

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

**Mr. Speaker:** Order! The hon. Member is on a point of order!

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, we are just seeking clarifications on this matter. Section 3(2) merely says that a person who has held office as a Director may be re-appointed. That means that the appointing authority has discretion. Section 5(2), says: “The President, on recommendation of the Advisory Board---So”, if the intention of Parliament was to make the President seek advice from the Advisory Board on the appointment, it could have clearly said so in Section 3(2). Those words are absent. What my colleagues are failing to understand is the fact that, in Law, there are those principles which you call the principles of statutory interpretation. Even a first year law student knows that there are principles of statutory interpretation. Those are the principles that we should use in construing and interpreting Section 3(2) of the Schedule.

Mr. Speaker, Sir, what the principles say is that in those cases where a statute is clear, it should be construed in accordance with the words of that statute. That is if the words are clear, plain or un-ambiguous, they must be interpreted in their natural and ordinary meaning.

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

**Mr. Speaker:** Order, Mr. Minister! Do you want to be informed by hon. Ogindo?

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, I thought hon. Ogindo was not a lawyer.

**Mr. Speaker:** Order, Mr. Minister!

*(Loud consultations)*

**The Minister for Energy** (Mr. Murungi): What? Mr. Speaker, Sir, I am dealing with a matter of statutory interpretation. The hon. Member has nothing to inform me on this matter. He should sit down and be educated.

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

**Mr. Speaker:** Order, Mr. Ogindo! Our rules allow just one Member to be on his or her feet at any given time. So, until such time that you have caught the Speaker’s eye and you are allowed the Floor, you will have to remain seated.

**The Minister for Energy** (Mr. Murungi): Thank you, Mr. Speaker, Sir. What I am simply saying is that the language in Section 3(2) is precise, un-ambiguous and plain,

and it should be interpreted in its ordinary sense. There is no reference in Section 3(2) for the President to be advised either by Parliament or by the advisory body on the reappointment of Justice Ringera.

Mr. Speaker, Sir, even if the Assistant Directors came through Parliament, it was not necessary. The President “may”. He has discretion. He has exercised his discretion in this case by appointing Justice Ringera without reference to the Advisory Board or Parliament because the law allows him to do so. So, the question is: Since the President has acted properly and in accordance with his powers and within the four corners of this law, what are we referring to that Committee on Subsidiary or Delegated Legislation? That is number one.

Secondly, the President has exercised his powers, not under a subsidiary legislation, but under Section 3(2) of the Act. The Schedule is not a subsidiary legislation. So, it will be wrong in precedence to refer this matter to the Committee on Delegated Legislation.

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

**Mr. Speaker:** Order! The Member on the Floor is on a point of order. Allow him to finish.

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, finally, it is not a matter of simply saying that we should take this matter to this or that Committee. There must be that question which is being referred to the Committee for an answer. The person who made the request for the matter to be referred to the Committee on Delegated Legislation did not inform the House what question he wanted that Committee to go and deal with. He has to come and say whether the subsidiary legislation is *ultra vires* or it is illegal in one form or another. We are saying that the President acted properly and in accordance with the law. There is no breach of the parent Act by that Notice. So, there is nothing to take to that Committee. However much noise you make, the truth will always remain the truth.

*(Loud consultations)*

It does not matter because there can only be one correct interpretation.

**Mr. Speaker:** Order, Mr. Minister! Can you, please, conclude!

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, I want to conclude by saying that the request for that subsidiary legislation through the notice to be taken for further scrutiny by the Committee on Delegated Legislation is in, itself, frivolous, has no legal or factual basis and should be rejected by this House.

Thank you.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Speaker, Sir. I want the Speaker to hear me.

Mr. Speaker, Sir, this is not a simple matter, as I said yesterday. Any attempt to try and simplify these matter runs foul of the conscience of the whole country.

If you look at Sections 27, 28, 39 and 40 of the Local Government Act, they give the Minister for Local Government powers to appoint nominated councillors. Those sections also give the Minister for Local Government powers to revoke those nominations. I have had the privilege of arguing cases in the Court of Appeal and, more recently, the case of Taib versus the Attorney-General and the Minister for Local

Government. The Court of Appeal said that although the Local Government Act states specifically that the Minister can revoke the appointment of a nominated councillor, he cannot do that because since the law was changed, it gave political parties and the Electoral Commission of Kenya powers to recommend and to nominate those councillors. In order to revoke, although the law does not specifically say so, he must go back to the political parties and the Electoral Commission before he can gazette a revocation of a nominated councillor. Now, this *mutatis mutandis* applies to the current situation that we are talking about. The Local Government Act is not a subsidiary legislation. It is a substantive legislation.

I want to say this, and I am saying it from the bottom of my heart

**Ms. Karua:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Orenge! Do you want to be informed by hon. Karua?

**The Minister for Lands** (Mr. Orenge): Yes, Mr. Speaker, Sir.

**Ms. Karua:** Thank you, Mr. Speaker, Sir. I would like to inform the hon. Member on the Floor that during the debate on the Anti-Corruption and Economic Crimes Bill in 2003, hon. Murungi, the then Minister for Justice and Constitutional Affairs had this to say to the House, and I am reading from the HANSARD. I seem to have lost this page but the upshot of it is that he was saying that through this law, we are creating a new culture of appointing, where appointments by the Executive have to be vetted by Parliament and where the Executive cannot just wake up and appoint.

On Cap.2 Section 51, it is quite clear that where the Statute does not provide for reappointment, you must follow the same process you followed for appointing. It, therefore, goes without saying that if to appoint the Director the President had to receive the recommendation from the Advisory Board and then come to Parliament for approval, the reappointment is exactly the same mode. Common sense also dictates that when you reappoint, you appraise the performance. The President cannot appraise the performance because it is appraised by the Advisory Board and then Parliament endorses. I am just wondering; why this desperation for shortcuts?

**Mr. Speaker:** Order! Mr. Orenge, you are appropriately informed. I do not know if you find that information useful.

**The Minister for Lands** (Mr. Orenge): Mr. Speaker, Sir, it is very useful.

*(Laughter)*

**Mr. Speaker:** Order, hon. Members!

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

Order, Mr. Murungi! Mr. Orenge is on a point of order! Our rules do not allow that you rise on a point of order, when another Member is on a point of order!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): On a point of information, Mr. Speaker, Sir.

**Hon. Members:** No! No!

**Mr. Speaker:** Order, hon. Members! Mr. Orenge, do you want to be informed by the Minister for Justice, National Cohesion and Constitutional Affairs?

**The Minister for Lands** (Mr. Orenge): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Proceed, Mr. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I would like to thank my learned friend for allowing me to inform him. It is the Kenya Anti-Corruption Commission (KACC) Annual Report of 2006/2007 that the Board told the President.

“On my part as Chairman of the Advisory Board, I am happy to report that the Commission has acquitted itself well *vis-à-vis* its statutory mandate in the Act.”

I want to present this Report to him.

*(Mr. M. Kilonzo handed over the document to Mr. Orengo)*

I also want to inform and give him a report for last year dated 16<sup>th</sup> October. Again, in the report by the KACC, and it has photographs of the Chairman, the Chairman told the President:-

“On behalf of the Advisory Board, I would like to thank the management and all the employees of the Commission, including Justice Ringera for yet another successful year.”

I would like to present this Report to the Minister.

*(Mr. M. Kilonzo handed over the document to Mr. Orengo)*

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, while I got the information from the gracious lady, what Mr. M. Kilonzo has presented to this House as information are expressions of “thank you.” If you want to give a senior lawyer like me information, give me substance and not rhetoric!

*(Laughter)*

Mr. Speaker, Sir, Ms. Karua was exactly on the point the Court of Appeal made that when there is power to appoint, to revoke or reappoint you must follow the same procedure. You will remember that those who were bewildered by the powers of the President, and I am also bewildered that Mr. Murungi who all the time during Moi’s tenure used to talk about the imperial presidency--- To the hon. Member, it looks like the day begins and ends with the presidency, and yet the world is larger than that. The hon. Member should know this.

This point is so basic that we cannot run away from it. I am glad that the Chair has given us time to air our views because it is better to view this matter broadly and look at the law. When I read Mr. M. Kilonzo’s article in *The Daily Nation* I found that he wrote selectively. Section 51 of the Interpretation and General Provisions Act does not exist in his mind and yet it is very critical. At the end of the day, we can learn from other jurisdictions. President Bush appointed Bernanke as the Chairman of the Federal Reserve in the United States of America. President reappointed the same man but they had to go back to the Congress for approval. I think this is what the law intended. This is what we intended should be done and we cannot run away from this.

Lastly, laws are made to serve us and not vice versa. When you exercise a discretion or power, you do not do that to please yourself but you exercise in the interest

of the public. You should remember all the time that when you exercise any power, you do not do this to please yourself, wife or relative. This is exercised for the public good. Right now, the President and Mr. M. Kilonzo, should listen to what the country is saying. Are these powers being exercised for the public good or to please the minds of a few people in the country? I think this is what we should think about seriously.

In order not to be misunderstood, I respect the presidency even as an appointing authority, but I will be the last person to accept illegality or injustice in the name of loyalty. I will never do that.

*(Applause)*

**Mr. Mbadi:** Thank you, Mr. Speaker, Sir. One of the main reasons I have stood here is because lawyers had almost turned this argument to be one among the lawyers. However, we want to tell them that all Members of Parliament can argue in this case.

Mr. Speaker, Sir, the appointments of the Director and Assistant Director are provided for in Section 8(3) and (4) of the Anti-Corruption and Economic Crimes Act. The arguments the hon. Members who support this appointment are putting forward are in the First Schedule, Section 3(2). Any legal provision looks at the spirit of the law rather than the letter of the law. The reason the section that recommends the appointment of the Director talks about the approval coming from the House is simply to give the Kenyan public, which is supposed to pay the Director and the Assistant Director, the power to vet the appointments through their representatives who are Members of Parliament.

Mr. Speaker, Sir, if there is a contradiction between the schedules to a particular Act, then you cannot insist that there is no problem there. But as far as I am concerned, there is no contradiction. Clause 3(2) of the First Schedule of the Act states as follows:-

“The person who has held the office as a Director may be reappointed but may not serve as the Director for more than two terms.”

If I look at the spirit of this particular provision, it automatically assumes that you will follow the provisions of Clause 8(3) and Clause 3(4) which, therefore, means that it is only giving the responsibility to the appointing authority, which is Parliament, because the President is only doing it in a ceremonial way. The President cannot appoint somebody who has not been approved by Parliament. Even if Parliament approves that so and so should be appointed without specifically saying that the person should be the Director or Assistant Director, the President has no powers to make that appointment because the approval must expressly come from this House. Therefore, my understanding is that even though the First Schedule is silent about whether Parliament should be consulted in reappointing the Director and the Assistant Director, the spirit of the law is that it should follow Section 8(3) and Section 8(4).

With those few remarks, I think the Minister for Justice, National Cohesion and Constitutional Affairs should apologise for trying to mislead this House on things which non-lawyers like myself can properly interpret and point out.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, first of all let me begin by saying that, if we go back to history, there was a period in the Soviet Union and in the United States of America (USA) when things happened differently. In the case of USA, there was Senator



McCarthy. During that time, the scenario did evolve where one only needed to be called a communist and irrespective of the position that you held, you had to be thrown out. There were no arguments. The truth of the matter is that during that time of McCarthyism in the USA, many able people who had integrity had their own reputation and profession destroyed.

Mr. Speaker, Sir, it is also a well-known fact that during the standing period, there was a fellow called Lavret Biria. I have to say this because we need to take things cautiously. Lavret Biria was in charge of the secret police. He only needed to hear that you are an enemy of the revolution. Only that! Once that accusation was made against you, you were banished to Siberia and you were destroyed. Many people were destroyed. I say that because there are some Members who are wondering why we are doing this. We should not turn ourselves into a court of law. If we think somebody is bad, we do not want to worry about checking the details. All we want to do is to push up the hatred and destroy somebody's reputation. We should ask ourselves questions. It is, indeed, true that in this House, we are in a position to defend this country and the people. We have to make sure that we do so. It is important that we check the matter carefully and not be guided by malice, hatred or the need to destroy somebody.

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

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, speaking on the same matter--- I am developing my argument and the hon. Member has been talking all along and he should give me the opportunity to talk.

**Mr. Speaker:** Order! The hon. Member is on a point of order!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, let me put it this way, first of all, the argument that we have been given here---

**Mr. Speaker:** Order, Prof. Saitoti! Will you please ensure that you stay within the parameters of legality inclusive of the Standing Orders! Do not make allegations that you cannot substantiate. Do not use language that is unparliamentary.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, the way I have talked here clearly indicates that I was bringing a background of this matter. The rest were deductions.

**Mr. Speaker:** Order, Prof. Saitoti! Could you, please, divorce emotions from your contributions?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, as you can see, I am laughing very broadly today. I am a haughty man and I want to say that I am not in any way angry. When I get angry, I do really get angry.

The point that I want to say is that all this has come about because of the reappointment of Justice Ringera and the contentious issue is whether the law was followed. I believe that is the position. But again, I believe the Constitution is also very clear. Namely, that indeed, if it is an issue of whether it is legal or illegal, Parliament in itself is not a court of law. The mechanism has already provided for in the Constitution which says that the interpretation will be done by a court of law. That is the only thing that I am saying. We cannot be the institution of Parliament here and at the same time

convert ourselves into an institution of the Judiciary. The Constitution is very clear as far as the separation of power is concerned.

Mr. Speaker, Sir, if indeed there are some of us who feel that the President erred and did an illegality, that is a matter to be interpreted by the Court of Law and not the Committee. The Committee is not a court of law. The Committee is a Committee of this House and there is a Standing Order that says that all the sessions of a Committee are an extension of the debate of this House. It is clear, and there have been several rulings in the past. I have been in this House for sometime and I have known that when the issue of the legality comes in, there have been rulings that Parliament is not a court of law. If it is an issue of illegality, the Committee that we are talking about has every right of going to court for interpretation.

With those few remarks, I beg to oppose the Motion.

**Mr. Speaker:** Order, hon. Members! This matter has to come to an end. So, from this point, I will allow four more points of order. Two from my left and two from my right. It is now the turn on my right. I will take Prof. Anyang'-Nyong'o because he has been picketing for a long time.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, Bishop Augustine of Hippo once said that, in matters as grave as this, it is important to think for a moment that you may be wrong. On this side of the House, the President made a decision. I want to appeal to His Excellency the President, to listen to Bishop of Hippo: "Think for a moment that you may be wrong".

Mr. Speaker, Sir, my dear friend, Mr. Murungi was then the Minister for Justice and Constitutional Affairs and with whom I served in the Kombo Committee on Anti-Corruption and we developed this law on Economic Crimes and Public Ethics Act. When he was presenting that Bill in Parliament, he said as follows:-

"Mr. Temporary Deputy Speaker, Sir, the Commission is to be managed by a Director. "That is in Clause 5 of the Bill". The Director should be a suitably qualified person in the areas of law, finance and public policy. The Director will also have Assistant Directors, all of whom should be appointed by the Advisory Board on recommendation of Parliament---

So, we are introducing a new culture in this country where appointments to public office in this country should be vetted by Parliament. We are starting with this Bill.

Mr. Speaker, Sir, the Bill provides for independence and autonomy of the Commission in the performance of its duties. Clause 7 says:-

"In the performance of their functions the Commission and the Director shall not be subject to the direction of any other person or authority and that the State Corporations Act should not apply to the Commission."

So, the Executive shall not have power to appoint director today, remove him tomorrow and appoint another one. It further says:-

"The Director has some security of tenure and during the five years, he or she can only be removed from office by a tribunal appointed after recommendation of the Advisory Board. So, the process of removing the Chief Officer of the Commission from this office is a bit complicated."

Mr. Speaker, Sir, that is a point I was trying to make. It is a bit complicated. The complication comes from the fact that as we sit here today, both the National Assembly and the nation are extremely apprehensive in the manner in which Justice Ringera is

being reappointed to that position. The issue as hon. Mbadi has said, is not just legal. The issue touches at the very core of establishing “a new political culture in this nation.” That the hon. Minister observed then. My concern is for us to be humble and to nurture this political culture of consultation and nurturing of new institutions, so that we do not drive this country to other precipices of disaster.

Mr. Speaker, Sir, hon. Professor Saitoti has said that in the United States (US), there was an era of McCarthyism when people were haunted from office because they were accused to be communists or Marxists. You do not need to go to the era of McCarthyism in the United States. You only need to go to the era in which the hon. Minister served as a Vice President in this country when there was what I call neo-McCarthyism in Kenya. I myself was haunted out of the university being accused of being a Marxist. I even lost my brother under those conditions. The late Shaw, then a reserve policeman in this City gave me the details of how that happened and he went with those details to his grave. So, there has been neo-McCarthyism in this country. This august House would like to defend this country from another slide into post neo-McCarthyism which means that we must have an open culture of consultation and respect for public opinion. Where process is complicated as, indeed, the Minister said, then we should recognise that complication and not take firm stances that are not amenable to ocular reason. We must accept that when the National Assembly and the nation are apprehensive, we should think for a moment that we may be wrong.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Proceed, you have caught the Chair’s eye.

**The Minister for Energy (Mr. Murungi):** On a point of order, Mr. Speaker, Sir. My name has been mentioned twice.

**Mr. Speaker:** Order hon. Murungi. Hon. Members, you must respect the rules of the House.

Order, hon. Members! Hon. Kiraitu Murungi, I know you may be aggrieved but wait until you catch the Speaker’s eye and you will have the Floor at that time. Let us hear hon. Odhiambo.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, thank you for protecting me.

Mr. Speaker, Sir, I would like to say that in my view, we are actually putting the cat before the horse. If I was standing before a court of law, I would be asked what the issue before us is. The issue before us is the Gazette Notice. Is it delegated legislation or no? Under Cap. 2, definition of section, it is delegated legislation. We are asking that, therefore, by the powers conferred under the Standing Orders of this House, it be taken to the Committee dealing with delegated legislation. So, all these issues that are being raised here shall then be queried by that Committee.

Mr. Speaker, Sir, for instance, the issues under Section 8(3) and the Schedule 3(2), will be issues that will be discussed by that Committee. We would want to look at whether there was legality in dealing with that issue. Secondly, we have been asked to look at the principles of legal interpretation. My most able teacher, hon. Mutula Kilonzo has told us that we have forgotten. We were wonderful students. I remember them well even in French language. The first principle is the principle of the intent of Parliament. That committee will look at the intent of Parliament as contained in legislative history. It will also look at the plain meaning. The plain meaning is very clear. Look at Section 8(3). We will discuss this matter. We have many lawyers and very intelligent non-lawyers

within this House. That is why they were elected to this House. We shall give our interpretation if this comes before this House.

Finally, we have been urged not to send Justice Ringera to Siberia. We do not want to send him to Siberia. We just want to bring him to Parliament of Kenya; where we are spearheading reforms and want things to be done properly. All we are saying is that we want to query whether the reappointment was done properly. Having finished that, then if we do it properly, then we will start the proper process. If he wants to apply, he will do so, and then we will query. If he has issues that are being improperly adjourned when instead it is actually the hon. Attorney-General that is hampering his work, then that Committee will look into it. Why are we jumping our guns before the time? Let us deal with the issues at hand.

Thank you, Mr. Speaker, Sir.

*(Ms. A. Abdalla and Mr. Murungi)*

**Mr. Speaker:** Ms. Amina Abdalla! Order! Before you proceed, the Minister for Energy is a little too anxious. A member says he is energised. Could we hear the Minister first?

**Ms. A. Abdalla:** Mr. Speaker, Sir---

**Mr. Speaker:** Order, hon. A. Abdalla, you will proceed.

**Ms. A. Abdalla:** Mr. Speaker, Sir, I might also be having something that he needs to respond to.

**The Minister for Energy (Mr. Murungi):** Mr. Speaker, Sir, I thank you for finally recognising me.

Mr. Speaker, Sir, both hon. Karua and my colleague Professor Anyang'-Nyong'o have referred to the HANSARD of the year 2004 when I was presenting the Anti Corruption and Economic Crimes Bill to this House. Indeed, I did say that time that we were introducing a new democratic culture in this country where senior appointments to Government offices will be vetted by Parliament. If you listened carefully to what they said; they said that I said appointments and revocation of those offices are not going to be done at the whims of the Executive. I still stand by those remarks. I think what we are saying now is also common sense. I like Professor Anyang'-Nyong'o's remarks. Let us listen to that Bishop. Is it Ogindo or Oginde. Let us for a moment---

*(Laughter)*

Even us, as Members of Parliament, let us for a moment, also imagine that we could be wrong, even as we are discussing this particular issue. Professor, you could be wrong. I could be wrong. Everybody could be wrong.

Mr. Speaker, Sir, it is common managerial practice that once you have interviewed a Chief Executive and given him a job and the Chief Executive has performed well and his term has expired, you do not subject that Chief Executive to a further interview; you just renew the contract---

**Mr. Speaker:** Order, Minister, please restrict yourself to areas where you have been aggrieved. Do not begin to make new contributions because you had an opportunity to do so.

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, all I was saying is that my colleagues only told half of the truth regarding the HANSARD that they were reading to this House. I did not talk about re-appointment during my contribution to this House in 2004. Re-appointment as presented in Section 3(2) makes sense in the sense that the Executive was appointed, it has performed extremely well according to the report of the board itself and in those circumstances, it is not necessary for the Board or Parliament to give further approvals for the CEO to be re-appointed. That is normal practice! Let us not change that culture because it is Mr. Ringera.

**Ms. A. Abdalla:** Mr. Speaker, Sir, I contributed yesterday and mentioned that we are not looking at Justice Ringera the individual.

*(Applause)*

In fact, I admitted to this House, with the interaction that my Committee has had with the Kenya Anti-Corruption Commission (KACC) and Justice Ringera, we appreciated the challenges he has *vis-a'-vis* premeditated mega corruption. We appreciated that he has problems. What I disagree with Prof. Saitoti on is for him to make this matter that we are raising which is a matter relating to process, to an individual issue. Personally, I can say to this House that if Justice Ringera went through the right process, I would be the first one to vote for him because I believe that the anti-corruption law is the one that is hindering this country from being able to prosecute premeditated mega corruption and is leaving only for KACC to be efficient, if at all, on corruption that is opportunistic where you do not have time to cover your tracks. So, it is nothing to do with Justice Ringera or the other assistant directors as individuals. We just want to have an opportunity – and for the information of Mr. Murungi, what happened to the appointment of Mr. Rotich and the exercise he used when we were passing this list of the directors of the KACC in 2004, is, in fact, one of the reasons why we brought the Motion on Delegated Legislation. The then Speaker told us that we could only pass the full list and not name by name. We felt aggrieved that after passing the name of Mr. Rotich, he was not appointed. So, we must look at this matter on a more serious way that does not reflect our positions as of now. Today, I am in the PNU Coalition and I should be on this side supporting what was happening. But if it is illegal, you must change the system.

*(Applause)*

We are not dealing with individuals: We respect the Presidency but when something is wrong, give us the opportunity to try and correct it. You have the chance to come and vote here and say if the Committee so proposes and you disagree, come and convince us. Try to get as many people to vote on your side. It is wrong for our Ministers to come here and give us selective interpretation. Mr. M. Kilonzo knows that the Departmental Committee on Justice and Legal Affairs was very clear in re-appointing members of the Advisory Board because we felt that they were not performing as we wished. That is why we replaced everybody who was up for re-appointment. So, for him to quote a report that was written by a team that has already left office is unfair to this House.

*(Applause)*

We are just not asking on this matter. The Advisory Board came to us and told us that they had planned to go the whole hog to follow the anti-corruption law, Section 8(3) and because of that, we wanted to support that process which is why yesterday, we showed our displeasure because we did not have the gazette notice on which to act. Now that we have it, please, hold your horse; let us come back when the report is here. If you disagree, lobby and convince other hon. Members but for you to want to stop the working of a Committee that was informed by previous action of the Executive, that tainted the tenure of the current members of the KACC and to repeat the same mistake just because you are fearful it is not fair.

With those few remarks, I wish to urge that we cease this debate and wait for the report for us to add whatever issues or grievances we have.

**Mr. Midiwo:** Mr. Speaker, Sir, I just want to make a very short intervention. First of all, I want to assure Mr. Murungi and Prof. Saitoti that some of us are friends with Justice Ringera. This is not about Justice Ringera. This is about the process of appointment. Most of all is that the Executive seems to have been asleep when we occasioned the new regime of the Standing Orders. We came up with this particular Committee on Delegated Legislation because the Executive was doing very unlawful things and there was no way Parliament could intervene. The main purpose of this Committee, which the Executive did not appear to know that it exists, is to look at wrongful things that the Government would rush and gazette or otherwise just to get past Parliament. In this case, we want to urge you to let this Committee do what we set it up for. So many of these things are happening. There is an Act that says that the name of the Director-General of Vision 2030 would be sent to Parliament for approval. Just recently, he was unilaterally appointed without being vetted by Parliament. The person has already taken up Office. The reason why we formed this Committee is to stop the Executive from abrogating those powers that Parliament has and Parliament should exercise.

Lastly, just a couple of months ago, we approved the re-appointment of two assistant directors of the KACC; Messrs. Mutonyi and Shollei and the due process was followed. Their names were brought here, we did not have a problem with them and we sent them back there. I can assure you that if the Government had followed the right process and given us our due as a Parliament of the Republic of Kenya, we probably would have approved the reappointment of Mr. Ringera. We wonder: What is the difference between the appointment of Messrs. Shollei and Mutonyi and that of Mr. Ringera? Something is fishy and that is what is irritating the country.

Thank you.

**Mr. Speaker:** Order, hon Members! Order! I indicated that we were going to finish this matter by taking two more from the right and two more from the left and we have done so.

This afternoon, Mr. Ruto, Member for Chepalungu, stood on a point of order and referred to a publication in the *Kenya Gazette* with respect to the reappointment of Justice Ringera and urged the Chair to direct that, that matter be referred to the Select Committee on Delegated Legislation. That point of order has been followed by a plethora of very well argued points of order by many other hon. Members present in the House this afternoon.

Hon. Members, I do not propose to delve into the law applicable at this stage. But my preliminary directions from what I have gathered out of the contributions made will be in four parts as follows. First, it has emerged that hon. Members desire that the matter be referred to what some contributors have said, the Committee on Delegated Legislation and the others have referred to the Committee on Justice and Legal Affairs.

Hon. Members, on the first part, I will want hon. Members to refer to the Standing Orders with respect to the mandate of those two committees. For the Committee on Delegated Legislation, the relevant Standing Order is Standing Order No.197 which says under paragraph (1):

“(1) There shall be a select committee to be designated the Committee on Delegated Legislation”.

Hon. Members, it does not say “Subsidiary Legislation”. It says “Committee on Delegated Legislation”.

“(2) The Committee shall ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinise such instruments to ensure that they are consistent with parent statutes”.

“(3) Unless otherwise provided for either expressly or by necessary implication under any written law, all subsidiary legislation shall be tabled before the House upon publication in the *Kenya Gazette*”.

“(4) The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled”.

Then, I want to refer to the Second Schedule to the Standing Orders and, in particular to Page 123. At which, there is a provision for the Committee of Justice and Legal Affairs and provides that the mandate of that Committee shall include constitutional affairs, the administration of law and justice covering the Judiciary, police and prisons departments, community service orders, public prosecutions, elections, ethics, integrity and anti-corruption and human rights.

Hon. Members, I want to move on to Standing Order No.198 which then provides the general powers of Select Committees, and it says at Paragraph (1):

“There shall be select committees to be designated Departmental Committees which shall be nominated by the House Business Committee and approved by the House at the commencement of every Parliament”, which this House has done in respect of those two Committees.

(2) Unless the House otherwise directs, the Departmental Committees shall be as set out in the Second Schedule.

What is important, then, is Paragraph (3) which says:

“The functions of a Departmental Committee shall be: -

(a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

(b) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

(c), which is important and you need to note that, says:” to study and review all legislation referred to it---

So, in essence, therefore, which is significantly the second part of my preliminary directions that Select Committees or Departmental Committees, for that matter, do not

need an order from the Speaker or from the Chair to inquire into any matter? If they deem that, that matter falls within their purview, they are at liberty to institute an investigation.

So, hon. Members, having said that, it is my position that if the Committees, in their interpretation of their mandate, particularly the two Committees, view that matters pertaining to that legal notice fall within their mandate, then they are at liberty to commence investigations.

*(Applause)*

The final part, which I want to say and which is important, as to whether or not, a determination that the matter that has been raised falls within the mandate of the two Committees or any one of them, that I will give my exhaustive findings and position on, on Tuesday next week. I will be able to go into the law and address all the concerns that have been raised and answer them as to whether or not, this matter falls within the purview of the two Committees or any one of them. In the meantime, as I have said, no Committee, Select or Departmental, requires the order of the Chair to execute its mandate. It is implicit in the Standing Orders.

*(Applause)*

Next Order!

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

**Mr. Speaker:** What is it, Mr. Mungatana?

#### INTENDED PRIVATIZATION OF 26 PARASTATALS

**Mr. Mungatana:** Mr. Speaker, Sir, we had been expecting the Ministerial Statement in answer to the demand of the intention to sell the 26 parastatals as gazetted by the Deputy Prime Minister and Minister for Finance. We want your direction on that.

**Mr. Speaker:** Honorable Deputy Prime Minister and Minister for Finance, there was a request for a Ministerial Statement on Privatization. Can you indicate when it will be available?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, I had previously indicated to the hon. Member that I have not yet received the Statement, but as of a few minutes ago, I have, so I can proceed and read it, if you so order.

**Mr. Speaker:** When?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** I am ready to do it now.

**Mr. Speaker:** Unfortunately, for now, we are out of time. Will you be present on Tuesday?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! It is so directed.

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

**Mr. Speaker:** What is it, Mr. Linturi?



## ROLE\MANDATE OF EFFICIENCY MONITORING UNIT

**Mr. Linturi:** Thank you, Mr. Speaker, Sir. I will also be very brief because I had given an indication that I will be seeking a Ministerial Statement from the Prime Minister on the role and the mandate of the Efficiency Monitoring Unit, which is a department under his office.

Mr. Speaker, Sir, I would be happy if the Prime Minister and Minister for Finance would clarify the following: When was this unit established and who have been the CEOs since its inception and whether its reports and recommendations are binding on the Government? Are the people mentioned adversely in these reports legible for Government appointments?

Third, Mr. Speaker, Sir, in his view, has this unit lived up to its expectations or conducted its functions effectively and within its mandate? Fourth, whether its mandate is in conflict with that of the Inspectorate of State Corporations.

Fifth, Mr. Speaker, Sir, the Prime Minister should also tell us what he is doing to deal with those mentioned for financial impropriety in these reports; and, finally, whether he intends to share the reports with the Office of the Controller and Auditor-General and the Kenya Anti-Corruption Commission.

Thank you, Mr. Speaker, Sir.

## ALLEGED SEXUAL ABUSE OF BOYS BY FATHER KIZITO

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. You had given direction that the Minister of State for Provincial Administration and Internal Security should issue a Statement on the alleged case of sexual abuse of boys by Father Kizito. It was supposed to be made on Tuesday, but this was not done. Could you kindly give direction as to when the Ministerial Statement will be issued?

**Mr. Speaker:** Prof. Saitoti, could you indicate when you will issue the Statement?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I apologise profoundly because I was interrupted by my colleagues here. I will be happy if those remarks are repeated. I am sorry.

**Mr. Speaker:** Ms. Odhiambo, could you just get the gist of the request?

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, the gist of the matter is that I had sought a Ministerial Statement on the alleged abuse of boys by Father Kizito which has been pending for the last two months.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, that is, indeed, true. I would like to apologise that the Statement has not been made. Although this matter is before court, I will be quite happy to issue the Ministerial Statement on Tuesday, next week.

**Mr. Speaker:** Fair enough. It is directed that the Ministerial Statement be issued on Wednesday because many Ministerial Statements will be issued on Tuesday. Is Wednesday okay with you, Mr. Minister?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, Wednesday in the afternoon is fine.

**Mr. Speaker:** Very well!

**Mr. Linturi:** On a point of order, Mr. Speaker, Sir. I have not heard an indication on when my Statement will be issued in this House.

**Mr. Speaker:** Should it be made by the Prime Minister?

**Mr. Linturi:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Deputy Prime Minister and Minister for Finance, that request is directed to the Prime Minister. Could you, convey this to the Prime Minister. Let him deliver the Statement on Wednesday, next week because there will be Prime Minister's Time?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, that will be done.

**Mr. Speaker:** Fair enough.

### CONSIDERED RULING

#### MOTION ON ADOPTION OF REPORT ON MAU FOREST COMPLEX NOT SUB JUDICE

**Mr. Speaker:** Hon. Members, before we move to the next Order, I wish to make the following Communication. You will recall that on Wednesday 12<sup>th</sup> August, 2009, the Report of the Government' Task Force on the Conservation of the Mau Forest Complex was laid on the Table of this House and a Notice of Motion given for its adoption. You will further recall that on Tuesday, 27<sup>th</sup> August, 2009 when this Motion was listed on the Order Paper as Order No.13, the Chair deferred the debate on it in order to permit perusal of documents presented to the Chair by Mr. Isaac Ruto on 27<sup>th</sup> August, 2009, in respect of High Court Miscellaneous Civil Course No.313 of 2008 and representations that the Motion should not be allowed on the ground that the matter is *sub judice*.

The documents presented to the Chair included a Chamber summons dated 2<sup>nd</sup> March, 2005; an affidavit sworn in support of the Chamber summons dated 1<sup>st</sup> March, 2005; Orders of the High Court issued in Nairobi on 3<sup>rd</sup> March, 2005 and a Notice of Motion dated 3<sup>rd</sup> March, 2005. High Court Miscellaneous Civil Course No.313 of 2005 relates to an application by seven individuals seeking the leave of the High Court to apply for orders of *certiorari* and prohibition to remove from the High Court and quash the decision of the Minister for Lands announced on or about 14<sup>th</sup> February, 2005 and published on 15<sup>th</sup> February, 2005, cancelling over 10,000 title deeds and in particular, the title deeds of the applicants.

The High Court, by orders issued on 3rd March, 2005 (a) granted leave to the applicants to apply for an order of *certiorari* to remove from the High Court and quash the said decision of the Minister for Lands and (b) granted leave to the applicants to apply for an order of prohibition, prohibiting the Minister for Lands and the Attorney-General from cancelling the applicants title deeds, evicting, trespassing or otherwise interfering with the applicants quiet occupation and enjoyment of their registered parcels of land.

Hon. Members, it is important to note that the grant of leave to the applicants by the High Court to apply for orders of *certiorari* and prohibition was to operate as a stay of the decision of the Minister for Lands to cancel the titles of the applicants until the hearing and determination of the judicial review proceedings or until further orders of the

Court. The Court directed the applicants to file and serve the respondents and all interested parties with the substantive Motion within 21 days from the date of the order.

*(Eng. Maina consulted loudly)*

Order, Eng. Maina! I would like you to re-acquaint yourself with the Standing Orders with respect to what happens when the Speaker is on his feet.

*(Several hon. Members stood at the Bar)*

Those Members at the Bar may walk in.

Hon. Members, the Court directed the applicants to file and serve the respondents and all interested parties with the substantive Motion within 21 days from the date of the Order. The matter will, thereafter be set down for hearing in terms of our civil procedure. The Court Order indicated that failure – underline the word failure – by the applicants to file and serve the substantive Motion will lead to an automatic lapse of the leave as well as the stay granted. The Order of the Court was made on 3<sup>rd</sup> March, 2005 and if not complied with by the applicants, would have lapsed at the end of March, 2005.

None of the documents presented to the Chair by Mr. Isaac Ruto indicate what subsequently transpired in this matter. There is nothing in the documents presented to the Chair to indicate whether or not, the applicants subsequently complied with the Orders of the Court or, in fact, the leave and stay automatically lapsed. In short, nothing in the documents presented to the Chair indicates the status of this matter at the moment and whether or not, it is still alive.

As the Chair has only recently ruled, the *sub judice* rule is not one to be invoked lightly. It cannot be used to prevent this House from discharging its constitutional mandate unless weighty reasons are advanced. The danger of prejudice to the due determination of justice must be clearly demonstrated. Standing Order No.80 (2) is categorical in providing thus:-

“A matter shall be considered to be *sub judice* when it refers to – underline – active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.”

Standing Order No.80 (4) makes it clear that the onus of showing that a matter is *sub judice* lies on the Member alleging so. Such a Member is required to produce evidence that Paragraphs 2 and 3 of Standing Order No.80 are applicable. As to if the matters in Civil Course No.313 of 2005 are active within the meaning of Standing Order No.80 (3) (c) when it is not evident that arrangements for hearing have progressed such as setting down the case for trial have been made in a way that it can be ended by judgment or discontinuance is doubtful.

The documents presented to the Chair by Mr. Isaac Ruto on 27<sup>th</sup> August, 2009 are more than four years old. As the Chair has earlier indicated, nothing in the documents provides any evidence that this case has ever been set down for hearing. Standing Order No.80 does not envisage it to be the role of the Office of the Speaker to make inquiries at the Court Registry to establish the status of matters before them. Where *sub judice* is alleged, unless there is good cause to the contrary, the Chair will consider only the evidence tendered to it.

To the extent that no evidence has been produced to the Chair that there are any active criminal or civil proceedings rendering debate on the Motion relating to the Mau Forest Complex *sub judice*, I rule that the debate on the Motion on Adoption of the Report of the Government Taskforce on the Conservation of the Mau Forest Complex is not *sub judice*, and this House is at liberty to proceed with deliberations thereon.

(Applause)

Hon. Members, may I take this opportunity to urge that any hon. Member who wishes to raise an objection to the discussion of any matter by this House on grounds that it is *sub judice* carefully considers the detailed provisions of Standing Order No.80, and be prepared to furnish adequate evidence in support of that objection.

Thank you.

**Mr. Ruto:** Mr. Speaker, Sir, I appreciate your ruling. I regret if, indeed, I did not attach the evidence that indicates that the case is still alive. I will do so tomorrow morning.

**Mr. Speaker:** Order, Mr. Ruto! It is not whether or not the case is still alive. It is whether or not the case is active. That distinction is important.

**Mr. Ruto:** Mr. Speaker, Sir, it is, indeed, active. I will furnish you with the details.

**Mr. Speaker:** As it stands now, that finding by the Chair is valid. You are unable to challenge it. So, accept it and live with it.

**Mr. Ruto:** Mr. Speaker, Sir, I will furnish the Chair with the evidence.

**Mr. Konchella:** On a point of order, Mr. Speaker, Sir. Now that you have ruled on this matter, which is very grave, can I ask that the Motion for adoption of the Report by the taskforce that was appointed by the Prime Minister be now put on the Order Paper for deliberation?

**Mr. Speaker:** Order, Mr. Konchella! That is not done here. That is business that will be transacted in the House Business Committee.

## COMMUNICATION FROM THE CHAIR

### DEFERMENT OF DEBATE ON APPROPRIATION BILL

**Mr. Speaker:** Hon. Members, with respect to Order Nos.8, 9 and 10, I have the following direction to give.

Following the debate on the Motion of Adjournment yesterday, serious concerns were raised by hon. Members on matters that have a bearing on the Business listed as Order Nos.8, 9 and 10. Following those concerns, the Rt. Hon. Prime Minister and the Deputy Prime Minister and Minister for Finance did approach the Chair this morning and indicated that they require time to progress and possibly conclude ongoing consultations. Further, the Deputy Prime Minister and Minister for Finance requires time to secure information and data on presentation of those three Orders.

In those circumstances, for a good cause, I defer Order Nos.8, 9 and 10 to Tuesday next week, at 2.30 p.m.

Next Order!

**BILL***Second Reading*

## THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING BILL

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I beg to move that The Proceeds of Crime and Anti-Money Laundering Bill, 2009, be read a Second Time.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! Those of you who are withdrawing from the Chamber, can you, please, do so quietly? Please, note that this is the more serious part of Parliamentary Business.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, hon. Members will recall that The Proceeds of Crime and Anti-Money Laundering Bill was debated in this House in May, 2008 and went through the Second Reading. It, however, lapsed on 24<sup>th</sup> February, 2009 at the Committee Stage, when Parliament was adjourned and subsequently prorogued.

I wish to report that we received on The Proceeds of Crime and Anti-Money Laundering Bill, 2008, views, concerns and proposals for amendment by various stakeholders. We also had meetings with the Departmental Committee on Finance, Planning and Trade and the Chairman of the Departmental Committee on Justice and Legal Affairs to discuss and review their concerns and proposed amendments. I am happy to report that we have incorporated the amendments that we had agreed upon, and I hope that hon. Members will appreciate our efforts towards this end.

Mr. Speaker, Sir, as you are aware, money laundering is the process through which criminals disguise their origin and legitimise their ill-gotten benefits of crime. The goal of a large number of criminal acts is to generate a profit for the individual or groups that carry out the acts. To criminals, money laundering is, therefore, of critical importance as it enables them to enjoy the profits derived from criminal activities without jeopardising their sources.

Money laundering is commonly referred to as “cleaning money”; a perception that gives the vice a metaphorical connotation, implying that money acquired unlawfully can be cleaned to appear as genuine. As the practice is illegal, it is transacted with a lot of secrecy, hence it is mainly operated in the underground economy. Although it may be seen as an independent crime, it has a nexus with other criminal activities that feed from it.

Mr. Speaker, Sir, traditionally, money laundering was associated with disguising money acquired from proceeds of drug trafficking, but that is increasingly being viewed as limited since money acquired dubiously can be laundered. It is, therefore, prudent not to link money laundering to a particular crime, but to acknowledge that as long as there is evidence of an attempt to deal in money acquired illegally from a crime and subsequently integrating the money into the economy as genuine money, then money laundering has occurred.

Money laundering is a complex undertaking and it occurs in three bold stages. The first is placement, which is the initial stage when funds enter the economy. The second is layering, where complex networks of transactions are created to attempt to obscure the link between the initial entry point and the end of the cycle. The third is the integration stage, when the money returns to the legitimate economy. Money laundering has to go through these stages because its owners need to prevent the discovery of the crime that they have committed, which may lead to prosecution, conviction and confiscation of their criminal funds.

Mr. Speaker, Sir, some commentators ask questions as to why a country should worry about money laundering as long as, through the process, a nation can attract substantial resources to finance its development programmes. To appreciate why we need to be worried about money laundering, one needs to also appreciate the kind of criminal activities that generate money that requires to be cleaned.

Such activities include illegal arms sales, smuggling, drug trafficking and prostitution rings, which generate huge sums of money. Other such activities include embezzlement, insider trading, bribery and computer fraud schemes that can also produce large profits, and create the incentive to legitimise the ill-gotten gains through money laundering.

Mr. Speaker, Sir, when a criminal activity generates substantial profits, the individual, or groups, involved must find a way to control the funds without attracting attention to the underlying activities of the persons involved. Criminals do this by disguising the source, changing the form, or moving the funds to a place where they are comfortable that they are not likely to attract attention.

Mr. Speaker, Sir, we consider money laundering as a cousin of corruption. Money laundering of necessity, breeds corruption which in turn becomes the manure for further money laundering. We all know the dangers of this corruption.

Mr. Speaker, Sir, money laundering and corruption undermine the country's business reputation and stands in the way of legitimate investment. Money laundering fuels organized crime which in turn fuels---

### QUORUM

**Mr. Kambi:** On a point of order, Mr. Speaker, Sir. Under Standing Order No.28, we do not have Quorum in the House.

**Mr. Speaker:** There is no Quorum. Please, ring the Division Bell.

*(The Division Bell was rung)*

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Deputy Speaker:** Order! Stop the Bell. Clerks-at-the Table could you check if we have a Quorum?

*(The Clerks-at-the Table counted the Members present in the Chamber)*

There is no Quorum!

**ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there being no Quorum, the House stands adjourned until Tuesday, 8<sup>th</sup> September, 2009, at 2.30 p.m.

The House rose at 5.20 p.m.