

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 12th November 2015

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF ZIMBABWE IN SPEAKER'S ROW

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation from the Parliament of Zimbabwe who are Members of Zimbabwe Women Caucus seated in the Speaker's Gallery. The delegation comprises of the following Hon. Members:-

1. The Hon. Monica Mutsvangwa, the Chairperson of the women's caucus
2. The Hon. Pauline Mpariwa
3. The Hon. Priscilla Misihairambwi
4. The Hon. Judith Mawire

The delegation is accompanied by Ms. Farai Hondonga. The delegation is in the country on a study visit to the Parliament of Kenya. They have been here since Tuesday, 10th November, 2015, and will be departing on Saturday, 14th November, 2015. I wish to welcome them to the National Assembly of the Republic of Kenya, and wish them fruitful engagements with our Hon. Members.

I thank you.

(Applause)

PETITION

OPERATIONS OF KWALE KWFT BRANCH

(Hon. (Ms.) Juma spoke from the Dispatch Box)

Hon. Speaker: Hon. Zuleikha, have you assumed the role of the Leader of the Minority Party? You can speak from there. Maybe the person who occupies it has decided to bequeath you the office.

Proceed.

Hon. (Ms.) Juma: Thank you, Hon. Speaker. Maybe it will be good luck for me in future.

I, the undersigned, on behalf of the citizens of Kenya and in particular, the Kaya Burani and Lawaridi women group in the Kenya Women Finance Trust (KWFT), draw the attention of the House to the following:-

THAT, the Kenya Women Finance Trust and its parent company, Kenya Women Holding, provides financial services exclusively to low income-earning women in Kenya.

THAT, the institution has branches in various parts of the country, including Kwale County.

THAT, the main objective of the institution is to improve the social and economic status of its members.

THAT, the institution has in the recent past breached its contract with its members, thus frustrating their financial empowerment efforts.

THAT, members of the institution in Kwale County have been compelled to give a replacement of another account holder upon termination of their contract with the institution.

THAT, the institution has taken advantage of the low literacy levels of the members and withdrawn their savings book, thus denying them a chance to be in the know of their account status.

THAT, the institution has been forcefully taking household goods of members who have unserviced loans with the institution without following due procedures.

THAT, attempts to get the management of the institution to listen to members' grievances have been unfruitful.

THAT, the matter in respect of which this Petition is made is not pending before a court of law.

THEREFORE, your humble petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

1. Intervenes to ensure that the petitioners' plight is addressed by investigating the management of the KWFT for compelling women to provide a replacement of another account holder(s) upon termination of their contracts with the institution.
2. Intervenes to ensure that the petitioners access their savings immediately they terminate their contracts with the institution.
3. Makes any other recommendations that may be deemed fit in redressing the plight of the petitioners.

And your petitioners will ever pray.

Thank you.

Hon. Speaker: Very well. Let me draw the attention of the House to the fact that under Standing Order No.226, it is possible, indeed, in appropriate cases for Members to be allowed a maximum of 30 minutes to comment on a petition presented or a petition reported on. That is the correct position. Of course in appropriate cases, the Chair may be compelled to disallow comments if it appears that they could compromise the investigations that may be prayed. Since I do not see anybody desiring to make any comments, let us proceed.

Next Order.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 12th November, 2015:-

The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) for the year ended 30th June, 2014 and the Certificate therein in respect of Kilifi South Constituency, Turkana Central Constituency, Ikolomani Constituency, Khwisero Constituency, Kitutu Masaba Constituency and Nyaribari Masaba Constituency

The Annual Report and Financial Statements of Kenyatta National Hospital for the year ended 30th June, 2014.

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

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

The Annual Report and the Financial Statements of the Kenya Tourism Finance Corporation for the year ended 30th June, 2014.

The Annual Report and the Financial Statements of the Office of the Controller of Budget for the year ended 30th June, 2014.

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

The Annual Report and the Financial Statements of the Central Bank of Kenya for the year ended 30th June, 2015.

Hon. Speaker: The Petition by Hon. Zuleikha Juma is referred to the Departmental Committee on Finance, Planning and Trade for consideration. The Committee should report within 60 days as it is the case.

Let us move on to the next Order.

Before the Leader of the Majority Party speaks, let me take this opportunity to welcome members from the Anglican Church of Kenya (ACK) Mihuti Parish, Gitugi Divison, Mathioya Constituency, Murang'a County, who are seated in the Speaker's Gallery. You are welcome to observe the proceedings of the National Assembly. Let me give this chance to Hon. Moses Lessonet, the Chairperson of the Select Committee on the Constituencies Development Fund (CDF) to make some brief presentation to Members on a matter that I know is of interest.

STATEMENT

DISBURSEMENT OF CONSTITUENCIES DEVELOPMENT FUND

Hon. Lessonet: Thank you, Hon. Speaker.

I rise to make the following brief Statement.

The CDF Board has so far deliberated on project proposals from 215 constituencies. Equally, the Board has received proposals from 61 other constituencies which it will deliberate on tomorrow, 13th November, 2015. I would like to say that 14 constituencies are yet to submit their project proposals for the 2015/2016 Financial Year.

In terms of funds, out of the allocation of Kshs35,213,000,000 for this financial year, the CDF Board has so far received Kshs6 billion from the National Treasury. From this amount, Kshs1,959,266,487 went towards those constituencies which had not received their allocations for the last financial year. Therefore, 102 constituencies received that amount which I have just

mentioned in respect of the last financial year. Let me inform the House that 173 constituencies have received part of the allocation amounting to Kshs3,985,900,000 for this financial year.

Allow me, therefore, to table this brief Statement together with the list of constituencies which have received funds for this financial year, and those which received part of the last financial year allocation. That is my brief statement on the CDF.

Hon. Speaker, the National Treasury has continued to honour their promise to disburse Kshs2 billion every week to the CDF Board. This is the fourth week they have consistently kept that promise. We want to encourage those constituencies which have not brought their proposals to do it quickly. Those constituencies which have received funding should also disburse funds to projects quickly.

I thank you.

(Hon. Lessonet laid the document on the Table)

Hon. Speaker: That means there is a balance of 173 constituencies that have not received any funding for this financial year because you talked about 117?

Hon. Lessonet: Yes, Hon. Speaker. For the 2015/2016 Financial Year, 173 constituencies have received a minimum of Kshs20 million. We have 102 constituencies which have not received their full allocations for the previous years and Kshs1.9 billion has been disbursed to them. So we still have another 117 constituencies which are yet to receive money for this financial year. That means part of the 102 constituencies have just received money for the previous years. So, we are waiting for them to comply by bringing their balances that are below Kshs10 million and they will receive more.

I thank you.

Hon. Speaker: Very well. Do I see an intervention from Hon. Charles Nyamai, who is the Member for Kitui Rural? I did not know your constituency was renamed "Rural".

Hon. C.M. Nyamai: Thank you, Hon. Speaker. It was created from Kitui West, which I used to represent. It is now represented by Hon. Nyenze. This includes some parts of Kitui Central.

Let me commend the Chairman of the CDF whom I served with in the same capacity in the previous Parliament for the report he has given. While we appreciate what the National Treasury and the Board are doing, I have been on the Chairman on a serious issue concerning Authority to Incur Expenditure (AIE). He has said that the money has been sent but we do not have AIE, and so we cannot use it. When he stands and gives such a statement, basically he is inciting people against us and this is not fair. So, he should talk to his secretariat, so that they can expedite processing of the AIE, so that we disburse money to our people.

Hon. Speaker: Hon. Lessonet, can you enlighten Members because this matter is very close to their hearts?

Hon. Lessonet: Hon. Speaker, I promise to quickly convey that information to the CDF Board, so that it can promptly make the AIEs available by tomorrow. I will insist that they be available tomorrow.

Hon. Speaker: Yes, Hon. Wesley Korir.

Thank you, Hon. Speaker. I would like to ask the Chairman to talk about the constituencies that have not received money. He is giving Kshs20 million to constituencies that have received money, yet the bursaries are the biggest issue. Candidates are doing examinations,

yet we have not received any bursaries money. Students are killing me down because there is no bursary. He should make sure that he disburses the bursaries money.

Thank you.

Hon. Speaker: Of course, if they were killing you, you would not be speaking here; you would have died long ago unless you are dodging them.

(Laughter)

I suppose your message is understood by the Chairperson. Can I allow these few Members who have indicated their intention to speak so that Hon. Lessonet can deal with them? Just note the issue of those who are threatening to eliminate Hon. Wesley Korir, the marathoner. Maybe that is why he is still surviving.

Let us have Hon. Clement Wambugu.

Hon. Wambugu: Thank you, Hon. Speaker. While the CDF Board has done some good job for giving us the funds; there is still a lot of anxiety on the CDF funds. My constituents are very worried because they do not know what is going to happen in February. When will we have the CDF Act, so that it can be aligned to the Constitution?

Hon. Speaker: I am sure the Chairman can make a quick response to that. Finally, let us have Hon. Dawood.

Hon. Dawood: Thank you, Hon. Speaker. I spoke to the Chairman and there is a problem with the CDF when we do reallocations. Mine is six months late and I am told the Committee has not sat. I even spoke to the Chairman and the Chief Executive Officer (CEO) earlier on. That is a recurring problem. Whenever there is something which needs to be approved by the Committee, it is as if it sits on some things and does not discuss them at all. It keeps them for another day. That is how we delay getting our CDF funds. I concur that the AIEs come after a month or two sometimes after we have received the funds in the bank. So, is it meant for the banks or it is ours for use? That is what we want to know.

Thank you.

Hon. Lessonet: Thank you, Hon. Speaker. With regard to Cherangany Constituency, I want to tell Hon. Korir that we thought the practice is to disburse bursaries in January. Now that the year has come to an end, the CDF Board will make sure that there are enough funds in Cherangany Constituency and all the other constituencies to disburse bursaries by the time schools open in January.

On the question of reallocation, I am aware that the CDF Board is very thin at the moment. We only have five members. They did not appoint a full Board because of the matter that was in court. There is a delay that Hon. Dawood has talked about because the CDF Board is very thin on the ground. I spoke with the CEO of the CDF Board today and he has promised me that there will be a board meeting tomorrow, 13th November, 2015 in which they will look at the question of reallocation.

The CDF Bill is on course. We have done the First Reading and anytime, we shall go to the Second Reading. We will be doing public hearing next week and receiving memoranda. We hope to be through with the process of receiving memoranda next week, so that we can proceed to the Second and Third Readings.

I also want to inform Members that if they have time tomorrow, 13th November, 2015, the High Court will be making a ruling on the request for extension of time. The CDF Board

went to court and requested the court to extend time, so that it will not lapse on 19th February, 2016. They could add us more years. That will be a very critical matter tomorrow. If you have time, you can join us in court tomorrow to see whether we will get that extension of time.

Hon. Speaker: Very well. Notwithstanding the application in court, we should allow the Judiciary to do its work. Ideally, Members would have liked a situation in which by the time the House breaks for recess on 3rd December, 2015, if it is possible, the National Government Constituency Development (Amendment) Bill is enacted. I believe that is what the Members would like done very fastest. So, if possible, before we go on recess on 3rd December, it is fair that the House should have expressed itself on this. So, fast-track the receipt of the memoranda from the public and other stakeholders and bring the Report to the House, so that debate can commence. I am unlikely to comment about other matters, which have not been canvassed.

Yes, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, you are very right. In the House, we do not deal with “any other business” (A.O.B.), but we deal with matters as they are discussed and Hon. Kajuju wants us to deal with that.

BUSINESS FOR THE WEEK COMMENCING 17TH TO 19TH NOVEMBER, 2015

Hon. Speaker, pursuant to Standing Order No.44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 17th November 2015.

The HBC met on Tuesday this week at the rise of the House to prioritise the business of the House for this week and next week.

On Tuesday, next week, the House will give priority to debate in the Second Reading of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, (National Assembly Bill No.54 of 2015), and the three land Bills, should they not be concluded today.

We will also deal with the Forest Conservation and Management Bill, 2015, and more importantly the National Government Constituency Development Fund Bill, 2015. Lastly, next week, the House will deal with the adoption of five Sessional Papers. The HBC has also prioritised the Senate Bills that are before this House.

The following Cabinet Secretaries are scheduled to appear before the Committee on Tuesday, 17th November, 2015:-

1. The Cabinet Secretary for Environment and Natural Resources will appear before the Departmental Committees on Environment and Natural Resources at 10.00 a.m. to answer questions from Hon. (Dr.) Wilberforce Ottichilo, MP; Hon. Hassan Dukicha, MP; Hon. Christopher Nakuleu, MP; Hon. Shakila Abdalla, MP and Hon. James Mwangi Gakuya MP.

2. The Cabinet Secretary for Agriculture, Livestock and Fisheries will appear before the Departmental Committee on Agriculture, Livestock and Cooperatives at 10.00 a.m. to answer questions from Hon. James Mwangi Gakuya, MP; Hon. Dan Kazungu, MP and Hon. Abass Sheikh Mohammed, MP.

Hon. Speaker, Members are aware that Pope Francis will be visiting Kenya this month, a historical moment that we are all looking forward to as a country. On this note Hon. Members, we may break during this important Papal visit to our country. We thus have 10 sittings before the long recess from December, 2015 to February, 2016. It is, therefore, important that we conclude with the business scheduled before then.

Finally, the HBC will reconvene on Tuesday, 17th November, 2015 at the rise of the House to consider business for the rest of the week.

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

Hon. Speaker: Next Order!

MOTION

ADOPTION OF REPORT ON SPECIAL AUDIT REPORT OF JSC

THAT, this House adopts the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission (JSC) and the Judiciary of May, 2014, laid on the Table of the House on Tuesday, 7th July, 2015.

Hon. Speaker: There are two points of order. The Leader of Majority, what is your point of order?

Hon. A.B. Duale: On a point of order, Hon. Speaker. I rise under the Standing Order No.83 to seek your indulgence before we proceed with this Order listed as Order No.8, which is the debate on the Public Accounts Committee (PAC) on the Special Audit Report of the JSC.

Hon. Speaker, from the outset, I wish to state that I have utmost respect for the Chairman and, indeed, the entire Membership of PAC. I have the highest regard for the work that the Committee undertakes on behalf of this House. It is for this reason that I wish to seek your indulgence to allow us, as a House, time to reflect on the weighty issues raised by the CJ of the Republic of Kenya by way of a letter addressed to you in connection with the Report we are about to debate.

The letter dated 27th October, 2015 is copied to me; my colleague, the Leader of the Minority Party; the Chairperson of the PAC; the Chairperson of the Justice and Legal Affairs Committee; the Chairperson of the Budget and Appropriations Committee and above all, the Clerk of the National Assembly. The letter raises a number of issues, but I want to dwell on my reading of these three issues.

This is the folder that I have received from the CJ of the Republic of Kenya, Hon. (Dr.) Willy Mutunga.

The first issue that the CJ contends with is that he was not accorded time to give additional information to the Committee as requested in his letter of 30th June, 2014 to the Clerk of the National Assembly. I have that letter here. The CJ further contends that it is possible that the Report we are about to discuss, as a House, could have been more accurate and factual if his views were considered. As a matter of fact, he attached additional information in his latest letters.

Secondly, the CJ concurs that since the Judiciary is not free of error, the JSC, and indeed the Judiciary, remains accountable to the accountability institutions as set out in the Constitution, including this august House. I have adduced my statement from the many letters in this folder. I felt that, as a House, we should not be accused, or even be told that such a senior citizen, the CJ of the Republic of Kenya, can write to all these committees, your office, the Clerk's Office, the leadership and my office--- The House, in one way or another, must deal with this matter. He

said that Parliament has the powers of accountability. He, however, requests that the three arms of Government amicably agree on the modalities of exercising that accountability, including a framework for summoning the heads of each of these arms.

Just like you, Hon. Speaker, the CJ wears two hats, one, as the head of the independent arm of Government called “the Judiciary” and another as the Chairman of a constitutional commission. I dread the day that a court will, in the exercise of its judicial powers, will demand the appearance in person of a Speaker of any of the Houses of Parliament or indeed, the Speaker of the National Assembly, in his capacity as the Chairperson of the Parliamentary Service Commission (PSC). It is this mutual framework of accountability that the CJ of the Republic of Kenya wants us to address ourselves to; this matter of heads of other arms of Government has not been dealt with in our rules of procedure. I pray that with your guidance, may it be time to establish suitable rules on this matter not only for the CJ, but also so that we know how to deal with the Speakers of the Houses of Parliament.

Lastly, the CJ contends, in his many correspondences, that many of the recommendations in this Report we are about to discuss are now *functus officio*, having been overtaken by events. That is according to the CJ. Then he raises the question: Can this House, therefore, act in vain?

Hon. Speaker, I beseech you and the House for a moment to forget the person of the CJ of Kenya and focus on the office that he holds. It is not an ordinary office. It cannot be compared to a parastatal or a Ministry in the Executive. I could only compare it to the office you hold, Hon. Speaker. By writing the letter, the CJ of the Republic of Kenya is submitting himself to the will of this House. After reading his letters, all he is asking for at the preliminary level is simple, fair hearing, accuracy and justice. I emphasise that the CJ, in his many letters, is simply asking for a fair hearing, accuracy and justice.

It is for this reason that I request you, Hon. Speaker, to defer this Order to another day and request the PAC, in your judgement to, first, address itself to the issues raised by the CJ of the Republic of Kenya and guide the debate at a later date.

Secondly, I suggest that the Committee can consider tabling an additional Report in the form of an addendum to this main Report having its proposed way forward on the very weighty issues raised by Dr. Willy Mutunga, the CJ of the Republic of Kenya.

Hon. Speaker, I have faith in the PAC, which is led by our very able and distinguished colleague and Member for Rarieda. I know they will find this very useful and guide us accordingly. In the meantime, I request the CJ to take advantage of the new opportunity that the Committee will avail to raise his issues instead of addressing them through the media. The CJ, on the other hand, was also violating the privilege of the House. Instead of appearing before the Committee, he kept on putting articles in the newspapers. I ask him and our colleagues in the Judiciary not to allow our two institutions to address each other through the media.

That is the end of my statement and I really need you and the Chair of PAC to guide us. The best we can do is not just read and forget about the many correspondences of the CJ of the Republic of Kenya. I am sure that in whichever way we decide, he will not accuse us of sending folders to the National Assembly and nobody raises them. I felt that as one of the leaders of this House, this matter should be discussed and the Speaker can give direction.

Thank you, Hon. Speaker.

Hon. Speaker: The letter was written to me. It is unfortunate because I do not sit in PAC and I could not respond because the Committee has an able Chair. It was copied to other leadership. I will give an opportunity to the Chairman of PAC, Hon. Gumbo. I will give him the

first chance. I can see a few Members are almost standing up; they feel agitated. One of them is the Chairman of some party I know. I can see he is itching to say something, but let us give the first chance to the Chairman of the Committee.

Hon. (Eng.) Gumbo: Hon. Speaker, I thank you. I also wish to thank my good friend, the Leader of the Majority Party for bringing forward this matter. Yes, I confirm that I received a copy of the CJ's letter and the folder that the Leader of the Majority Party has been referring to. Of course, we look to your guidance on this matter. As you know, the Report was tabled on 7th July, 2015 and the CJ's letter came on 27th October, 2015, almost four months later.

Hon. Speaker, most Hon. Members may be aware that I am about seven months old in this Committee. There are some matters which I have only found file records and I was not privy to. In that context, I will kindly request you that as we move forward, you may allow some senior older Members of the Committee like, Hon. John Mbadi and Hon. Nyamweya, to give an input on this matter.

We are a House of records and the impression created by the CJ's letter is that the PAC did not accord him a chance to appear. I submit with humility that that is not true. In the same folder, I have a copy of a letter from the Hon. CJ dated 9th June, 2014 when he wrote directly to the then Chairperson of the then PAC, Hon. Ababu Namwamba.

The letter is a short one and so you can allow me to read it out.

Hon. Speaker: Proceed.

Hon. (Eng.) Gumbo: It reads as follows:-

“I confirm receipt of summons---”

I do not think they were summons as such. I think it was an invitation, but he says:-

“I confirm receipt of summons to appear before your Committee. I am writing to request that we agree on a mutually convenient date for appearance because I had a conference at the Supreme Court hearings to preside over and June 11th 2014 does not work at all for me. I also believe that I am entitled to get the questions you will raise with me in advance. After you hear the Chief registrar of the Judiciary, you will also be in a position to decide whether you want to summon me as the head of the Judiciary.”

This was on 9th June, 2014. On 18th June, 2014 we wrote through the Clerk of the National Assembly to the Hon. CJ. We were referring to his letter dated 9th June, 2014 on the aforementioned and your subsequent telephone conversation with the Chair of the PAC, Hon. Ababu Namwamba EGH. M.P. The letter says:-

“This is to confirm that the Committee heard from the Chief Registrar of the Judiciary on 10th June, 2014 and still finds it necessary to hear from you. Consequently, the Committee has scheduled to meet you on 1st July, 2014 at 10.a.m in the Chamber on 1st Floor County Hall, Parliament buildings.

Forwarded herewith are issues discussed during the meeting”.

Hon. Speaker, it includes all the issues that the Committee wanted to discuss with the Hon. CJ.

This letter was unfortunately not responded to. Instead, on 30th June, 2014, he wrote to you and I have a copy of that letter. He is talking about the PAC hearings on the special audit of the Judiciary. It is also a short letter. You can allow me to read it out. It says:-

“I am deeply gratified that the special audit of the Judicial Service Commission and the Judiciary requested by the National Assembly's PAC in October, 2013, is finally ready and being considered. The April 2014 Special Audit Report confirms the findings made by the JSC in the

course of its own investigations launched on August 19th 2013, as contained in the JSC Report on former Chief Registrar of the Judiciary, Gladys Boss Shollei, which is being made available to all key Government agencies, including Parliament.

With the benefit of this Special Report, I do hope that the National Assembly now realizes and understands why the JSC took the steps it did last year. The JSC is mandated by Article 172(i) of the Constitution, to promote accountability in the Judiciary. Already the Chief Registrar of the Judiciary, who is the Accounting Officer of the Judiciary and Secretary to the JSC, has given a detailed response to the accountability questions raised in the Special Audit Report and corrective steps taken thus far. The JSC and the Judiciary will be ready to respond to any further accountability queries that Parliament/Parliamentary Service Commission (PSC) may have on the Special Audit.

I want to emphasize that point. The JSC and the Judiciary, not the Chairman of the JSC or the President of the Supreme Court will be ready to respond to any further accountability questions that Parliament may have on the Special Audit Report.

It is important to note that the Special Audit of the JSC and the Judiciary is quite limited in its scope. It is hoped that the gaps identified in our various internal audits will inform the full scale annual audit performed by the Kenya National Audit office for the Financial Year 2013 /2014. The Judiciary will account for this period as required by law through the annual state of the Judiciary and Administration of Justice Report, which have already been submitted to Parliament for debate.”

That is the end of the letter.

Hon. Speaker, you will agree with me that this letter of 30th June, 2015 does not make any reference whatsoever to this further request to Hon. CJ to appear before the Committee. That was the last communication that came from the CJ until this letter of 27th.

I agree that the CJ, just like you, wears two hats. He is the Chair of the JSC and is also the Head of the Judiciary, in addition to being President of the Supreme Court.

I have said that I was not there when these summonses were issued, but I want to submit from the discussions that we have had as a Committee. The reason why the Committee felt that the CJ must appear as the Chairman of the JSC, not as the CJ of the Republic of Kenya was because of the issues the Committee felt needed to be addressed at the very top.

I want to follow from what my good friend Hon. Duale has said.

It is important that we find a framework---The question which must emerge from this is, is the law as it applies now where the CJ becomes the Chairman of the JSC the way it should be? I am seeing the difficulty we find ourselves in when we invite the person of the CJ, even though in the official capacity of the Chairman of the JSC, the person is still the CJ of the Republic of Kenya.

Since we are the House mandated by the Constitution to make laws, we must look at this framework. Is it in order? Looking at this difficulty that we are grappling with that the CJ of the Republic of Kenya--- I am aware of jurisdictions which have clearly delineated these functions---this is where the Chair of the JSC is not the CJ - and then it becomes very easy to deal with a matter such as this one.

(Applause)

This letter from the CJ is giving us an opportunity to look at the entire JSC Act with the benefit of history.

I was in the last Parliament when the Judicial Service Commission Act was being done. One of the problems that I had, and the HANSARD will bear me witness, is this provision. More fundamental is the other provision in the Judicial Service Commission Act, which allows practising lawyers to be members of the JSC.

As we address this matter, it is one of the difficulties that I have raised with my good friend, Hon. Chepkong'a; this provision which allows practicing lawyers to be members of the JSC. Is it in order?

I addressed this matter with the late Hon. Mutula Kilonzo and as a man of Honour he wrote me a letter later on, when we saw the problems with the lawyers who had been nominated as JSC members.

We know of lawyers, with all due respect, whom we never heard much about before they became members of the JSC. However, they became JSC members and they handle virtually all cases in the country. You look at the role of the JSC as the employer of judges and magistrates.

When your employer comes pleading before you, how do you tell your employer "No"? This is because the JSC employs judges and we are allowing this lawyer, who is the employer of judges, to make a plea before the same judges.

I want to look at this letter from the CJ as an opportunity for us as a House which is the body mandated in this country to make laws, to look at the entire Judicial Service Commission Act. This will ensure that such a problem does not arise from time to time that the head of the JSC has issues particularly on matters to do with financial accountability as issues to answer. We can ask him to appear before the representatives of the people without facing these impediments and the lacunas of this House.

Hon. Speaker, I thank you.

Hon. Speaker: Anybody who is listening agrees that the issues being raised and canvassed are not simple. So, let me just follow the order in which the names appear on the intervention list.

Yes, Hon. Abdikadir Omar.

Hon. Aden: Thank you very much, Hon. Speaker for giving me the opportunity to contribute. I am one of the recipients of this communication from the CJ. As a Committee, this report was tabled on 7th July, 2015. That was earlier this year. The letter that was read to us or the views given to us by the Leader of the Majority Party now came in 28th October. This is about 10 days ago. We are a Committee that works based on facts and information that is before us. When the CJ tells us that we tabled the report more than two or three months and says; "here is proof of this expenditure, which is the Committee's query"---

The Committee will only make a fair decision on that expenditure, if that information was availed to it at the time it was making the decision. I wait for your guidance. I agree with the two leaders, who have spoken before me that you give us clear guidance on this issue.

The other issue of tabling reports by the Judiciary in Parliament also referred in the same folder of the CJ is something with a minor amendment, which can be moved on this report. That issue can be dealt with because we have come to realise that while the Committee understood that, that report must have been made directly to this House, his argument is that he has tabled these documents to Parliament and it is up to it now to decide to debate---

(Loud consultations)

Hon. Speaker: Order, Members! Lower the level of consultations, please. It is important that I hear what the Member is saying. Even if you do not want to listen, allow me to hear.

Hon. Aden: Hon. Speaker, the concerns raised by the CJ are coming very late. Those were the facts that were available when the Committee reached its conclusion on this report.

The CJ was invited and there was a good reason why he could not turn up the first day. He sent a letter accepting that he can be called another time. The Committee did its part and wrote back to him. It gave him a date on which he did not turn up. Therefore, obstructing the progress of this report now, so that the Committee can again go back to it-- We are handling very many issues and we will be guided by your directions.

In my view, the issues raised by the CJ do not warrant halting the passage of this report now. We can move a few amendments to this report to accommodate some of the factual issues that the CJ might have raised.

Hon. Speaker, please guide us on how we deal with information which has been availed to us now on the Floor of the House. This is the copy of the cheque which shows that the CJ refunded the money to the Consolidated Fund. We will wait for your guidance.

However, in my view, we can deal with this report with the few amendments, pass it and accommodate his concerns.

Thank you, Hon. Speaker.

Hon. Speaker: I will give this chance to Hon. David Ochieng. Hon. Members, I am following the order of the names as it is. Do not be worried about seniority or ranking Members.

Hon. Ochieng: Thank you very much, Hon. Speaker. I want to thank Hon. A. B. Duale and Hon. Gumbo, for their comments on this item because it raises very weighty issues.

Last year, you remember one matter that we grappled with at the Departmental Committee on Justice and Legal Affairs was whether the JSC should appear before us. It took almost a year before they came to realise that they needed to appear before a Parliamentary Committee. So, this is a matter that requires your considered guidance. As a member of the Departmental Committee on Justice and Legal Affairs, I also received this call. My issue, first of all, is here you are as the CJ and you are being summoned by a Committee of Parliament. What caught my eyes was not even the fact that he needed to appear.”

He is saying that in between the discussions, an issue arose as to whether as the Head of the Judiciary, he should appear before Parliament. That was really curious to me. How do we treat this and who told him? Who raised the issue with him that he will not need to appear or he should appear? You can see the CJ is struggling to understand whether he will appear as the CJ, the President of the Supreme Court or as the Chairman of the JSC? Once this is clear, in future, we will not have this confusion arising.

Most importantly is the way this Parliament does its reports. You have said something about it before, but you need to clarify it. The way committees do their reports is very important. If you listened to Hon. Abdikadir, he has said that the issue of the Committee saying that there are no reports from the Judiciary is a minor issue. The fact that the Judiciary has not given us reports for two years is not a minor issue. It is a big issue. It is an issue of the Constitution which requires that they give us reports. So, if this Parliament has received reports twice and we have not discussed the same and a committee of Parliament says in a report that Parliament has never

received those reports, it is not a minor issue. It is a big issue. Therefore, how do we do our reports and how do we check the facts on what we have in our reports? This is very important.

The reason why you see people scampering and fearing to come to Parliament is because they do not know what will be recommended. Therefore, if we are going to allow our reports to be done in such a way that they are very sloppy and are not factual, then we undermine the persons we also seek to oversee.

Hon. Speaker, I thought your guidance would be necessary. One, in terms of what Hon. A. B. Duale has said when the CJ is summoned by a committee of Parliament, who does he appear as? What is the framework of his appearance? How do we conduct ourselves as Hon. Members when he appears before us, because he is a head of an arm of Government? So, we need to have this very clearly enunciated.

We also need a timeline on areas where the Constitution requires us to debate reports or other bodies give reports to this National Assembly. How soon must we debate this report so that we do not have this kind of situation arising and giving conflicting information?

Finally, there is lack of clarity on this report. I have also seen this in the last few days in the on-going debate on corruption. There is dichotomy between the roles of the head of a Government institution like the CJ, Cabinet Secretaries and Accounting Officers. This is something that is really important and we need to sort it out as Parliament. How do we treat this because you will find areas in this report that should be addressed to the accounting officers are being addressed to the head of the Judiciary? Questions that should be addressed to the Head of Judiciary are being addressed to the Accounting Officer. This clarity will not only help us in Judiciary but also other arms of the Government.

Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. Indeed, the matter before us is weighty. Unlike the four speakers who have spoken ahead of me, I have the benefit of being an old Member of PAC. I have sat in the PAC all through from the time we started looking at this issue of the Judiciary to date.

So, I have the benefit of history.

The most important determination and intervention we ask from you is whether Parliament, through its Committees, can summon the CJ. Actually, that is the elephant in the room. I respect the CJ of the Republic of Kenya and I supported his appointment. In fact, we vetted and gave him the job and I still believe we made the right decision. However, this is an issue of accountability. The ruling you are going to make is going to determine whether or not the Chairman of the Parliamentary Service Commission (PSC), if at all there will be issues in Parliament regarding expenditure, can be summoned to appear before the PAC for investigation.

First, I agree with Hon. (Eng.) Gumbo that something needs to be done to divorce the JSC from the CJ. However, I do not agree with him that we can cure this by looking at the Judicial Service Commission Act. The CJ of the Republic of Kenya is a guaranteed position under Article 171 of the Constitution. For us to do this we have to amend the Constitution and that will require a referendum. If you have to affect the functions and the constitution of any commission, you have to take it to the people of Kenya. Our options are, therefore, limited.

With regard to the ruling you are to make, I would like to request you to look at Article 125 of the Constitution. It talks about the Committees of Parliament. It says:-

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information”.

Hon. Speaker, the elephant in the room is whether this “any person” includes the heads of the arms of Government and that does not include the CJ. I am not trying to scare you, Hon. Speaker because I know you know very well that while sitting as the Chairman of the PSC, you must exercise prudence and clear financial management. As you make this ruling, you should also consider that one time this “any person” may be the Speaker of the National Assembly, who is also the Chairman of the PSC. I remember sometime back the Budget and Appropriations Committee invited the PSC and the Speaker, who is the Chairman to appear before us. He explained the Budget Estimates to us. I do not know whether we made a mistake. You are a head of an arm of Government that directly oversees the operations of Parliament and the welfare of the Members of Parliament.

I want to talk about two things as we ask for your guidance. I read in the newspapers about things that the CJ said which I agree with. I do not want to go that way because those are media reports. I agree with them that I am a Member of that Committee and there are things that more Members of the Committee felt should be done differently from the way I thought and I had to go with the majority.

It is not true that we do not provide the CJ an opportunity as Hon. (Eng.) Gumbo has elaborated. Initially, the CJ wanted to be the first one to appear. We told him to hold on and appear later. At that time, we were inviting him as the Chairman of the JSC. Later on, other members and the Registrar appeared before us, and we realized we were not only going to interrogate the CJ as the head of the JSC, but also on issues he was mentioned as an individual. Therefore, we had to interrogate him as the Head of the JSC and as an individual. As Hon. (Eng.) Gumbo has read out, issues started getting complicated.

In a letter dated 30th June, 2014, and with all due respect to the CJ, I regret to observe that he was trying to direct Parliament on how to conduct its business, which I think was unfortunate. He cannot tell us he has already taken action and, therefore, he cannot be questioned. I do not think that is the point. The point is that we gave him some resources as the JSC at one point, and during that time we had issues with those resources. Could he come forward and explain a few things? He cannot tell us that because he has changed, there are no issues and no more theft; that we should not ask about the theft that occurred. We are not debating the report. As a person, I wish the CJ appeared before us. In my view, if he appeared before us, probably we would have had a different report. I am certain we could have had a different report.

As I conclude, I would like to ask that as you make this determination, it is important that you exercise your mandate and tell the people of Kenya whether the heads of the arms of Government are immune to parliamentary investigation and interrogation.

Thank you, Hon. Speaker.

Hon. Speaker: Or, whether the various suits filed in the name of the Speakers whether the Speakers are supposed to appear--- That determination has not happened in the Judiciary, yet we rely on it for the best interpretation of the Constitution and other laws. Somehow that determination has not been made by the Judiciary. Nevertheless, let me hear Hon. Olago Olouch.

Hon. Member: Hon. Speaker, what about this side?

Hon. Speaker: Hon. Members, I am following the interventions the way the names have come. If you come here and decide to listen, enjoy and relax. I know it is after lunch and you

might be--- So, continue relaxing. Your turn will come. I can even tell you the order in which the names are appearing. After Hon. Olago Oluoch, we will have Hon. Manson Nyamweya, Hon. Ogalo, Hon. Sakaja and Hon. (Ms.) Kajuju. That is the way the names are appearing here unless you want me to change.

(Loud consultations)

Hon. Members, I suspect many of you did not understand what the debate was about because you were speaking. You remember I asked you to allow those who would like to follow debate to do so. Now that you have heard it is a serious matter, you want to make your contributions. They say, "The early bird catches the worm". Let us kindly go by that. I will use my discretion. I will, perhaps, consider the issue of gender since I have not heard a lady's voice.

Hon. Aluoch: Thank you, Hon. Speaker. The issues that Hon. Duale raised and which have been responded to by my friend, Hon. (Eng.) Gumbo, are very serious. I agree with both gentlemen. I am in possession of copies of the letters to the CJ and in my view, I saw desperation in the tone of the CJ.

Hon. Ochieng referred to the Departmental Committee on Justice and Legal Affairs where I have the honour and privilege to serve. Early in the life of this Parliament, the relationship between the Judiciary and the Departmental Committee on Justice and Legal Affairs was so bad that at some stage, I thought we were not going to ever talk. Under the chairmanship of Hon. Chepkong'a, we have worked a lot to bring ourselves together. Right now, I believe the Departmental Committee on Justice and Legal Affairs and the Judiciary are not in very good talking terms but we can look at the issues. What is happening in the PAC is what happened to us early in the life of this Parliament. The prayer that Hon. Duale is asking for ought to be granted. As we do that, I agree that the complaints by the CJ bring out very fundamental issues. One of them is what we had to grapple with when we asked the CJ to appear before us, it became difficult for him to distinguish whether we wanted to listen to him as the CJ of the Republic of Kenya, the President of the Supreme Court or as the Chair of the JSC. He was adamant that as the CJ, we should not invite him to come before the Committee of Parliament. We stood our ground and insisted that he had to come. I believe that if you look through these letters that we have seen, you will find that the CJ has been under the pressure that as the CJ he should not appear before a Committee of Parliament.

Hon. Speaker, I believe time has now come for us to deal with the issue that Hon. Gumbo has raised. How do we constitute the JSC? Let me draw a parallel between you and the Head of the Judiciary, or the Executive. You are not just the Speaker of the National Assembly but you are also the Chair of the PSC. So, at what stage do we draw the line? I have seen suits where you have been sued as the Speaker. In my view, as a lawyer, as the Speaker, you should not be sued. Either somebody should sue the PSC or an application against Parliament but not you as the Speaker. Time has now come for us to use this opportunity to look at how we can handle the challenge brought by our 2010 Constitution with respect to the issue of natural justice.

Unfortunately, those of us like you who are lawyers know what is fundamental in natural justice and fair hearing. From CJ's letter, he seems to be complaining that he has not had a chance to be heard. I believe, Hon. Speaker, that you have the right to ask the PAC to withhold this Report and listen to the CJ not as the CJ of the Republic of Kenya but as the Chairman of the JSC where he is mentioned personally to be allowed to address the Committee.

In my humble view, I support Hon. Duale's prayer that you ask that the CJ appears before PAC, so that his side of the story can be heard. That way, you will have fulfilled a fundamental aspect of justice of fair hearing and natural justice,

Thank you, Hon. Speaker.

Hon. Speaker: I hope other contributors will be as brief and to the point as Hon. Olago Aluoch has been. But let us go to the point - the issues raised by the CJ in his letter - so that we can get a fair determination.

Hon. Nyamweya: Thank you, Hon. Speaker for giving me a chance to contribute. I will draw your attention to Article 125 of the Constitution which Hon. Mbadi has referred to. I want to refer to Sub-Clause (2) of this Article. The purpose of Sub-Clause (1) is that a House of Parliament and any of its Committees has the same power as the High Court.

I want to draw your attention that when the CJ had personal matters, he submitted to the High Court. He appeared in court and gave evidence, yet he is the Head of the Judiciary. That is a point you need to look at as you go through this. The CJ is a lawyer and he is not like Manson here. He has studied this Constitution very well. Article 125(1) which I have referred to is very clear. There is no saving clause that so and so should not appear before the Committee.

Hon. Speaker, as you look at this matter, I want you to look at the issue when we were doing this Report. We should not set precedence for other members who will be called to give evidence because they are given time to appear. I can tell you one problem we are facing at the PAC. We are calling accounting officers and they are not coming. We have been postponing meetings and at the end of the day, we will be late in giving our Report. This is the case and yet we have a mandate to do this Report.

The CJ was accorded time to appear before the PAC and he did not come. He did not even make a submission or a memorandum. I wish he could have done a memorandum. He would have an excuse that he did a memorandum and that is why he did not appear before the PAC. He did not do a memorandum to the PAC and the Chair at that time, Hon. Ababu Namwamba struggled and made several calls to him to come but he said he would not come. You can rule that we halt this debate if we ignore Article 125 of the Constitution of the Republic of Kenya. Guide us but as far as I am concerned, the Report has been tabled. After we are done with it, there is the Committee on Implementation.

Let us go through this Report and then the Committee on Implementation will take over it. All the Reports debated in the National Assembly are taken over by other committees. So, if there is an error which has been made in this Report, it will be corrected by the Committee on Implementation.

With those few remarks, my personal position is that we should debate this Report, because that is the way forward. After we have finished it and adopted it, it will go to the next committee.

Thank you.

Hon. Speaker: Hon. George Oner.

Hon. Ogalo: Thank you, Hon. Speaker. I am not a member of any of the three committees. So, I am not in receipt of the letters of the CJ. However, one fundamental thing that this House must address itself to is whether Article 125 refers to certain Kenyans and not others. If the drafters of the Constitution wanted to exclude anybody from the provisions of Article 125, they would have excluded the Speaker of the National Assembly, the Speaker of the Senate and the CJ. The JSC is under Chapter 15 on Commissions.

The Chair of JSC is like the Chair of any other constitutional commission. If we invite those other chairs, how can we fail to invite the chair of the JSC? We give taxpayer's money to the JSC to spend and they must account for it. If in the process of accounting for that money, the CJ has to appear before the House as the chair of the JSC, let it be. If there is anything that would have excluded the CJ from appearing, it would have been indicated clearly in the Constitution.

The chair of JSC is specified in the Constitution and, therefore, there is nothing we can do in law to change that without amending the Constitution. In my opinion, you need to rule and order that the JSC Chair appears before a committee of Parliament to answer to questions pursuant to Article 125 of the Constitution.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Yes, Hon. Johnson Sakaja.

Hon. Sakaja: Thank you, Hon. Speaker. You said the early bird catches the worm, but the early worm is caught first by the first bird. So, we are happy it has now come to this side. These are important issues we are talking about. Indeed, in our consideration of this issue, we should set proper precedence because it is a grey area within our laws.

Before getting into the subject of this specific matter, I have seen that even the CJ himself in his communication, he is not very sure whether he wants to come or not. If you look at one of his letters dated 9th June, he says: "I confirm receipt of the summons to appear before your committee." He then goes further and says:-

"I am writing to request that we agree on a mutually convenient date for appearance, because I had a conference in the Supreme Court for hearing."

So, he is not sure whether he should submit himself to PAC or not.

The Constitution we have today is one that expects absolute accountability from everybody and from every arm of Government. However, I am persuaded to sympathise because as much as that it might be unwritten in a system where you have three arms of Government and separation of powers, it may be an unwritten rule that the heads of those institutions cannot be subject to such a proceeding. However, as we think about it and, of course, the lawyers will judge me right or wrong, in my thinking I want to give an example.

Article 2(5) of the Constitution says that all the treaties that Kenya is party to make part of the laws of our country. That means that the treaty establishing the International Criminal Court (ICC) is part of our laws. This means that the ICC is, by extension, a part of our judicial stratosphere and established by subsidiary legislation. That also means that in the hierarchy of our courts within the Judiciary, the ICC is below the Supreme Court and the High Court because it is established through subsidiary legislation in this country.

Hon. Speaker, you remember very well that our President, who is one of the heads of an arm of Government and the leader of this nation, submitted himself to the ICC, which is a court within our judicial system and by extension this country. He went to the ICC. Before he went, he made it very clear, right here in this House, that he had taken off his hat as a President. He handed over power to the Deputy President and went there as a citizen.

The CJ is being summoned to come to Parliament as the Chair of the JSC and not as the CJ. There must be that distinction. If that is not the case, because it happens, the same individual is wearing two hats. Then it must be abundantly clear to all that even the President of this country was not in any way expected to submit himself to any court within our judicial system.

Within the new Constitution, even the Deputy President is elected. I beg to suggest that the Deputy President also, as part of the leadership of one arm of Government, should not subject

himself to a judicial process within our legal system. But because that is not the case, the CJ will have to appear before Parliament, and we have seen willingness on his part, until we change the law and make it abundantly clear that he may accept to come, not as the CJ, but as the Chair of the JSC. As we move ahead, how we distinguish this is the same way that the President went to the ICC. The President is Uhuru Kenyatta. He went there as Mr. Uhuru Kenyatta and not as His Excellency President Uhuru Kenyatta.

I concur a lot with what my colleagues are saying as a way of moving forward. We might need to consider making it clear that no head of any arm of Government shall also be in charge of any constitutional commission. That means that the Speaker of the National Assembly should not be the Chairman of the PSC. That also means that the CJ cannot be the Chairperson of the JSC. The Report of the PAC on the Judiciary exposes a lot of corruption. By having the leader of the Judiciary, an institution that needs absolute confidence from the people of Kenya to operate, when taken through such a process, you erode confidence in that institution. We have heard that there could be issues in Parliament. If you are taken through such a process as the Chair of the PSC, all the confidence of the people in the institution of Parliament is eroded.

The National Assembly needs to take this opportunity, as we move ahead, to amend our laws. It could be that in the next term the Speaker is not the Chairperson of PSC because junior officers can taint your name by virtue of what they are doing and taint the whole institution. Also, the CJ should not be the Chairperson of the JSC to avoid conflict of interest and to ensure that we have full accountability by all arms of Government.

Hon. Speaker: Yes, Hon. Florence Kajuju. We are now winding up.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker. I would like to thank Hon. Members who have spoken before me and the Leader of the Majority Party.

It is unfortunate that we are debating this issue through a letter or memo written by the CJ. I am happy that he is willing to appear before the PAC. We had this issue last year with the CJ in the Departmental Committee on Justice and Legal Affairs. At that point in time, the CJ totally refused to appear before the Departmental Committee on Justice and Legal Affairs.

Our indication to him was that our Standing Orders allow us to summon any person to appear before the Committee. That was when the CJ ought to have seen that there was a red flag and started engaging Parliament to see how we could redress some of the issues that might arise. This has happened with the PAC. It is more important to him to appear before the PAC because his appearance is with regard to accountability issues. Therefore, he feels that as the Chairperson of the JSC he cannot run away from this position.

Some of the issues that were addressed in the memo today are matters that have been dealt with by media reports. We have seen a lot of it in the newspapers where allegations are being made that the CJ was not given an opportunity to defend himself. I do not think that was the right way to go. The way he has come to Parliament now ought to have been the right way for him to have addressed Parliament at the initial stage. That does not cure the problem. We have a bigger problem as far as our laws are concerned.

When he wrote to the then Chairperson of the PAC on 9th June that he was willing to submit himself before the Committee, he ought to have stated in what capacity he would appear and what hat he would be wearing then whether as the President of the Supreme Court or as the Chairperson of the JSC. As it has been said by Hon. Members who spoke earlier on, time has come for us to address our minds as to whether we can summon the President of the Supreme

Court or the Chairperson of the JSC or the PSC. That needs to be dealt with regard to Article 125 of the Constitution.

Be that as it may, every person has a right. Equity demands that a party ought to be given an opportunity to defend himself. Let us give him that opportunity because it appears that he feels aggrieved by the Report that has been made by the PAC. He feels that there are issues that he may want to defend himself on. This memo appears to be giving a defence after the closure of the case.

Let us now, through your wisdom, give him an opportunity, and I believe you have a lot of wisdom. Let him appear before the Committee in whatever manner that pleases him and tender the defence, then maybe the Committee will give us the Report. Depending on whether the Report is passed in this House or not, it will be accepted by the population of Kenya and the Office of the CJ.

I pray that you give him that opportunity. It only befits him that he be given the opportunity.

Hon. Speaker: Nevertheless, let us not forget that the Committee is currently considering the report of the Auditor-General on various Government departments and state agencies for the 2013/2014 Financial Year. It is not that there is no opportunity for anybody desiring to be heard to do so. I am fully aware that is happening.

Even as you contribute, let me draw your attention to Standing Order No.106. I am sure those of you who remember it immediately will know that it is about the tedious repetition of your own arguments or the arguments of others.

Immediately after Standing Order No.106 is Standing Order No.107 on gross disorder.

Let us have Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker. It is a high honour being the last one or near last to speak, but I think I can meet that standard.

I have two issues. I sit on the PAC.

On the one hand, there is the issue of whether or not the CJ did not get a chance to appear before the Committee to inform the Committee---

Hon. Speaker, the Committee has produced its Report. It is factual with respect to the information that was available at the time of determination. We cannot set a precedent in which after thoughts or somebody decides that they would have been better off if they had been there and had given something different. I thank the CJ deeply for being very courteous and the way he responded when we asked him to appear before the Committee. Unfortunately, he decided not to appear. On that issue, I pray that your ruling should be that the Committee should move forward with the Report as presented and not go back to reopen it for further discussion.

The second part of the determination is whether or not the person of Dr. Willy Mutunga should have been invited before the Committee and whether he was appearing as the CJ or the Chair. I agree with the sentiments expressed earlier by the Leader of the Majority Party and other speakers, that there is no way he can divide himself into two. He is the CJ. Everything else he holds, whether he is a church leader or elder or other things, is subservient to the fact that he is the CJ. In that respect, I would hope that the proposed amendment, which does not cure what we have done so far, separates the roles. It would help, so that we can clearly invite the Chairman of the JSC and not the CJ unless there is a matter dealing with the CJ in accordance with the provisions of the law.

My prayer is that you allow the House to reflect on the weighty question of whether or not you can invite the CJ and how to split that between his two roles. On the first issue of whether or not we did not hear him, there was sufficient time. It has taken a lot of time. To take it back is to set precedent for people, like you said earlier on, to listen and say they ought to have been there.

I submit.

Hon Speaker: Let us have Hon. Peter Kaluma.

Hon Kaluma: Thank you, Hon. Speaker for the opportunity to address this matter. I sit in the Justice and Legal Affairs Committee and may I begin by telling the House that I am just returning from the United Nations Conference against Corruption on your own nomination, for which I thank you.

First, the CJ is a citizen of the Republic of Kenya. So, as a person, he is a Kenyan. The CJ is a Judge of the Supreme Court. In fact, he is the President of the Supreme Court. So, he is a State officer. Of course, you know where I am going to. The CJ is the Head of the Judiciary, which is an organ of the Government. I like this and I do not know why the CJ is stating so in the letter. This letter is headed: "Office of the CJ and President of the Supreme Court". He is the President of the Supreme Court and the Chairman of the JSC. I am not going to repeat what my colleagues have said, but if we look at our mandate under Article 95 of the Constitution, on all those five capacities, the CJ, whoever he is at any given time, is subject to the legislative processes of Parliament. He is subject to the oversight mandate of Parliament, so that we can oversight the CJ.

Article 95 talks about oversight of State officers. In that, not even the President is exempted. Article 95(5) provides that this National Assembly shall review the conduct in office of the President, the Deputy President and all State officers. The CJ falls under that. Indeed, the Leader of the Majority Party doubts whether we can review the conduct of the President. Let me confirm that this is something that we do daily. I am happy our own President reports to this House regularly during the State of the Nation Addresses and we sit back to debate them as leaders and as the Assembly of the nation. Article 95 says:-

“(5) The National Assembly—

(b) exercises oversight of State organs.”

How do you oversight Parliament if you are not dealing with the leadership of Parliament? How do you oversight the Judiciary if you are saying the CJ ought not to come? I agree that we must always uphold, restrain and respect as a Committee, what the CJ is referring to, in the relationship between these organs. In the Justice and Legal Affairs Committee, we have said that unless it is necessary, we do not want the CJ, the Head of the Judiciary, to be seen in Parliament regularly on each and every issue that can be dealt with by the Accounting Officer and others. However, remember, there are some issues over which only the Head of the Judiciary can give answers.

We had an issue the other time where, for instance, the Finance and Administration Committee of the JSC was entangled in fiscal policy and management of funds in the Judiciary with the Chief Registrar of the Judiciary. Who can come to Parliament, the leadership of the nation seated here, to explain what is happening there at that level? Let me tell the Members that a letter can tell you easily that we have taken action and some officers are in court, but we also know that there are cases where some officers could be in court as cover up. There are times

when Parliament needs to look beyond what has happened elsewhere to undertake its budgeting role.

Hon. Speaker, when you make this decision, I request you to look at Article 95; the one dealing with the power of Parliament to appropriate funds to the national Government and the power to oversight those funds. Under oversight, we are told that nobody is an exception. You can summon anybody without exception. You can call everybody you want to come.

I started by mentioning that I am from the conference because of the value I see under Article 10. I do not know whether there is a Constitution in the world that specifically prescribes the national values and principles that govern a country like ours. That is what we are doing under Article 10. This is a very brief provision in the Constitution. The value of good governance, transparency, integrity and that of accountability are some of the few virtues that we singled out as values that we want to be governed by and as values that must characterise and define how we relate, whether in public office or otherwise. So, accountability is an important thing. That is why in oversight, there are no holds barred.

Hon. Speaker, in your role as the Chairman of the PAC, you have sat in the Budget and Appropriations Committee during oversight sessions. Nobody is an exception. Hon. colleagues, this issue of accountability is so big that it cannot be subordinated to principles like committees and others.

Let me end because my colleagues need to speak. It is good to talk about committees and I personally respect our CJ. I respect him and wish him well, but there are problems at the Judiciary. We are talking about funds that are lost and we are not being personal. We want good fiscal policies, proper administration and application of public funds that we allocate that body. This money is paid by poor Kenyans out there. The truth of the matter is that there are issues about expenditure and we have spoken about committees. The CJ is talking about a committee, but look at this when you give your ruling. He is saying that we must show restraint and be operating between one another, but look at what the CJ is saying in the second paragraph on Page 2 of his letter. He says:-

“It will help eliminate the use of needlessly abusive, inappropriate and intemperate language as contained in some sections of this report”.

That is the attitude of the Head of an organ of Government. He is saying that each and every recommendation of a Committee of Parliament sitting as Parliament is erroneous. Let him submit a memorandum if he cannot come.

Look at the manner in which this letter is copied. This is the Head of the Judiciary writing to the Head of Parliament not just the National Assembly. Even when Parliament sits jointly, the Speaker of the National Assembly presides since he is the Head of Parliament. The CJ is writing from organ to organ. Why did he have to copy that letter to the Leader of the Majority Party, the Leader of the Minority Party, the Chair and all the Members of the PAC, the Chair and all the Members of the Departmental Committee on Justice and Legal Affairs, the Chair and all the Members of the Budget and Appropriations Committee, and the Clerk? Are we still talking about the Head of an arm of Government seeking the committee? With great respect, I think this is erroneous. I want to request that we have a committee on accountability. I know our CJ is watching me somewhere but I have nothing personal.

On accountability, corruption is a major global issue today. Let me tell you that the fight against corruption has overtaken the battle for human rights across the world. We will not allow funds to be misused or allow anything that lacks integrity simply because there are words or

phrases like committee and others. We will call all of you to account for those monies in the oversight of budget.

Hon. Speaker, I thank you.

Hon. Speaker: Well spoken. Yes, Hon. Priscilla Nyokabi

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. I also want to join in this discussion on the question of the CJ and the letter that has been given to the House as I look at all the Members whom it has been copied to.

Hon. Speaker, I just want to raise three points. One, it is the special situation in which the Judiciary found itself. We had a situation in which the CJ and the Chief Registrar of the Judiciary (CRJ) were not speaking the same language. That CRJ is now out of office. I do not think in a situation such as what happened in that year, where the CJ and the CRJ were not on the talking terms, we can say that whatever the CRJ tells the Committee is enough. If the relationship between the CRJ and the CJ is not good on matters corruption, then I think the fair situation would have been to hear both of them. As far as possible, the CRJ and the CJ should be managing the affairs of the Judiciary in a way that one of them can represent the Judiciary in its entirety. However, on the situation in which we found ourselves that year, it would have been important for the Committee to hear the CJ as well. What the House is saying today is the sadness with which we confront this matter.

In countries like Indonesia and Malaysia, which are doing very well in the fight against corruption, their conviction rates are 80 -100 per cent. In this country, our conviction rate is not even 10 per cent. The reason is simple. If we have a Judiciary that is corrupt, then it cannot enforce the rules of corruption against everybody else. We have a Judiciary that is allowing all the corrupt people to be acquitted. What we have as a country is corruption that seems to be a merry-go-round.

I, therefore, agree with everybody else that we are going to fight corruption in the Legislature and in the Executive, but we will first and foremost fight corruption in the Judiciary. If we can clean that area, then everybody else is going to follow suit. For that purpose, if the Judiciary needs to be represented in the Committee, it will be important to give the CJ an opportunity to come to the Committee and give any information that he thinks is important.

Secondly, is the question of continuous development of our Constitution. We have to develop a relationship between the Legislature and the Judiciary. The more we tear at each other, the more both institutions lose public confidence. Kenyans have no confidence today in the Executive, the Legislature and the Judiciary. This House has to create a situation in which the relationship between the Judiciary and the Legislature is well factored in our rules whether it is through a law, a Bill, a practice, an administrative measure or a Standing Order. It is possible for every committee to invite the CJ to come and answer questions. It is also possible for us, as a Parliament, to abuse the powers and privileges that come with the leadership of the institutions that we have.

Once the PAC is done with the situation, the Procedures and House Rules Committee needs to look at how the CJ and the head of an institution comes to account before Parliament, given the powers and privileges that go with his office.

Lastly, it is the relationship between the heads of organs. I agree with what Hon. Kaluma was saying that the Speaker of the NA is the head of Parliament. Time has come for the three of you namely the President as the Head of the Executive, the Speaker as the Head of Parliament and the CJ as the Head of the Judiciary to find a working relationship. How you find that

working relationship is a mystery and has not been found in any country, but we are Kenyans. The three of you gentlemen have to find a way in which this country is going to move forward. When we fight corruption, we want to see the President, the Speakers and the CJ reading from the same script. We only have one country. I trust you, Hon. Speaker. You can lead this conversation to find a way of moving this country forward.

I thank you, Hon. Speaker.

Hon. Speaker: Let us now have Hon. Dalmas Otieno.

Hon. Anyango: Hon. Speaker, thank you very much. We are in a new territory and we may have to make new rules to address these issues as the fight against corruption continues. I was with the former President of Nigeria, Olesegun Obasanjo the day the Egyptians took Hosni Mubarak in a cage to court. As a former President of a Republic in Africa, he really felt pain. He said there was an issue of image of the Egyptian Republic and there was dignity of a person who is a holder of a particular office. The issue we are handling involves serious protocol.

I suggest that one, if in future it should be necessary that the Speaker of the Senate, the Speaker of the NA and the CJ have to appear to answer personally on matters before any committee of Parliament, particularly these ones to do with accounts, then we should amend our Standing Orders, so that our Speaker, instead of just chairing the Committee on Appointments and the House Business Committee (HBC), he takes over and presides over the PAC. This will ensure that the CJ will come and answer questions when the Speaker of the NA is presiding over the committee.

(Applause)

The Chair of the PAC can answer all the questions. However, if the Speaker of the NA is in the Chair where we have to question the Speaker of the Senate or somebody of that high rank, because I doubt whether we will ever have the President coming to give evidence before any committee--- Since it is you the Speaker of the NA that will preside over a tribunal to discuss the removal of the CJ, and if he has to answer personally to a committee of the House, you should preside over those proceedings and let the decisions come. The alternative would have been that the CJ comes and answers the questions before the Plenary of the NA and not a committee of the NA.

(Applause)

Those modifications would help us preserve the dignity of the Judiciary and observe protocol issues that would arise because the Constitution provides that you would chair a tribunal to remove the CJ. We have no provision of who would chair a committee if the Speaker of the Senate has to personally answer on issues before any of our committees. Now that we have reached where we are, I would suggest, therefore, that we agree to adjourn this debate so that you preside over the PAC jointly with the Chair of PAC, allow the CJ to appear before you to answer questions and then let the Committee proceed thereafter to make its resolutions and bring them before us.

It is important to observe protocol, retain dignity and the respect we want to confer on all these offices. It is the same principle that never allows the President to appear before the Judiciary for any offence until he is out of office.

We also hope that the dignity of the House, represented by the Speaker of the House, would be preserved in as many proceedings as may be necessary as we strengthen the governance structures in this country. This is to make each person accountable in the right circumstances, the right protocols and proper arrangements as we move forward.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, you have canvassed this matter sufficiently. You have raised many points that also show some of the new grounds that we have to cover. Not least, Hon. Dalmas finally brought in the provision of Article 168(5) on the removal of the CJ. The tribunal appointed by the President is to be chaired by the Speaker of the National Assembly and its membership should include three judges of superior courts. However, that provision of the Constitution is crafted such as to give distinction to what it is the tribunal will be handling.

With regard to the issues of accountability and oversight, for the time being, bearing in mind what Hon. Dalmas has said, respect and decorum are expected. However, Hon. Kaluma has raised a point on the provision of Article 95(5)(a) giving the National Assembly the mandate to review the conduct of all State officers, including the President and the Deputy President (DP), and to initiate the process of their removal from office.

Under Article 260 of the Constitution, every one of us is a State officer. So, indeed, the National Assembly is vested with peculiar powers when it comes to the issue of oversight. Paragraph (b) of the same Article 95(5) of the Constitution mandates the National Assembly to oversee all State organs. The PSC and the JSC are State organs.

For the time being, what is our mechanism of overseeing State organs? In the area of expenditure, it is through the PAC and the PIC and, on operational matters, through our various Departmental Committees. There is need for us to come up with clear guidelines. However, those guidelines cannot override the provisions of the Constitution.

Article 125 of the Constitution empowers both Houses and their committees to summon and not just invite, any person to give evidence even on oath on any matter, including compelling such summoned persons to produce documents. What the CJ refers to as summons was merely an invitation. He is borrowing from words picked outside there loosely.

This is a very dicey area. If the Speaker commits a crime, is he not to be taken to court? We must ask ourselves all those questions. If the Speaker is also said to have committed an offence as the Chairperson of the PSC, again, he should appear before PAC. If he does not appear, we will be failing in our responsibility and power vested in us by Articles 95 and 125 of the Constitution respectively.

I can see the difficulty Hon. Dalmas has about the heads of arms of Government appearing before Parliament or before another arm. For the time being, I appreciate what PAC did by according the CJ all the relevant co-operation and decorum, including taking the rare move of sending to the CJ particularised questions which he was expected to come and answer. The letter dated 18th June, 2014 was sent to the CJ because he requested to be given details of the questions that the Committee felt he needed to personally respond to. The Committee appreciated the Office of the CJ, but also recognised that the CJ was being invited as the Chair of the JSC.

I agree with you that there is need for us to adjourn debate on this Motion and come up with a clear guideline on how to invite heads of other arms of the Government. If we were to take the route of not inviting and/or summoning any person, as the case may be, or if I were to rule that, that is not possible, I would be violating the Constitution, specifically Article 125. The

Article gives a committee and, indeed, the House that power. I cannot take away that power merely by some guidance or ruling.

If the Judiciary, which is vested with the power of interpretation under Article 165 of the Constitution, feels that it is necessary to interpret that power differently, the JSC is at liberty to initiate a process of seeking an interpretation to guide us accordingly. However, for the time being, it would be fair that we just abide by what is in the Constitution. Should there be need for the Committee to invite the CJ, maybe in its current sittings, the Committee can go ahead. It is not possible and it will be against our Standing Orders and procedures to take away the Report which is already tabled for purposes of taking fresh evidence from a witness who was accorded the opportunity to appear but failed to appear because he was not clear in his mind.

(Applause)

Even as I agree with the proposal that we adjourn debate on this Motion for the time being to give everybody an opportunity to think through it, this matter could have been handled differently had the CJ merely written to me or to the Chairperson of PAC. The CJ cannot write and then take the letter to the media. What is being discussed and the commentaries that have come as a result of that letter are putting the reputation of this House and the Committee into disrepute.

(Applause)

It is not fair. That should not have happened. If indeed, as Hon. Kaluma has rightly said, we are talking about comity between various arms, is that how you show it?

Whenever the CJ wrote requesting for something, as it has been shown, he was given. So, even for this matter, he did not have to go to the media. By going to the media, he has put the Committee into a lot of unnecessary pressure. That is why on 22nd October, 2015, Hon. Gumbo rose and pleaded that this Report be prioritised for debate and I agreed with him. Now, it looks like the Leader of the Majority Party thinks there is need for us to clarify something. I will be giving a considered ruling on Wednesday or Thursday, next week.

(Applause)

I have not given it yet. I will give a considered ruling on this matter to help us move forward. If we need to have certain new directions about relationships and how to handle one another, perhaps we can suggest it in that Communication. The way the matter has been handled, I do not think the Committee can be blamed because they have done the best they could have done under the circumstances. We will give a considered ruling on this matter, so that it is something that helps us to move forward. If we need to put in certain new directions about relationships in terms of how to handle one another, then we can suggest it in that Communication. But I do not think the Committee can be blamed. I do not think we can lay any blame on the Committee because they have done the best they could have done in the circumstances.

Hon. Members, I agree with the plea to take it out and I will then give direction of how, if need be--- I do not know what they are doing, but it may be well that they may require to invite

the same fellows in the Judiciary, namely the Accounting Officer or the head of the institution. Whatever the case may be, it is up to the Committee to make a decision. It is not open to me. I know that in this matter, even the former Chairman went out of his way to try, as much as possible, to accommodate the Chief Justice. For me, we must defend the dignity of this institution especially because the way this matter has come was not the way it should. It should not have come this way. The Chairman, all along, wanted this Report debated in an open way, which I believe is the way the Committee wanted it. Several Members of the Committee who have spoken have pointed out the fact that they went out of their way to try and accommodate the Honourable Chief Justice of the Republic of Kenya. I do not think it was intended that there was going to be any mistreatment. I am very sure, not even from the current Chairman or the Members. We can give that assurance. I can give that assurance on behalf of the Members of PAC that whoever is invited, the intention is purely to transact the business for which anybody is invited.

I thank you, Hon. Members. Yes, Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Speaker, I wish to thank you for your Considered Ruling. Even as I thank you, I wish to rise under Standing Order No.191 read together with the Standing Order No.205 to kindly seek your intervention on a matter which is of grave concern to PAC. Just allow me to indulge you a little by taking you to Article 203 of the Constitution, which requires that the sharing of the revenue raised nationally between the two levels of the Government shall be calculated from the most recently audited accounts of revenue received and approved by the National Assembly.

The Constitution under Article 229(4) spells out the timelines for the processing of the Government's annual accounts. If you will indulge me, it says that:-

“(4) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—

- (a) the accounts of the national and county governments;
- (b) the accounts of all funds and authorities of the national and county governments;
- (c) the accounts of all courts;
- (d) the accounts of every commission and independent office established by this Constitution;
- (e) the accounts of the National Assembly, the Senate and the county assemblies;
- (f) the accounts of political parties funded from public funds;
- (g) the public debt; and
- (h) the accounts of any other---

Article 229(8) provides that:-

“(8) Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action”.

I am bringing this matter to you because those constitutional provisions presuppose that if we are, indeed, to meet the constitutional deadlines, then we need to have the full cooperation from the various accounting officers.

Unfortunately, we see a trend which is really frustrating our Committee where either accounting officers bring incomplete information to the Committee and request for more time or

simply give the last minute request for postponement of their appearance. I will give you an example. Yesterday, we came to you and requested you that we needed to hold a sitting today as Parliament was having a session, so that we are able to meet the deadlines. We were to look at the annual accounts of the Ministry of Agriculture, Livestock and Fisheries. Unknown to us, yesterday, the Accounting Officer in the Ministry of Agriculture, Livestock and Fisheries had already written requesting for the postponement of the sitting. You had granted us the opportunity to sit and the Members were sitting and this letter comes at the last minute.

Even before then, we had scheduled to look at the accounts of the Ministry of Environment, Water and Natural Resources. This was to be done on 9th November, 2015. The same day, on 9th November, as the Committee was sitting, we got a letter from the Ministry of Environment, Water and Natural Resources saying that they are not able to appear and are requesting for the appearance to be rescheduled. You have even seen the cases that we have had with the Ministry of Devolution and Planning, where an accounting officer brings documents and then later on goes to say that they are erroneous documents. The point I want to bring here is that if these constitutional deadlines as provided for under Article 229 are to be met, then it means that this information that these accounting officers purport to be wanting to bring now, ought to have been brought by the end of September last year. So, those accounting officers who are purporting to want to bring the information now are 13 months late. We are the representatives of the people and what the people will see is that Parliament is delaying in its work and yet, the work of Parliament cannot progress.

Hon. Speaker, as I seek your intervention and advice on how to proceed, there are only two issues here, namely for the accounting officers to respect their constitutional mandate and in their failure, we have to use the Auditor-General's observations without giving them an opportunity to appear for us to comply with the constitutional deadlines. It is becoming extremely frustrating for us to be working the way we are doing. We are not going to complete the work. Some of the accounting officers who had requested to be given a week have called me saying that they need more time to look at this and that.

Some of the information that is coming before us would give a bad image. It gives the impression of accounting officers who are coming before Parliament without prior preparation at all and bringing documentation that are not accurate. Sometimes, you get the impression that they are hoping that Members of Parliament will just flip through the documents and not go into detailed examination. It is giving a bad picture of the Government in general and even the country as a whole.

We feel frustrated. As the head of this institution, we felt that we want to bring this matter to your attention, so that you can try to help us to see how we can get this done, so that as much as possible, we meet the constitutional deadlines.

Hon. Nyamweya: On a point of information.

Hon. (Eng.) Gumbo: Hon. Speaker, I will accept his information.

Hon. Speaker: But you are being informed when you were on a point of order? Let me just allow Hon. Manson Nyamweya to say one thing in a minute.

Hon. Nyamweya: Thank you, Hon. Speaker. As our Chairman has said, we are facing a very serious challenge. The accounting officers were there when the money was spent. In the past, we could understand that accounting officers were not in office then. It was understandable but now, we have accounting officers who are in office, but who are buying time not to appear before the PAC to provide information. As the Chair has requested, we need your help here to

see the way forward in terms of whether we can do the report with the observations of the Auditor-General. Something should be done to the accounting officers to comply. They are given a time-table and a letter is written to them and they confirm that they will appear. After that, they come and say that they are not prepared. The critical point that I am trying to raise is that those people are in office. They are new to these issues.

Hon. Speaker: I think this is administrative and what I need to do is to get your programme to the Ministries. Indeed, in any Parliament, PAC is the oldest Committee if we are dealing with matters of oversight.

Perhaps, we need to sit and agree on a programme to show that you will be dealing with the reports of the Auditor-General with regard to reports of particular Ministries, agencies or State departments, so that we can enforce it. The practice is of course, a minimum seven days notice and everybody should appear. Anybody should appear. Sometimes, I see CSs and I do not know what they are coming to do. We should be dealing with accounting officers. Maybe, those others could be flower girls and flower boys accompanying them, if we have flower boys. PAC needs to deal with the people who are responsible for finances. Those are the people who should come. The PSs should come with all their technical personnel to help them respond to the various issues that the Auditor-General will have raised and the other issues that the Committee may wish to raise with them. If we can get your calendar of events, we can then circulate in advance. That should be part of the business of the Leader of the Majority Party to ensure that people who are scheduled to appear, particularly before PAC, appear without fail. People fall sick and I am sure that the Committee is not averse to that, but even then there should be reasonable notification that the person who was expected to attend may not be available. People do not just fail to turn up. Hon. Gumbo, we can sit and go through the programme and then we can structure it administratively. I am ready to assist your Committee to enforce attendance.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE MAGISTRATES' COURTS BILL

(Resumption of consideration in Committee interrupted on 11.11.2015)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are in the Committee of the whole House to consider the Magistrates' Courts Bill (National Assembly Bill No.40 of 2015). We were doing Clause 10 yesterday.

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 10 and substituting therefor the following clause—

Contempt of
Court.

10. (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.

(2) A person who, in the face of the Court—

(a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;

(b) interrupts or obstructs the proceedings of the Court; or

(c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.

(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.

(4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which—

(a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court

(b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice, constitutes contempt of court.

(5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.

(6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.

(7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a

conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.

(8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

We are seeking to allow the court to punish for contempt of court and to harmonise the definition of “contempt of court” with the definitions as contained in the High Court (Organization and Administration) Bill and also the Court of Appeal (Organization and Administration) Bill. We are just seeking to synchronise the three Bills because we are dealing with courts, so that we do not have different standards of contempt.

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

Clause 11

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 11 of the Bill be amended in sub-clause (2) by deleting the words “the magistrate’s courts” appearing immediately after the words “administrator by”.

We are seeking to correct a grammatical problem here. These are repetitive.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

Clause 12

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 12 of the Bill be amended in subclause (1) by deleting the words “the magistrate’s court” appearing immediately after the words “Chief Registrar”.

This is another grammar problem that we are seeking to amend by deleting the words “the magistrate’s court”. The duties of the administrator are granted by the rules of the court and not the court itself. So we want to make it clear in the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Koyoo, do you want to speak to this one? I can see you have just placed your card.

Hon. Oyoo: Hon. Temporary Deputy Chairman, I have a divergent opinion. This amounts to duplication of titles. We already have a very powerful registrar and this is diluting the good job of the registrar of the court. Unless, we are talking about subordinate courts or the former Magistrates Courts, I do not think it is relevant.

The Temporary Deputy Chairman (Hon. Cheboi): So make your decision, Hon. Members. I can see there is no other request.

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

(Clause 12 as amended agreed to)

(Clauses 13 and 14 agreed to)

Clause 15

The Temporary Deputy Chairman (Hon. Cheboi): I think you have an amendment to Clause 15, Hon. Chepkong'a? If you do not, we could still proceed. Look at Page 2032 of the Order Paper. If you do not wish to prosecute it, we will proceed.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 15 of the Bill be amended—

- (a) in the prefatory statement by deleting the word “under” appearing immediately after the word “specified” and substituting therefor the words “by written law.”
- (b) by deleting paragraphs (a), (b) and (c).

We are trying to eliminate a grammatical problem.

(Question of the amendment proposed)

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

(Clause 15 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): I notice Hon. Mitaru.

(Clauses 16, 17, 18, 19 and 20 agreed to)

Clause 21

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 21 of the Bill be amended in the proposed new Section 48 (1) of the Law of Succession Act by deleting the expression "2013 Provided that for the purpose of this section in any place where both the High Court and a magistrates' courts are reasonably accessible, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act" appearing immediately after the words Magistrates' Courts Act" and substituting therefor the expression "2015".

What we seek to do is to amend an erroneous reference to the year of enactment of the Bill and also to delete an unnecessary proviso that has been contained in the Bill. As you know, drafting is no longer making provisions. You have to state very clearly as a sub-clause. This proviso did not make sense.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

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

(Clause 21 as amended agreed to)

Clause 22

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 22 of the Bill be amended in paragraph (b) of the proposed amendments to Section 49 of the Law of Succession Act by deleting the expression "5(1) of the Magistrates' Courts Act, 2013" and substituting therefor the expression "7(1) of the Magistrates' Courts Act, 2015".

What we seek to do is to amend the erroneous references to a clause within the Bill, that is cross-referencing, and also the year of enactment. It was making reference to 2013 while the Bill actually refers to 2015.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, do you want to speak to this? I can see you have made a request.

Hon. (Eng.) Gumbo: No, Hon. Temporary Deputy Chairman. I wanted to speak to an earlier one. I think it is just changing the years.

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

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

(Clause 22 as amended agreed to)

New Clause 19A

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following clauses immediately after Clause 19—

Rules.

19A. (1) The Chief Justice may make rules generally for the effective organization and administration of the Magistrates' Court.

(2) Without prejudice to the generality of subsection (1) (b), such rules may provide for the—

- (a) procedure of handling claims relating to violation of human rights;
- (b) general practice and procedure of Magistrates' Courts;
- (c) supervision and inspection of Magistrates' Courts;
- (d) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;
- (e) form, style, storage, maintenance and retrieval of Court records; and
- (f) procedure relating to contempt of court.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better administration and organization of the Court;
- (b) the authority of the Chief Justice to make rules under this Act is limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standard applicable to the rules made under this section are those set out in the

Cap. 2.
No. 23 of 2013

Interpretations and General Provisions Act and the
Statutory Instruments Act, 2013.

This is a new clause. While discussing and scrutinizing this Bill, the Committee came to the conclusion and determination that giving blanket power to the Chief Justice (CJ) to make rules generally for the effective organization and administration of the Magistrates' Court is in contravention of the Statutory Instruments Act. The Act requires that you must tell the instances in which the CJ or the person who has been given or donated the power can make regulations. So, what we have done is to provide the instances in which the CJ may make regulations. We have stated as follows in Clause 19A (2):-

“Without prejudice to the generality of subsection (1)(b), such rules may provide for the procedure of handling claims relating to violation of human rights all the way to form, style, storage, maintenance and retrieval of court records and finally relating to procedure relating to contempt of court.”

Those are very specific provisions in which the CJ can make regulations. It is not open for him to make regulations on anything under the sun. The law is very clear that, that must be regulated by an Act of Parliament. Those regulations must also be tabled in this House and be referred to the Committee on Delegated Legislation for scrutiny to ensure that it complies with the law.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Member for Ol Jorok.

Hon. Waiganjo: I support the Committee's amendment. This particular Clause is simply meant to restrict the CJ on matters of making regulations. If the Bill was left the way it was before this amendment, then the CJ would be at liberty to make any regulation. Of course, I support so that this House, through its Committee on Delegated Legislation, can look through such regulations to confirm that they are in tandem with the statutory instruments.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Member for Kipipiri. Do you want to speak to this particular amendment?

Hon. Gichigi: Yes. Thank you, Hon. Temporary Deputy Chairman. I also rise to support this New Clause. It will be dangerous to give the CJ a blank cheque to create law that can be on anything. I am also happy that, for the first time, regulations are going to be made on the procedure relating to contempt of court. This has been a major source of injustice in this country. Currently, the court just notices somebody doing something wrong in the court and without framing a charge and according such a person a chance to be heard, it just sentences him without even alerting such a person why he is being sentenced. So, this is a good provision. I support.

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 19B

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following clauses immediately after Clause 19—

Code of Conduct
for magistrates.

19B. The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to magistrates.

Hon. Temporary Deputy Chairman, Clause 19B seeks that the CJ shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to magistrates.

As you know, Hon. Temporary Deputy Chairman, the code of conduct that is in place at the moment was brought into operation in 2003. That is way before the new Constitution was promulgated on 27th August 2010. It is lagging behind in terms of complying with the new Constitution. So, we seek that the CJ prescribes a new code of conduct that will govern the conduct of magistrates while conducting themselves in court to ensure that they comply with the new Constitution.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gichigi and Hon. Waiganjo will speak, in that order.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairman. I am extremely happy about this new clause. We are increasingly having challenges with magistrates. All sorts of things are happening, including the recent charging of a magistrate from Kericho for bribery. I have seen in the internet a report that a magistrate has been charged for robbery with violence. It is shocking that such a thing can happen allegedly in Kisumu. Increasingly, we are employing young magistrates who need guidance; they may be having challenges because of lack of code of conduct. So, it is good to review what is there and give them a new code of conduct.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Waiganjo.

Hon. Waiganjo: There cannot be a better amendment than this. We are living at a time when our Magistrates' Courts, even though presided over by the Chief Magistrates--- There is

nothing more annoying than when a court is slated to start at 9.00 a.m. it starts at 10.00 a.m., and then breaks at noon. In the afternoon, the court is said to start at 2.30 p.m. but starts at 4.00 p.m. Even the language the magistrates use in court and the manner in which they treat litigants, advocates and even members who go to court to observe the proceedings is not good.

There is need for a code of conduct for our magistrates.

I support this amendment.

(Question of the new clause proposed)

*(Question that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 23

The Temporary Deputy Chairman (Hon. Cheboi): The Mover, Hon. Chepkong'a to move the Second Reading.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 22 —

Amendment of
section 26 of
Cap. 12A

23. Section 26 of the Environment and Land Court Act is amended by inserting the following subsections immediately after subsection (2)—

“(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.

(4) Appeals on matters from the designated magistrate's courts shall lie with the Court.”

What we are seeking is to amend Section 26 of Cap. 12 A; that is the Environment and Land Court Act, which gives jurisdiction to the High Court.

What we are seeking to do is to introduce a court that has already been prescribed in the Constitution - that is the Environment and Land Court - to have exclusive jurisdiction over all matters related to environment and land, as contained in that legislation.

So, it is purely to change the term “High Court” to “Environment and Land Court” which is now prescribed under the new Constitution. Therefore, we are just changing the name of the court.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Gichigi again, very active this afternoon.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I would like to seek some clarification from the Mover, because I see that this is Section 26 of the Environment and Land Court Act that is being amended by inserting a clause that says:-

“The Chief Justice may, by notice in the *Gazette*, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.”

I am wondering what the Environment and Land Court has got to do with labour relations.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear first from Hon. Waiganjo and we will have a very brief one from Hon. Chepkong’a. This has to be a matter of the same county, but proceed.

There is quite some activity in that direction.

Hon. Waiganjo: Thank you, Hon. Temporary Deputy Chairman. My view is that Section 26 of the Environment and Land Court Act is the one that we are amending. Therefore, what we mean is that the CJ may now gazette magistrates. This was at the domain of the High Court. So, the CJ will gazette magistrates who now can preside over the Environment and Land Courts. This is because it used to be the domain of the High Court, but I would want to listen to the view of the Chairman on this.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gichigi, I thought you would have answered. I thought that was going to settle the matter. But Hon. Chairman, do you have anything to add on that one?

Hon. Chepkong’a: I have too many Bills that deal with different courts. In my assumption, I thought I was dealing with the High Court. Unfortunately, I am dealing with the Magistrates’ Courts. I, therefore, wish to make further amendments to this amendment itself. There was a typographical error in terms of the way it was typed.

I would like to amend so that it can be in line with what was intended.

The Temporary Deputy Chairman (Hon. Cheboi): You are proposing an amendment to the new Clause.

Hon. Chepkong’a: Yes. I am proposing an amendment to the new clause. I am proposing that Clause 23(3) be amended by deleting the words “employment and labour relations in respect” and substituting with the words “Environment and Land of any area of the country.” This will make it clear. It is not about employment and labour relations, it is about environment and land.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. It is clear now.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mulu, you want to speak to this one?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. What I wanted to say is that it was only the amendment that has carried the day. So, I do not want to take you back.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Gichigi because that was your baby.

Hon. Gichigi: This is a very important amendment that is going to change the direction of dispute resolution in this country over land and environment, and especially land.

This business of restricting those cases to the High Court as per the current law is very harmful and expensive to parties. By giving a chance to the Chief Justice to appoint magistrates who are all over this country, we are easing the flow of justice and making it less expensive and quicker. So, this is a clause that everybody should support. I will be urging the President to sign it as fast as possible, to make it easier for Kenyans.

Thank you.

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let me have the Mover reporting first.

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Magistrates' Courts Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will proceed to the next Bill which is the High Court (Organisation and Administration) Bill, National Assembly Bill No. 47 of 2015.

*[The Temporary Deputy Chairman
(Hon. Cheboi) left the Chair]*

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

THE HIGH COURT (ORGANISATION AND ADMINISTRATION) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House convened to consider the High Court (Organisation and Administration) Bill, National Assembly Bill No. 47 of 2015.

We will begin.

Clause 3

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I welcome you to the seat.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you so much. I appreciate it.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 3 of the Bill be amended in subclause (1) by deleting paragraph (f).

What we are seeking to do is to delete paragraph (f). That is already contained in the Constitution. It is superfluous to repeat it in an Act of Parliament when it is very clear in the Constitution that power is already enshrined in the Constitution.

Thank you.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, it is true that this is a clear provision in the Constitution.

However, it is important that we have uniform standards for law-making. This is because I have seen many times when we lift constitutional provisions word for word and put them in statutes, there seems nothing wrong with it. So, I wish the Chair of the Departmental Committee on Justice and Legal Affairs will listen to me so that we can have uniform standards for law-making.

For example, if you look at the Judicial Service Commission (JSC) Act, there are large sections of it which are lifted word for word from the Constitution. While it is true that this might be superfluous, we need to have uniform standards for law-making so that one standard does not apply here today and it applies tomorrow.

Thank you.

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

(Clause 3 as amended agreed to)

(Clauses 4, 5, 6, 7, 8 and 9 agreed to)

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 10 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following subclause —
“(1) The Court shall, subject to subsections (2), (3) and (9), sit continuously for the trial of criminal cases and disposal of civil and other legal business of the Court.”
- (b) in subclause (2)—
- (i) by deleting paragraph (a) and substituting therefor the following paragraph—
“(a) from the 7th of January to the Thursday before Good Friday;”
- (ii) in paragraph (b) by deleting the word “week” appearing immediately after the word “Easter”;
- (iii) in paragraph (c) by deleting the words “1st September” appearing immediately after the words “from the” and substituting therefor the words “15th August”.
- (c) in subclause (4) by deleting the word “fo” appearing immediately after the word “measures” and substituting therefor the word “for”;
- (d) by inserting the following subclause immediately after subclause (8)—
“(9) The Chief Justice shall prescribe rules to ensure that matters are disposed of within twelve months from the date the Court first sets the matters down for hearing.”

This amendment is very important. It is also important that Members note this. What we are seeking to do is to require the courts to dispose of all matters on a day to day basis with the exception of minimal delays that can be allowed for courts, particularly during recess. This is also to require the Chief Justice to make rules on the disposal of cases within 12 months from the date such cases are first set down for hearing.

We are also seeking to correct an error of grammar as contained in paragraph 10 (c). The word “for” was typed as “fo.” For too far too long, matters have been pending in court. If you go to court right now, we have matters as old as since 1986. At times, you even find some matters of 1982. Some of those matters have been set down for hearing but, unfortunately, litigants, for unexplained reasons find ways of delaying them. So, we now want to make it mandatory to the judges who will be presiding over those matters, in terms of management of cases. So, once a matter has been set down for hearing, for example, on 25th January 2016, it is expected that, that matter must be concluded within 12 months. That is by December of the same year so that we do not have matters that are left part heard.

A judge is transferred from one station to the other and he leaves too many matters which are part heard. The other judge who comes to take over does not even know what to do because someone has already taken evidence. At times, when people take evidence, they do not know whether they will record everything. They keep some in their minds. So, you will not know what was kept in the mind of that judge unless that judge continues to deal with that matter.

If you transfer a judge today from Mombasa to Lodwar, there will not be any opportunity for that judge to go back to Mombasa. He has gone to Lodwar. Therefore, he leaves too many pending matters in a station. There may be 100 pending matters. So, we want to ensure that those matters are no longer left pending. They must be disposed of within 12 months so that when you are transferred from one station to the other, you are not transferred with pending matters.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): This is calling for several interventions. Hon. Member for Ol Jorok.

Hon. Waiganjo: Hon. Temporary Deputy Chairman, I support this amendment. It is a fundamental amendment because we have increasingly seen advocates and litigants in our courts that have no interest in finalising their matters asking for unnecessary adjournments. Those adjournments have escalated into ways of making more money. First of all, you pay adjournment fees and throw away cost. We have also seen succession matters staying in court for decades. We still have matters relating to the estate of Mr. Mbiyu Koinange and Mr. J.M. Kariuki. So, it is unacceptable. This amendment says that all matters must be concluded within 12 months. So, it is an amendment that will completely change the *modus operandi* of courts and expedite matters that are pending before court. Most importantly, it will limit or reduce the backlog of cases in our courts.

I support this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Kipipiri.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I rise to support the amendment on Clause 10. Instead of courts that dispose matters, what we have are courts that create part heard matters in our system. Before I came to Parliament, I handled several cases that were older than me. Most of the witnesses had died and even the judges who had started those matters were also dead, yet the cases continued. This is the law that is going to change administration of justice in this country. I am extremely happy because of this provision. There is no need for a judge to have 100 cases which are part heard and yet, the parties are ready to be heard. Let the judge handle what he has before him, complete then start a new case.

Secondly, I am happy that the summer and winter vacations, which seasons we do not even have in this part of the world, are being reduced drastically. Judges should work. Those vacations should have been scrapped. They should go on leave like any other civil servants. We are aware judges do not sit in the afternoon. Therefore, they should write their judgments in the afternoon. They should not wait for vacation to go and write those judgments.

I rise to support.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kitui Central

Hon. Mulu: Hon. Temporary Deputy Chairman, I also rise to support this Bill. The points have been well put across by my colleagues. The realisation of this Bill will ensure timely delivery of justice.

Hon. H.K. Njuguna: Hon. Temporary Deputy Chairman, I would also like to support the amendment on Clause 10. It is fundamental to justice delivery in this country. It will restore confidence in the Judiciary because litigants are very frustrated when their cases drag for years and decades.

I support.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, whenever you delay justice, you are also inadvertently denying justice. To the extent that we are expediting the process of dispensing justice, I support. Some predicating circumstances may make it impractical to

conclude cases within 12 months but boldly saying we want to conclude cases within 12 months will reduce the idea of too many backlogs in our courts.

Hon. Kaluma: Hon. Temporary Deputy Chairman, the provision on limiting the trial span of a case to 12 months seeks to re-engineer how the courts dispose of matters. I support it. This being the Committee stage, I would like to say that it takes painfully too long for cases to be determined. For example, cases where public officers are charged in court and may later be proved innocent. They are suspended immediately the day they are charged and the trial span in those cases in our country is between five and six years. Through the delay, you would have essentially shattered and suspended the career of a person.

Succession matters, to which Hon. Waiganjo has spoken, are taking painfully long for people who have just lost a loved one. I agree with this amendment and urge all Members to support it. It is something to re-engineer the trial span of cases as, indeed, in other jurisdictions.

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

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

(Clause 10 as amended agreed to)

(Clauses 11 and 12 agreed to)

Clause 13

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 13 of the Bill be amended by inserting the following subclause immediately after subclause (1)—

(1A) For the purpose of effective hand-over, a judge shall report at the new duty station within three months from the date on which he or she was notified of the transfer.

(1B) The Chief Justice shall take into account the level expertise and legal specialization in the deployment of judges under subsection (1)(b).”

Hon. Temporary Deputy Chairman, the import of this amendment is to ensure that a judge who has been transferred from one station to another is given adequate time to conclude their matters. We are proposing that whenever the Chief Justice (CJ) effects a transfer, he should take a minimum of, at least, three months from the date of the transfer to allow the person to complete all the matters that are part heard before that person.

We have noted that in the Judiciary, transfers have been used as punishment. That if the CJ does not like the orders you have issued in that station, he can transfer you from say Kisumu to Mandera as a punishment. That should not be the objective of transfers. The objective of transfers is that if you have been in a station for too long, you may be over-familiar with the litigants in that station; you are transferred so that you maintain your integrity.

The Committee took note of the fact that most of these judges are family people; we should allow them time to move their children to schools in the stations they are moving to. If you are going to uproot a family from one station, they should have ample time to transfer their children from one school to the other. We must be sensitive to the needs of those judges as much as they are personal issues.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, we want to move a little fast unless there is an issue which calls for a serious debate. If you are simply agreeing with the Chairman of the Departmental Committee on Justice and Legal Affairs, we may pass you so that we move as fast as we can. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I agree with the reasons advanced by the Chairman of the Departmental Committee. I wanted him to look at the grammar in (1B) which says;

“The Chief Justice shall take into account the level expertise and legal specialization in the deployment of judges under subsection (1) (b).”

I think the word “of” is missing between the words “level” and “expertise”. We should have “level of expertise” or just take into account the expertise. If you are taking the word “level”, then it should be “level of expertise”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chepkong’a, can I come back to you for a further amendment? Consider it a little before we come there. Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairman, I want to oppose this amendment especially on 1A which says:

“For the purpose of effective hand-over, a judge shall report at the new duty station within three months from the date on which he or she was notified of the transfer.”

Hon. Temporary Deputy Chairman, in the amendment the word used is “within” but the Chairman of the Departmental Committee used the word “at least”.

The Temporary Deputy Chairman (Hon. Kajwang’): I can see you are in opposition, I will bring you in. Let me first clean up on Hon. (Eng.) Gumbo’s issue. Hon. Chepkong’a, can you clean up this?

Hon. Chepkong’a: I must thank the hawk-eyed Hon. (Eng.) Gumbo, for seeing what I possibly did not see. This is a typo error. I, therefore, beg to move a further amendment to Clause 13 (1B) by deleting the word “level” immediately after the word “the” so that it reads as follows:-

(1B) The Chief Justice shall take into account the expertise and legal specialization in the deployment of judges under subsection (1)(b).”

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kitui Central, you can now debate it as amended.

Hon. Mulu: Hon. Temporary Deputy Chairman, I have no problem with subclause (1B) but I have a problem with subclause (1A). I was just consulting Hon. Kaluma, to confirm whether what I heard the Chairman of the Departmental Committee say is true. Is it “within three months”, or “at least three months”?

Hon. Chepkong’a: Within “three months”.

Hon. Mulu: From your explanation, you said “at least three months” meaning you must be in the station for three months and that is what I was opposing. Generally, if you are transferred and you have cleared all your cases, you should move immediately. This is because you might open a door where other civil servants will demand the same treatment, and then we will nullify the whole exercise of transfers. I know at times you might be transferred because you are doing very well. So, you go to another station to improve. If that is the case, you stay in one station for three months then you delay improvement in the other station.

Hon. Temporary Deputy Chairman, at times, it is good to allow other people to come in and improve situations which you have made worse. I agree with within three months.

The Temporary Deputy Chairman (Hon. Kajwang’): So, with the advice of the Member for Homa Bay, you agree?

Hon. Mulu: I agree with “within three months”. For your information, being transferred from Kisumu to Mandera should not be seen as a punishment. Mandera is within Kenya. If you are transferred and you have no pending business---

The Temporary Deputy Chairman (Hon. Kajwang’): So, you withdraw your opposition. Let me hear it clearly, therefore, that with that clarification you now support.

Hon. Mulu: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kibra, unless you are opposing because we take it that the others are in support.

Hon. Okoth: Hon. Temporary Deputy Chairman, I want to actually ask if this belongs in the Bill and should not be something that is administrative within the Judiciary itself, that they find their own mechanisms of planning, timing and scheduling transfers and those administrative windows to take into consideration the family situations and other realities of the lives of magistrates. I will give a good example. In the diplomatic service in advanced countries, you know that you can only be stationed as an ambassador or a foreign officer in a country for three or four years and you have to keep bidding to switch to other positions. This is the kind of thing that magistrates should know that you are at a station at a certain county for four or five years, and you should be planning that you will be rotated to another part of the country to continue serving and that you know that these appointments and transfer windows may happen in the months of June, July and August. You can plan your life around that.

So, I was actually hoping that, maybe, this is something we can take away and just adopt best practices of good administrative management elsewhere within the Judiciary other, than in the main law itself. But I stand to be corrected.

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

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

(Clause 13 as amended agreed to)

Clause 14

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 14 of the Bill be amended in the prefatory statement by inserting the words “in so far as is reasonably practicable,” immediately after the words “which shall”.

We are seeking to clean up the Bill by adding the words “in so far as is reasonably practicable” immediately after the words “which shall” so that it is not totally mandatory.

(Question of the amendment proposed)

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

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

Clause 16

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 of the Bill be amended in paragraph (e) by deleting the word “efficiency” appearing immediately after the word “effectiveness” and substituting therefor the words “expeditious disposal of matters”.

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 19 of the Bill be amended by—

(a) deleting paragraph (b) and substituting therefor the following paragraph—

“(b) has since admission to the Roll of Advocates attained, at least, five years’ experience as legal practitioner”

(b) deleting paragraph (c).

We are seeking to reduce the qualification of the Registrar from that of a High Court Judge to five years’ experience as a legal practitioner.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I wish the Committee Chair would explain the import of that really because on the surface of it, it looks like you are downgrading the position of the High Court Registrar which I hope is not what you intend to do. Of course, I know there are issues to do with trying to lock out the youth of this country and this has become a matter on an issue such as this. But I wish you could pronounce yourself on it so that the import is clear so that we do not seem merely to be saying that the Office of the Registrar of the High Court is an inferior office and, therefore, it does not have to have those very high qualifications.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ol Jorok, do you think your contribution is going to help the Member for Rarieda? All right, please.

Hon. Waiganjo: Duties of a Registrar can be carried out very effectively by an advocate of the High Court of Kenya. We are not reducing the expertise because a Judge of the High Court has equal footing actually with an advocate of the High Court. For me, the amendment as proposed by the Chair is completely in order. In any case, it is going to give more advocates time to handle matters that can be handled by the Registrar.

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

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

(Clause 19 as amended agreed to)

Clause 20

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 20 of the Bill be amended in subclause (1) by deleting the prefatory statement and substituting therefor the following statement-

“The Registrar shall perform such duties as the Chief Registrar or the Principal Judge may direct and, in particular, be responsible for—”

The import is to ensure that the Registrar is subject to the Chief Registrar so that it does not depend on the Principal Judge who presides over that court.

(Question of the amendment proposed)

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

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

(Clause 20 as amended agreed to)

(Clauses 21 and 22 agreed to)

Clause 23

Hon. Chepkong'a: Hon Temporary Deputy Chairman, I beg to move:-

THAT, Clause 23 of the Bill be amended in subclause (1) by inserting the words "to the Commission" immediately after the words "recommendations".

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

(Clause 24 agreed to)

Clause 25

Hon. Chepkong'a: Hon Temporary Deputy Chairman, I beg to move:-

THAT, Clause 25 of the Bill be amended—

(a) in the prefatory statement by deleting the word "under" appearing immediately after the word "prescribed" and substituting therefor the words "by written law."

(b) by deleting paragraphs (a), (b) and (c).

We are seeking to ensure that the words we are seeking to delete are not prescribed by the Chief Justice, but by the written law. We are seeking to ensure that, that which will be complied with is that which this House has passed and not that which is prescribed by the Chief Justice.

(Question of the amendment proposed)

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

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

(Clause 25 as amended agreed to)

Clause 26

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 26 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “any” appearing immediately after the word “In” and substituting therefor the word “civil”

(b) in sub-clause (4) by deleting the word “off” appearing immediately after the word “stay”.

Clause 26 deals with alternative dispute resolution. We seek to make it clear that alternative dispute resolution is only with respect to civil matters and not criminal matters. It was not drafted clearly.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

Clause 27

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 27 of the Bill be amended in subclause (1) by deleting the words “initiate” appearing immediately after the words “judge shall” and substituting therefor the word “implement”.

This is to require the Principal Judge to implement a case management system that will be developed by the Chief Justice and the Judicial Service Commission (JSC).

(Question of the amendment proposed)

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

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

(Clause 27 as amended agreed to)

Clause 28

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 28 of the Bill be amended in subclause (1) by deleting the words “There shall be” and substituting therefor the words “The Registrar shall maintain”.

This is to assign the role of maintaining the records of the court to the Registrar.

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

Clause 29

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 29 of the Bill be amended in subclause (1) by—

(a) deleting the words “Chief Justice and the Chief Registrar” appearing immediately after the words “consultation with the” and substituting therefor the words “Commission”;

(b) deleting sub-clause (2).

This is to require that the Principal Judge implements a performance management system in consultation with the Judicial Service Commission so that he does not develop his own performance indicator. It must be in consultation with JSC.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the amendment in Clause 29(1) is good. I do not understand why the Committee is proposing to delete Clause 29(2). Looking at the wording, other than removing the words “Chief Justice” and replacing with the words “Principal Judge”, the intent of Clause 29(2) is very good. Why are we doing away with it? I wish the Chair would have pronounced himself more on this. To me, the clause enriches the whole venture of performance management, inspection and monitoring within the court. I see no reason at all for deleting this clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chepkong’a, will you please explain the object of amending or deleting Clause 29(2)?

Hon. Chepkong’a: Thank you, Hon. Temporary Deputy Chairman. The reason why we are seeking to delete Clause 29(2) is to make provisions for the Chief Justice to prescribe a code of conduct in which we will be moving an amendment at a later time. That will make it very clear. This will be superfluous. Once the Chief Justice develops a code of conduct, what is contained in Clause 29 (2) will be in that code of conduct.

Hon. (Eng.) Gumbo: I am sorry if I am in anyway dragging us back to the same debate. But honestly, what does performance management have to do with a code of conduct? He is

talking about developing procedures for establishing a code of conduct. Here we are talking about performance management, inspections and monitoring. That has got completely nothing to do with the code of conduct. The idea that once the Chief Justice develops a code of conduct, it will take care of that clause is wrong. Clause 29(2) states in part: “For the purpose of ensuring efficient, effective and economic use of resources”. If you stop there, misconduct is not mentioned there. Where does the code of conduct come in? I am completely at a loss.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, Clause 29(2) gives the Chief Justice authority to conduct audits, inspections, investigations and organisational changes of the Judiciary as may be necessary. That is not the work of the Chief Justice. That is the work of the JSC. The Chief Justice himself does not perform that function. He does it together with other Commissioners in JSC. The power that he is being given in that clause contradicts the power that has already been given to the JSC under the JSC Act.

The Temporary Deputy Chairman (Hon. Kajwang’): Also, the framing of Clause 29(2) is not very consistent with Clause 29(1). You find the gist of Clause 29(1) is on the duty of the Principal Judge. It starts by saying that the Principal Judge shall do certain things. Then Clause 29(2) gives that function to the Chief Justice. If Clause 29(2) were to exist then it can do so independently because it is not addressing what Clause 29(1) is addressing. I hope that settles the inquiry.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I am sorry to drag you back on this matter. It is true that Clause 29(1) is talking about the Principal Judge in consultation with the Chief Justice. It is also true that the functions stated in Clause 29(2) are actually functions of the JSC. I do not see how providing those functions would at all be harmful towards the aspirations of this clause. I would have pleaded with my good friend, the Chairperson of the Departmental Committee on Justice and Legal Affairs, that even if it means removing the Chief Justice and ascribing those functions to the JSC, these are good functions. Honestly, the explanation that the functions would go into a code of conduct is a contradiction. There is no code of conduct issues here. We are just talking about performance management and auditing which are good functions.

The Temporary Deputy Chairman (Hon. Kajwang’): That is clear enough. Perhaps, it may not have anything to do with a code of conduct, but if the Chief Justice is reposed with the powers in Clause 29(2), there will be a problem with the functions of the JSC. Although the Chief Justice is the head of the JSC, the JSC as a commission runs independently. If there is another piece of legislation which has already been given that direct mandate, the Chief Justice may do some of these things without consulting the JSC because there is already a statute that gives him that mandate.

To clarify the law, it is necessary to remove Clause 29(2) and allow the JSC to do its work according to this.

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

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

(Clause 29 as amended agreed to)

(Clauses 30, 31 and 32 agreed to)

Clause 33

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 33 of the Bill be amended in sub-clause (1) by deleting the word "person" appearing immediately after the words "or other" and substituting therefor the words "judicial officer".

This is to clarify that the person who is being afforded protection in this clause is no one else except a judge. It is not only judges who are in courts, but clerks are there also.

Clerks are not accorded protection from personal liability; only judges are clear. So, we have made it clear that it only refers to a judicial officer.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kibra.

Hon. Okoth: On a point of order, Hon. Temporary Deputy Chairman. I rise to raise a point of order with the leave of the Chairman. I wish to request the Chairman of the Justice and Legal Affairs Committee to make sense. Would I be in order to propose that the House extends its sitting until the completion of business in items listed under 9(i), (ii), (iii) and (iv) tonight? As we look towards the coming end of the session, we can stretch ourselves a little bit and complete.

The Temporary Deputy Chairman (Hon. Kajwang): I appreciate that, Member for Kibra, except you may have realized that we are in the Committee of the whole House where we do not have power to extend the House. The House would have to resume before we can entertain that kind of order. You could be thinking about consulting with the Leader of the Majority Party or the Leader of the Minority Party to report. That is how our Standing Orders behave. First of all, we have to report and resume the House in plenary and then we can entertain what you are talking about. I am sure you are doing that because of another Standing Order which says that, that kind of Motion must be entertained before 6.00 p.m. So, it is about the chick and the chicken.

Let us proceed.

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

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

(Clause 33 as amended agreed to)

(Clause 34 agreed to)

Clause 35

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 35 of the Bill be amended in subclause (1) by deleting the words “under the Civil Procedure Act or the Criminal Procedure Code” appearing immediately after the word “prescribed” and substituting therefor the words “by written law”.

This is to require courts to deliver judgments in a manner prescribed under any Act of Parliament as the circumstances may require. We are seeking to delete “under the Civil Procedure Act or the Criminal Procedure Code”. We are aware that the other legislation---

The Temporary Deputy Chairman (Hon. Kajwang): Order, Hon. Chepkong'a! There is a Member whose constituents are disturbing. Order! Order, Member for Jomvu! You should not allow your constituents to detract you from your core functions in the National Assembly. Please, tell them that for as long as you are in the Chamber, you are released from those constituency affairs, so that you can concentrate wholly on what is before us. I am sure your constituent has been satisfied.

(Question of the amendment proposed)

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

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

(Clause 35 as amended agreed to)

Clause 36

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I need to do some small consultation. Member for Homa Bay, I understand that you have an amendment. Can I have the text of that amendment? Have you circulated it? I understand that you are seeking a deletion, in which case, if we uphold your amendment, then the Chairman will not have the legs on which his amendment will stand.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, we are moving fairly nicely in terms of usage of time and being effective and efficient. Upon further consultation with Hon. Kaluma, who is a Member of our Committee, I have agreed to drop my amendment. I, therefore, withdraw my amendment.

(Proposed amendment by Hon. Chepkong'a withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): Exactly. That is very wise of you. Member for Homa Bay Town.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I thank the Chairman of the Justice and Legal Affairs Committee in which I sit.

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

THAT, the Bill be amended by deleting Clause 36 and substituting thereof the following clause—

Power to punish for contempt of Court

36. (1) A person who-

- (a) assaults, threatens, intimidates or willfully insults a judge, judicial officer or a witness, involved in a case during a sitting or attendance in a court, or while the judge, judicial officer or witness is travelling to and from a court;
- (b) willfully and without lawful excuse disobeys an order or directions of the court in the course of the hearing of a proceeding;
- (c) within the premises in which any judicial proceeding is being heard or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding is being heard or taken;
- (d) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being heard or taken after the witnesses have been ordered to leave such room;
- (e) causes an obstruction or disturbance in the course of a judicial proceeding;
- (f) while a judicial proceeding is pending, makes use of any speech or writing, mis-representing such proceeding or capable of prejudicing any person in favor of or against any person in favor of or against any parties to such proceeding, or calculated to lower the authority taken;
- (g) publishes a report of the evidence taken in any judicial proceeding that has been directed to be held in private;
- (h) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he or she has given evidence in connection with such evidence;
- (i) dismisses a servant because he or she has given evidence on behalf of a party to a judicial proceeding;
- or,
- (j) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom

such proceeding is heard, commits an offence.

(2) A police officer may, by order of Court, take into custody and detain a person who commits an offence under subsection

(1) until the court adjourns.

(3) A person who commits an offence under subsection (1) shall, on conviction, be liable to imprisonment for a term not exceeding five days, or to a fine not exceeding Ksh100,000 or both.

(4) In exercise of its powers under this section, the Court shall observe the principles of fair administration of justice set out in Article 47 of the Constitution.

The other regimes of contempt are treated under Section 5 of the Judicature Act, Order 52 of the Supreme Court Practice Rules. So, we are limiting this to contempt in the face of the court like where you abuse or assault a judge and others in the course of proceedings. Those other areas of contempt are already catered for in those separate laws. So, we have only made this complete deletion and substitution to make it neater.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Homa Bay, then what happens with other issues of contempt not necessarily on the face of the record?

Hon. Kaluma: Hon. Temporary Deputy Chairman, we have the Judicature Act, Section 5 and the Supreme Court Practice Rules Chapter 52 dealing with all that. I know that there is an attempt to have a separate substantive law on contempt somewhere.

The Temporary Deputy Chairman (Hon. Kajwang’): Of course, the pieces of legislation you are referring to are borrowed from the United Kingdom.

Hon. Kaluma: No, the Judicature Act is our own law. We are saying that there could be a substantive law. This is not the Act where we want to provide for jurisdiction of the courts on every matter. We are saying those ones can be dealt with substantively in those separate laws.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. I asked that for the benefit of other Members. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I am both happy and disappointed by the Member for Homa Bay because he is doing good things and bad things at the same time.

The Temporary Deputy Chairman (Hon. Kajwang): Start with the good things that he is doing because his constituents want to know the good things that he is doing.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, he is talking about offences in terms of a person who assaults, threatens, intimidates or willfully insults a judge. Insulting a judge is a very serious offence. Then he comes down to Part (3), a person who commits an offence under sub-clause (1) and he has listed a litany of offences. He has listed so many crimes here. Under (4), this is the bad thing that he does. He says that “a person who commits an offence under sub-clause (1) shall on conviction be liable to imprisonment for a term not exceeding five days”. For heaven’s sake, that person has assaulted a judge. Honestly speaking, that person has assaulted a judge.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Homa Bay, was that an error! Was it intentional?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, allow me to continue. Then he says “five days or a fine of Kshs100,000”. Remember this is a country where people have said terrible things and said:- “I am willing to go to court. After all, I have the money”. You are doing this in a country like this one?

The Temporary Deputy Chairman (Hon. Kajwang’): Including when he assaults a judge? So, you can freely slap a judge knowing that you are only going to serve five days in prison and pay Kshs100,000. Was that an error?

Hon. Kaluma: Hon. Temporary Deputy Speaker, let me answer. Remember we are not going to charge that individual with all these. He will just commit one offence. I am saying this to correct the good honourable engineer. It is a balance between respect for proceedings and decency. You do not want people to fear courts so much. Remember, assaulting a judge does not take you out of the criminal remit. We are simply saying that the judge himself can deal with you instantly, beyond your being taken to the police station and being dealt with additionally. So, we do not want a situation where a judge will tell a person appearing before a court of law what to do, as you are shaking, not knowing what to say and what not to do. But there is additional punishment. It is a criminal case. By the way, every court station has a police station within it. Those criminal aspects can be dealt with. This is what a magistrate or a judge can deal with instantly.

The Temporary Deputy Chairman (Hon. Kajwang’): I will take an intervention from Member for Ol Jorok. But as I do that, please, consult widely with your Members. I think you could polish this a little. Can I just give you a health break as I take something from the Member for Ol Jorok? I will come back to you. I hope you understand what I mean. You need to consult properly on this.

Hon. Waiganjo: Hon. Temporary Deputy Chairman, I agree with the Member for Homa Bay on the penalties he prescribes for contempt of court. First and foremost, he has explained very well that the contempt of court does not remove one from the realm of criminal liability. Therefore, when we talk about assault, that can be handled through criminal courts, but contempt of court, since it is dealt with by the judge instantly--- There is a charge sheet on contempt. We do not again want to penalize a person who, perhaps, gets angry in court and clicks, then he or she is held in contempt of court and gets a fine of between Kshs500,000 to one million shillings. In my opinion, Hon. Kaluma is trying to protect the dignity of the courts and, at the same time, make litigants and those who are in court comfortable and know that they are in good hands. I support his amendment. I do not want him to make further amendments to the penalties that he is prescribing. They are good enough.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Homa Bay, what is that you had not covered?

Hon. Kaluma: Hon. Temporary Deputy Chairman, I have covered everything I needed to cover, save for the fact that I may need to thank my friend. The court will be so intimidating. Even if one said that this judgment is not as deep as I should make it, they would be jailed for six months or pay Kshs500,000.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. This is what I will do so that I am sure that you understand where we are going. I will put the Question subclause by subclause.

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

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

(Clause 36 as amended agreed to)

(Clauses 37 and 38 agreed to)

Clause 39

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 39.

We are seeking to restrict the practice of advocates as provided under the Advocates Act, Cap. 16. Advocates can practise in any court of law. That, in itself, is seeking to regulate the practice of advocates using this law.

(Question of the amendment proposed)

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

(Clause 39 deleted)

Clause 40

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting clause 40 and substituting therefor the following clause—

Rules.

1) The Chief Justice may, in consultation with the Principal Judge, make rules generally for the effective organization and administration of the High Court.—

(2) Without prejudice to the generality of subsection (1), such rules may provide for the—

- (a) conduct of the election of the Principal Judge;
- (b) procedure of removal of the President of the Court;
- (c) disposal of urgent and priority matters during Court recess;
- (d) disposal of matters within twelve months from the date the Court sets the matters down for hearing;
- (e) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;

- (f) form, style, storage, maintenance and retrieval of Court records; and
 - (g) procedure relating to contempt of court.
- (3) For the purposes of Article 94 (6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better administration and organization of the Court;
 - (b) the authority of the Chief Justice to make rules under this Act is limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
 - (c) the principles and standard applicable to the rules made under this section are those set out in the Interpretations and General Provisions Act and the Statutory Instruments Act, 2013.

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2013

We are seeking to ensure that Clause 40(1) is enhanced in terms of giving the power to the Chief Justice (CJ) on what he can make as regulations. He should not be given blanket power. The Interpretations and General Provisions Act of 2013 is very clear. It states clearly that when you donate a power as a House, you must make clear what regulations or rules may be made by the person who has been given the power. So, we require that the CJ makes regulations with respect to the issues that are enumerated from (a) all the way to (g).

I thank you, Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Even before the Member for Rarieda asks a question, why should the CJ be put in a situation to consult with the Principal Judge so that there is some downward consultation in issues to do with making rules? Maybe, Member for Rarieda, you can bring in your view so that the Chair can respond to both.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, actually this is the question that I had. In general, I agree with what he has proposed, but I am just wondering, if you have given him the power to make those rules, why do you want him to consult with the Principal Judge? I do not understand. Maybe, he should explain to us.

The Temporary Deputy Chairman (Hon. Kajwang’): I see two issues here. One is, under the Instruments Act that you are referring to, the rule making authority must be singular unless delegated. If you are putting it as the centre of power of making that authority, it looks to be consultative.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the point I wanted to bring out is that by allowing the CJ to consult with the Principal Judge, you are making the Principal Judge participate in making rules that will govern how he works.

The Temporary Deputy Chairman (Hon. Kajwang’): Two, it is presumed that the CJ will come up, in his normal rule-making systems, with a committee that will make those rules that probably, the Principal Judge will have participated in. Anyway, you will make the decision. Hon. Chairman, can you explain yourself?

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I thank you.

When the Committee was considering this, we did not want the CJ to make rules without consulting the presiding judge of the High Court. The CJ was going to make rules that concern the judges of the High Court. We, therefore, wanted the CJ to get the input of the presiding judge so that he does not just make rules with some people that do not concern the High Court. He could probably consult the Court of Appeal or the Supreme Court. These are rules that will govern the management of the High Court. The presiding judge himself has certain powers. However, I have listened to what you have just said but I can move this in an amended form so that we remove the confusion. I also understand what you are saying when you say that we are donating power to a third party.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes because my problem is mishandling the office as an office not as the individual.

Hon. Chepkong'a: Yes, Hon. Temporary Deputy Chairman. I am persuaded.

The Temporary Deputy Chairman (Hon. Kajwang'): I do not know whether the Rules Committee is a product of legislation, convenience or obligation.

Hon. Chepkong'a: It is a product of legislation.

The Temporary Deputy Chairman (Hon. Kajwang'): If it is, then even the Chief Justice (CJ) will not just make any rules. He would have to constitute some committee to do that.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 40(1) be further amended by deleting the words "in consultation with the Principal Judge" appearing after the word "may".

The provision will now read as follows:-

"The Chief Justice may make rules generally for the effective organisation and administration of the High Court."

The Temporary Deputy Chairman (Hon. Kajwang'): Let us deal with that further amendment first.

(Question of the further amendment proposed)

Member for Homa Bay Town, do you want to speak to the further amendment?

Hon. Kaluma: I would support the amendment, but what bothers me still is this power generally being given to the CJ to make rules particularly for the matters in Clause 40(2)(a), (b) and (g). I would propose that in as much as that amendment should be supported, we should delete Clause 40(2)(g). The rules governing contempt of injunctions under Order 40 are made pursuant to Section 81 of the Civil Procedure Act.

The Temporary Deputy Chairman (Hon. Kajwang'): The rules are made by whom?

Hon. Kaluma: By the Rules Committee.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, but members of the Rules Committee work under the CJ, do they not?

Hon. Kaluma: The Rules Committee is chaired by the CJ.

The Temporary Deputy Chairman (Hon. Kajwang'): For purposes of law, it is assumed that the CJ becomes the rule-making authority.

Hon. Kaluma: No, it is the Rules Committee, under Section 81 of the Civil Procedure Act that is mandated to make the rules. The power is expressly delegated to the Rules Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Chair of the Committee.

Hon. Chepkong’a: I thank you, Hon. Temporary Deputy Chairman. Nothing prevents this House from making it clear that it is the CJ who will make rules. We want to hold him responsible. We want one centre of power. We do not want a committee which we cannot deal with.

Once these regulations are made, they will not be brought to the Departmental Committee on Justice and Legal Affairs. The rules will be taken to the Committee on Delegated Legislation, where Hon. Kaluma is a member. The Committee will examine whether those rules are in consonance with the main Act.

The Temporary Deputy Chairman (Hon. Kajwang’): The principle is that the rule-making authority shall not delegate that power unless the Act itself has delegated it. If the Act has delegated the power, the delegatee cannot delegate further. So, it works through that principle. Whether it is the committee, that committee works under the CJ. There must be a central or titular power to which that authority is given.

Hon. Waiganjo: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Can I hear from the Member for Ol Jorok who is on intervention? Speak to the amendment only.

Hon. Waiganjo: Hon. Temporary Deputy Chairman, I want to speak to the word “delegatee” which you have used. I am not sure that is an English word.

(Laughter)

The Temporary Deputy Chairman (Hon. Kajwang’): That is a point of order but, as you know, the Chair can never be out of order. However, I withdraw that word for purposes of the HANSARD. I would not want some students of English looking at the HANSARD to find that non-English words were used during debate.

Thank you very much. Member for Homa Bay Town.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I have no problem with the provision as amended, if it is to apply to subclause (2)(a) to (f) because those matters concern administration of the High Court. However, subclause (2)(g) gives the CJ rule-making authority that is already given by another Act of Parliament to the Rules Committee and not the CJ. Generally, this does not relate to the administration of the High Court, but to general practice of law. So, I beg my good Chair to propose further amendment to delete paragraph (g).

As I have said, in Section 81 of the Civil Procedure Act, rule-making authority over these matters of general practice of law is in the Rules Committee and not the CJ. I have mentioned, for instance, in Order No. 40, contempt of injunctions is already prescribed. So, when you again give the CJ parallel rule-making authority, it becomes confusing for the practice of law.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us dispose of that.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go back to the amendment itself. Member for Rarieda, do you have an issue to raise?

Hon. (Eng.) Gumbo: Yes, Hon. Temporary Deputy Chairman, to the extent that we have removed “in consultation with the Principal Judge”, it is okay. Remember when we were doing amendments to the Public Audit Act, one of the most contentious rules was allowing one of the auditees, which is the National Treasury---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ol Jorok, do we have that word in your English dictionary?

Hon. Waiganjo: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. Proceed.

Hon. (Eng.) Gumbo: Auditee is perfect English, Member for Ol Jorok. One of the most contentious rules was allowing a principal auditee, which is the National Treasury, to have an input in making of the regulations. To the extent that we have removed that, we have cleaned it so that the power to make the rules vests in the CJ.

As the Chair of the Committee has said, this will be a process. It is not just the CJ who will make the rules which become law unto themselves. I support the amendment.

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

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

(Clause 40 as amended agreed to)

(Clause 41 agreed to)

New Clause 41A

Hon. Chepkong’a: I thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 41—

Code of Conduct for
judges of the Court.

41. The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to a judge of the Court.

We are seeking to ensure that the CJ promulgates a code of conduct within six months upon the coming into force of this legislation to ensure that the integrity of the judges is governed by a code of conduct. As you know, the current code of conduct, which was promulgated in 2003, came into force before the new Constitution was passed in 2010. So, we want to ensure that the CJ comes up with a code of conduct that reflects the new dispensation.

I thank you, Hon. Temporary Deputy Chairman.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, please, be brief because I am pressed for time.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, again taking advantage of my hawk eyes, instead of saying “to a judge of the court”, why should it not be “to the judges of the court”?

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ol Jorok, now that you are a student of English, can you get that done?

Hon. Waiganjo: Hon. Temporary Deputy Chairman, Hon. Gumbo is right on point. We should say “judges of the court” because the code of conduct will apply to judges of the court. It is just a matter of language.

The Temporary Deputy Chairman (Hon. Kajwang’): Is it not semantics?

Hon. Waiganjo: It is just semantics.

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

(Schedule agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, do I hear you on an intervention for reporting progress?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move that the Committee of the whole House doth report to the House its consideration of the High Court (Organization and Administration) Bill (National Assembly Bill No. 47 of 2015) and its approval thereof with amendments.

(Question put)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. Kajwang'): All right, Hon. Members. I appreciate you for the hard work that you have put in today, including the Member of Parliament for Jomvu, who has excelled in his parliamentary and constituency assignments.

(Hon. Bady stood up in his place)

It is all right. Just resume your sit. I am just acknowledging the work that you have put into all this.

Hon. Chairman, these are two Bills. Is it the same Chairperson who is handling both? Who is the Chairman on this Bill? Shall I hear you, Member for Rarieda? Is it?

REPORTS

THE MAGISTRATES' COURTS BILL

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Magistrates' Courts Bill (National Assembly Bill No.40 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Kajwang'): Who is the Mover?

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Waiganjo to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Waiganjo: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Homa Bay Town, I can see you are restless. Is there some pin on your seat or what is happening?

Hon. Kaluma: Yes, there is a pin, Hon. Temporary Deputy Speaker. Thank you for the observation.

I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words "subject to recommittal of Clause 8".

The Temporary Deputy Speaker (Hon. Kajwang'): Sorry, did I hear you? Yes, Member for Homa Bay Town?

Hon. Kaluma: Yes, thank you, Hon. Temporary Deputy Speaker. I need your attention.

I beg to move that the Motion for agreement with the report of the Committee of the whole House be amended by inserting the words "subject to recommittal of Clause 8".

I have circulated the proposed amendments.

The Temporary Deputy Speaker (Hon. Kajwang'): You have circulated the amendment? I have not seen it. Can I see this text that the Member for Homa Bay Town has circulated? Do we have it on the Table?

All right, I now have it. Proceed.

Hon. Kaluma: Hon. Temporary Deputy Speaker, this passed before the proposed amendments to Clause 8 that I seek to proffer were promulgated. Clause 8 in its original form in

terms of purpose was to deal with what is contemplated under Article 23 of the Constitution, which is to give the Magistrates' Courts powers to deal with matters of violation of human rights and matters that are proceeding before them.

As initially drafted, drawn and passed, Clause 8 in that form if left to go, essentially does not vest that jurisdiction, but takes it away.

I am proposing a New Clause 8A and 8B in terms of proposed amendments to subclause (1) as proposed and, of course, up to Clause 3. In short, I am moving that we give the Magistrates' Courts powers to deal with violations of human rights in the manner prescribed by the Constitution. I have simply lifted the wording of the Constitution in the proposed Clause 8A. In the proposed Clause 8B, these articles which are proposed to be excluded be included.

The Temporary Deputy Speaker (Hon. Kajwang'): All right, you beg to move. You have.

Hon. Chepkong'a: On a point of order.

The Temporary Deputy Speaker (Hon. Kajwang'): What is the point of order, Member of Parliament for Ainabkoi?

Hon. Chepkong'a: On a point of order, Hon. Temporary Deputy Speaker. So that Hon. Kaluma does not belabour the point for too long, we are in agreement with him.

The Temporary Deputy Speaker (Hon. Kajwang'): What is the point of order?

Hon. Chepkong'a: So that he does not spend too much time on this matter, I am in agreement with the recommittal of the Magistrates' Courts Bill with regard to Clause 8.

The Temporary Deputy Speaker (Hon. Kajwang'): Is that not more of a point of information?

Hon. Chepkong'a: Not really because I saw he was taking too much time.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Just resume your seats. Member for Homa Bay Town, I appreciate you a lot for your industry, but you see, your Motion is in the nature of a recommittal. Although the Chairman agrees with you, looking at the Standing Orders, I am more inclined to have a quorum in the House present in the House to deal with that issue.

To preserve your opportunity to raise that issue, I will order that this Order appearing as No.9(i) be listed in the Order Paper as soon as is practical. You should, at that point, avail yourself the earliest opportunity to rise in your place and articulate that Motion. I am sure there will be quorum to deal with that issue after which we can proceed with the remaining parts of Third Reading. Just make sure that you are hawk-eyed so that you see it in the Order Paper and avail the first opportunity to raise that issue. I feel that we need quorum in the House to deal with that.

Having ordered that, then we go to the next one. Where is Chairman dealing with The High Court (Organisation and Administration) Bill?

(The matter of re-committal of Clause 8 to be revisited)

THE HIGH COURT (ORGANIZATION AND ADMINISTRATION) BILL

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the High Court (Organization and Administration) Bill (National Assembly Bill No. 47 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Do we have the Mover to this Bill?

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker. I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Gumbo to second the Motion for agreement with the report of the Committee.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang'): Mover.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the High Court (Organisation and Administration) Bill, (National Assembly Bill No. 47 of 2015) be now read the Third Time. I also request Hon. Nicolas Gumbo to second.

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I wish to second that the High Court (Organisation and Administration) Bill, National Assembly Bill No. 47 of 2015, be now read the Third Time.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, I order that the business appearing as No.9(ii) in the Order Paper be printed in the order of business as shall be practicable for the purposes of taking a vote on the Third Reading.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): Order Members, the time being 6:30 p.m., this House stands adjourned until Tuesday, 17th November at 2.30 p.m. It is so ordered.

The House rose at 6:30 p.m.