



REPUBLIC OF KENYA

MAKUENI COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly – Third Session

Wednesday, 11th February, 2015

(The House met at 9.30 a.m.)

Hon. Speaker (Stephen Ngelu) in the Chair

PRAYERS

QUORUM CALL

Hon. Speaker (Stephen Ngelu): Sergeant at Arms ring the bell for quorum.

(The Division Bell was rung)

Hon. Speaker (Stephen Ngelu): Hon. Members the House will get in the Committee of the Whole House so that you can deliberate on the Makueni County Sand Conservation and Utilization Bill chaired by the Deputy Speaker.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker left the Chair]

IN THE COMMITTEE

[Hon. Deputy Speaker (Benard Musau) in the Chair]

THE MAKUENI COUNTY SAND CONSERVATION AND UTILIZATION BILL 2014

Clause 3, 4, 5 and 6

Hon. Chairperson (Bernard Musau): Hon. Members we are now in the Committee of the Whole Assembly considering the Makueni Sand Conservation and Utilization Bill 2014; Makueni County Assembly Bill No. 3 of 2014.

(Question proposed)

(Question put and agreed to)

Clause 7

Hon. Chairperson (Bernard Musau): Clause 7.

(Question proposed)

Hon. Chairperson (Bernard Musau): Hon. Ngovi, is there any amendment?

Hon. Chief Whip (Jackson Ngovi): --- *(Inaudible)*

Hon. Chairperson (Bernard Musau): If there is no amendment then you vote 'Nay.'

Hon. Chief Whip (Jackson Ngovi): --- *(Inaudible)*

Hon. Chairperson (Bernard Musau): Ok, thank you.

Hon. Chief Whip (Jackson Ngovi): --- *(Inaudible)*

Hon. Chairperson (Bernard Musau): Hon. Ngovi you have to move the Amendment so that the Members can react. That is the procedure.

. **Hon. Chief Whip** (Jackson Ngovi): **THAT** Clause 7 be amended as follows;

- a) In sub-clause 1(a) by inserting the words "who shall be a person qualified in matters relating to environment, economics and community development" between the word "Chairperson" and "appointed" and the words "with approval of the County Assembly" after the word "Governor".
- b) By deleting sub clause 1(c) and substituting therefore the words "6 persons from each sub-county appointed competitively with the approval of the County Assembly".
- c) (c) Clause 1(f) and (g) delete the word "appointed" and substituting therefor the word "nominated".

Thank you Mr. Chairman.

Hon. Chairperson (Bernard Musau): Can you call for a seconder.

Hon Chief Whip (Hon Ngovi): Yes, Hon. Benard Kiswii.

Hon. Chairperson (Bernard Musau): Thank you. I now want to propose clause 7 to be amended as proposed by Hon. Ngovi.

(Question of the amendment proposed)

Hon. Chairperson (Bernard Musau): Members if there is any Debate, there is room for that. Hon. Martin.

Hon. Member for Thange Ward (Martin Masila Undwake): Thank you Mr. Chairman. I do not think there is any need for amending that Clause because it will go against the wishes of the electorate who from the politics on the ground, they are following the Governor closely. If we amend anything Mr. Chairman, it will go against their wishes. You have actually heard there is a Commission coming to see whether there are any problems so I think it is not so good to amend and bring problems. There is no need for any amendment whatsoever. Thank you Mr. Chairman.

(Applause)

Hon. Chairperson (Bernard Musau): Hon. Member for Masongaleni.

Hon. Member for Masongaleni (John Kilonzo): Thank you Mr. Chairman. I would like to say this, as things stand today reasonability as been thrown through the window. While we may take the input of the community or public as we went on this public participation, I think the insurmountable speech that we have is particularly brought about by this Paper which is in front of us. So, I feel going through this paper should take a record three minutes, so that we clear this one within that time so that it remains the way it was --- *(Applause)* when it was brought to us so that our community enjoy 5% of the proceeds from the sand. Thank you.

Hon. Chairperson (Bernard Musau): Hon. Member for Ivingoni.

Hon. Member for Ivingoni/ Nzambani Ward (Cosmas Nzilili): Mr. Chairman I agree with the Member who has just spoken and incidentally we all come from the East and that is why we are actually thrashed by the people because of Sand. At one place, they almost beat me up and the reason they wanted to beat me up was so that we amend this document to suit them and that when we do that, it was going

to provide miracles and all of sudden Makueni would be rich. So instead of wasting time for Makueni to be rich we do not need to do anything about this Document. I have said this before and I spoke in a forum that Makueni County Assembly is not going to be able to make any Laws or perform any oversight. When the Laws come here from the Executive, we just need to pass them as they are. Let us just pass it as it is.

Hon. Chairperson (Bernard Musau): Hon. Member for Mukaa.

Hon. Member for Mukaa Ward (Jonathan Ndungi): Thank you very Mr. Chairman. I agree with the Members who spoke before me that the state in the County is that we be careful with the issues that we do. This issue of the Sand Bill is really long overdue and because views are not cast on stone, I agree with the Members that we pass it the way it is and we take the shortest time possible. My wish is that we finish this within the shortest time and we go for another *Kamukunji* where we could also brainstorm on the issues that are pending in this House even those that have not been brought because my intention is that as the Commission comes-I believe their work begins today because they have been given 14 days-we may prove to Kenya that we are not as bad as they think and we can only do that if we evaluate ourselves because we have not tabled to this House what the complaints are. Thank you Mr. Chairman.

Hon. Chairperson (Bernard Musau): Hon. Member for Mbooni.

Hon. Member for Mbooni Ward (Joseph Musya): Thank you Mr. Chairman. I propose we pass this Bill without any amendment. Thank you.

Hon. Chairperson (Bernard Musau): Hon. Keli.

Hon. Member for Kithungo Ward (Christant Keli): Thank you Mr. Speaker. I actually propose that we pass the Bill; we do not have to change the Clause 7 but for a different reason not because I want to be a good boy. It is because this Bill was subjected to public participation by the County Assembly. Views were collected from the people and we did a rigorous job although in the team that I was in Members decided to ran away from my Ward and another Member decided to use very bad and crude language during one of the Sessions in my Kalawa Ward that actually made me to run away from the session. That person happens to be the Chair of this Committee. Members who were with me led by Hon. Musya would bear me witness and in fact he is the only person who came to my public participation. I would urge when we go to public participation we desist from politics and do the job we are supposed to do because this political situation is what has led

to what we are experiencing today. What I was actually trying to make a point on is that since we did public participation by the County Assembly, we have not been told by the Committee whether they took those views and consulted with the ECM concerned so he can put his views or reservations on why he intended that Clause to be that way. For that reason; having no evidence that they compared the views of the public; I would oppose any amendment that is not backed by facts or statements. Thank you.

Hon. Chairperson (Bernard Musau): From the mood of the House it is like we may do very little in terms of amendment and I would wish to now to put the Question that Clause 7 as amended be part of the Bill.

(Question of the amendment put and negatived)

Clause 8

(Question proposed)

(Question put and negatived)

Clause 9

(Question proposed)

Hon. Chairperson (Bernard Musau): Hon. Ngovi Clause 9.

Hon. Chief Whip (Jackson Ngovi): Mr. Chairman, I beg to move the following Amendment, **THAT** Clause 9 we amended by deleting the word "Committee" where it appears and substituting therefor the word "Authority."

(Question of the amendment proposed)

(Question of the amendment put and negatived)

Clause 10

(Question proposed)

Hon. Chairperson (Bernard Musau): Hon. Ngovi.

Hon. Chief Whip (Jackson Ngovi): Mr. Chairman I beg to move the following amendment, **THAT** Clause 10 be amended by deleting the word "Committee" where it appears and substituting therefor the word "Authority".

(Question of the amendment proposed)

(Question of the amendment put and negatived)

Clause 11

(Question proposed)

Hon. Member for Ivingoni/ Nzambani Ward (Cosmas Nzilili): Mr. Chairperson I just want to alert the Members that despite the resolve that they have to finish up we should note that some Clauses are not for amendment so they might actually end up removing them from the Bill if they are not careful because our resolution as we do not do the amendments that clauses that are not affected by amendment are for "Ayes".

(Laughter)

Hon. Chairperson (Bernard Musau): I think Members have to take seriously the observation made by Hon. Member for Ivingoni/ Nzambani Ward. We may end up in the intention of passing the Bill actually refusing to pass the Bill so we need to be sober. Let us not be pushed by the dissolution and the Committee that was formed by President

Hon. Member for Mbooni Ward (Joseph Musya): Mr. Chairman as I said earlier on, to avoid this confusion I propose that we pass this Bill wholesale the way it was originally. Thank you.

(Applause)

Hon. Chairperson (Bernard Musau): Thank you as much as we would want to do that we have to be procedural. We have to follow the procedure in the Committee of the Whole House and that is why we have to go through all the Clauses so that they get captured by the HANSARD. Hon. Member for Mbitini.

Hon. Member for Mbitini Ward (Dickson Mutaiti): Thank you Mr. Chairperson. I am really disturbed by this Bill at the hand. If you remember very well last year we had public participation in regard to this. Each Ward had its comments, they had their own voice and I want to stand with the voice of the people of Mbitini that they are totally against this Bill whether amended or not and that is my stand; so I am totally against this. I am not worried about the Dissolution of this County. It seems as if now we are under pressure, that we have to agree with what the Governor wants us to do and this is going to bring a lot confusion in this House. My stand is that, the people of Mbitini whether it is amended or not we are not supporting this. Thank you.

(Hon. Members upstanding)

Hon. Chairperson (Bernard Musau): Hon. Members kindly take your seats because we want to put things right. I said that as much as we would want to pass this Bill without any amendment; pass it has it was brought to us by the His Excellency the Governor, we have to be procedural. We may vote some Clauses "Nay" and by so doing do away with those Clauses as they are in the original Bill. Like Clause 8; you have done away with Clause 8. Are we together? I think for the purpose of --- *(Hon. Janet Kitunga interjects)*

Hon. Chairperson (Bernard Musau): Yes Hon. Kitung'a.

Hon. Janet Kitunga: Thank you Chairperson for this opportunity. I noted that we did away with Clause 8 which was not our intention so can you please take us back to that Clause so that we do not mess ourselves as we are very positive about this Bill. Thank you.

(Hon. Julius Mwalali upstanding)

Hon. Chairperson (Bernard Musau): Hon. Member for Kitise before I give you this opportunity I think Members if we are in the mood of passing this Bill without any amendment the only thing that we can do is to allow Hon. Ngovi through a Motion to withdraw all amendments in this Bill from Clause 3 to Clause 38 and I think that will now be the will of the House. Are we in agreement Members?

(Members concurred)

Hon. Chairperson (Bernard Musau): So to handle this matter I think Hon. Ngovi is preparing a Motion in a little while to withdraw all the amendments so that we move with the speed that Hon. Musya had mentioned earlier and I think by doing so, that will correct there anomaly that was done by doing away with clause 8. Hon. Member for Mavindini.

Hon. Member for Mavindini Ward (Martin Mutuku): Thank you very much Speaker and I am happy for the wisdom given by the God for the direction you have given this House. I am happy and I request harmony in this House; let us be together. As you understand the mood of the County you will be very keen on the issues and what we are supposed to do as oversight. They are many pending Bills apart from this Sand Bill. I am happy with the way you are directing this House and request you also direct this House because we had other pending Bills like the

Bursary Regulation Bills which we are supposed to pass before the Commission arrives in Makueni. We also have the Business Empowerment Regulation which is also within this Assembly as well as the Makueni County Youth, Men, Women and People Living with Disability Empowerment Fund Regulation and also the Makueni County Emergency Fund Regulations on the issue of emergency which were brought to this Assembly. I would like to request you in your wisdom to let us pass these Bills. Even the names for the County Land Management Board proposed by the Executive, we pass them and bring the harmony-----

(Hon. John Kilonzo stands on a Point of Order)

Hon. Member for Mavindini Ward (Martin Mutuku): Mr. Speaker protect me. The mood of this County does not need the Point of Order.

Hon. Chairperson (Bernard Musau): Hon. Member for Mavindini can you take your seat.

Hon. Member for Mavindini Ward (Martin Mutuku): Okay thank you.

Hon. Member for Masongaleni Ward (John Kilonzo): With due respect I am basing myself on whatever he is talking about. Mr. Chairman I wonder whether we have so many Bills in front of us ---

(Hon. Christant Keli stands on a Point of Order)

Hon. Chairperson (Bernard Musau): He is on a Point of Order.

Hon. Member for Kithungo / Kitundu Ward (Christant Keli): But he has not stated the Point of Order.

Hon. Chairperson (Bernard Musau): The Hon. Member for Masongaleni he is on a Point of Order and he is granted permission by the Chair. Hon. Member for Masongaleni

Hon. Member for Masongaleni Ward (John Kilonzo): I am basing my Point of Order on the exact words which have been uttered by the same Hon. Member who was on the floor so I may quote Order number 86 and 87. I would like to ask whether we have so many pending Bills or rather I would like to get a difference between a Bill and a Regulation from the same Member. Is he in order to talk about Bills which are pending in this House? Thank you.

Hon. Chairperson (Bernard Musau): Thank you Members. I had just given this opportunity to those Members so that Hon. Ngovi can prepare to move the Motion. Hon. Ngovi.

MOTION

MOTION ON – WITHDRAWAL OF AMENDMENT TO THE MAKUENI COUNTY SAND CONSERVATION AND UTILIZATION BILL

Hon. Majority Whip Leader (Jackson Ngovi): Thank you Mr. Chairperson, I beg to move **THAT**, the Assembly withdraws all the amendments appearing in the Order paper

Hon. Chairperson (Bernard Musau): A seconder?

Hon. Majority Whip Leader (Jackson Ngovi): Member for Ivingoni / Nzambani

(Laughter)

Hon. Member for Ivingoni/ Nzambani Ward (Cosmas Nzilili) seconded.

Hon. Chairperson (Bernard Musau): Thank you Hon. Chairperson.

(Question proposed)

Hon. Chairperson (Bernard Musau): Hon. Member for Utithi.

Hon. Member for Thange Ward (Martin Undwake): Mr. Chairperson I belong to a Ward known as Thange which used to be Utithi/ Kinyambu Ward --- *(Laughter)*. I fully support this Motion that this Assembly withdraws all the amendments so that the Bill is passed as it was and as it was presented to this Hon. House by His Excellency the Governor. This will actually extend to all other Bills or Regulations and maybe we might be forced to even pass them in absentia. Thank you.

(Laughter)

Hon. Chairperson (Bernard Musau): Hon. Members let us take the work of this House seriously. Let us not reduce this House into a theater. Hon. Member for Emali/ Mulala.

Hon. Member for Emali/ Mulala Ward (Cosmas Mutunga): Thank you Mr. Speaker, I have stood to oppose that Motion with the following reasons. Firstly, you will remember this Assembly went for public participation. If we have to give respect to the people of Makueni we need to factor their views. Public monies were used in the public participation and it will be of great importance to respect those people. Therefore, some of the Amendments which have been proposed here are what the people of Makueni proposed. For instance if I go to Clause 35 which gives direction for the sub-division of the resources which will be done according to the Bill it states "*That Clause 35(1) be amended by deleting paragraphs (a), (b), (c) and (d) and substituting therefor the following.*" As per how it is in the Bill a very minimal percentage is going to the locals and remember by passing the Bill and ignoring the views of the public we will be doing a lot of injustice to the people of Makueni. My opinion therefore is to amend as it was proposed by the people of Makueni. Thank you.

Hon. Chairperson (Bernard Musau): The Minority Leader.

Hon. Minority Leader (John Mwenze): Thank you Chairperson. I would also to congratulate the Chairperson of Water and Irrigation Services for having making that decision that all these Amendments should be withdrawn and should not be a problem to us. Going back to the genesis of this Bill it originated from the Executive and I am sure it went through all the stages including the Cabinet and Governors offices and these are people of integrity and people we can trust in executing the mandate in their offices. If the Governor and the Executive using all their faculties of understanding and reference they brought us the best Sand Bill on Utilization and Conservation then I think when we pass this Bill without amendment we are giving them a dose of their own medicine and I do not see any problem with that. When we go to public participation we go there to take the views of *Wananchi* but one is at liberty to take into consideration those views if we feel they are of any help to us and the *Wananchi* who have produced them.

This Bill will be put into act and be executed for the next years to come but in these six months this House is at liberty to make any amendment and we cannot know what the amendments will look like until we give this Bill space to be practiced and the *Wananchi* will feel it and then we can make proper decision on which areas should to be amended and by that time it will have gone through a better public participation because the Act will be in place (???). When we make Bills in this House they are there for the whole County and not for particular Wards as some of our colleagues would like us to believe. So I think this Act will be implemented

throughout the whole of the County of Makueni once we see its short fall then by that time we will be in a better position to do the proper amendments and with that I support the amendment. Thank you.

Hon. Chairperson (Bernard Musau): Hon. Member for Mtito Andei.

Hon. Member for Mtito Andei Ward (Shadrack Mwau): Thank you Chairperson. Let me agree with the Members that we pass Bill as it is because people whom we represent do not actually know the procedures. This House knows the procedures but they do not understand those procedures we are talking about. As we talk now the electorate understands that we are the ones who do not want the Governor to work so let us assume now procedures are in this House and I understand that when we pass this Bill it is not cast on stone. Amendment can be done there after and we have seen in the National Parliament that an Act can be amended or any Bill passed can be also be amended so there is no need of wasting time. I would urge Members to agree that we pass the Bill the way it is and then forge forward because I understand that there are more regulations and those people on grounds do not understand whether there are Regulations or there are Bills so let us go with speed despite what was formed yesterday by the President. We do not fear dissolution because if the County is dissolved we will just go and stay at home. Before we came here we came from homes we are not from bushes so I agree with Members that we pass the Bill the way it is. Thank you.

Hon. Chairperson (Bernard Musau): I want to give this opportunity to Hon. Member for Nguu Ward and that will be the last contributor.

Hon. Deputy Minority Leader (Timothy Maneno): Thank you Chairperson. I wanted to get back to when this particular Bill was introduced to this House. I can remember how I very strongly opposed this Motion. Why? Because when I think of the Sand that are in the rivers *Muoni* and *Kikuu* and those which fall in my Ward and giving effect to that sand being ferried by lorries I could not imagine such a situation. When we come to this public participation we want to say this is where matters that give effect to the people who we represent will either have to experience a certain advantage or disadvantage. This time I have been too keen and when I try to look at the people whom I represent they do not even want to know or for me to defend them. So, other than taking all the Clauses saying that I want to die a martyr and that the sand should not be ferried, let it go. We can have our own mechanism on how we can protect the sand from my region and not actually preventing the Bill from passing. I therefore want to support the withdrawal of all

the Clauses that the Chairperson has given and adopt the Bill as it was when it was brought into this House.

(Applause)

Hon. Member for Kithungo/ Kitundu Ward (Christant Keli): On a Point of Order.

Hon. Chairperson (Bernard Musau): Point of Order Hon. Keli.

Hon. Member for Kithungo/ Kitundu Ward (Christant Keli): --- *(Inaudible)*

Hon. Chairperson (Bernard Musau): Hon. Members just before I give an opportunity to the Hon. Member for Kee to contribute about what Hon. Keli has just said, we are Hon. Members both elected or specially elected and we have a responsibility to carry out our duties without fear or favor. The fact that the President formed a Commission of Inquiry to the dissolution of Makueni County Government does not push anyone of us to act contrary so anyone who is making reference to this is out of order. Hon. Members, we are Hon. Members of this House and I would wish that, we operate over and above this kind of petty politics on what has been happening in Makueni. Hon. Member for Kee.

Hon. Member for Kee Ward (Jonathan Mutua): Thank you Mr. Deputy Speaker for according me this opportunity to express my views and those of the people of Kee on this particular Bill. One of the cardinal responsibilities of a Member of this County Assembly is legislation and the author of this Bill is not a legislator. It is our responsibility to put it in legislation form. I will not support that because a certain clique somewhere has sat down and informed us to go and pass the Bill the way it is and bring it back to us I should support that. No. Let it go in to the HANSARD that I have opposed that in totality. I will not be used as a rubber stamp in this Assembly for whatever comes. People from Kee met the Committee from this Assembly and they gave their views on this Bill which are captured and I would like them to be in cooperated there and I have said severally even from the previous sessions that I am not democratic. I like following the right thing. Democracy is the majority whether they are wrong or right but I prefer to follow the right thing. It cost the taxpayer's money for this Assembly to go in the 30 Wards and I know it cost over three million that went into that exercise and then out of that we say, *'No, forget about that exercise and we pass the Bill the way it is'*. I will not support that one. There is also the issue of being surcharged because why did you go there if you had no business of doing anything on that particular Bill. The people of Kee objected the 5% that was to go to the community and it is not clear how. They want to know

because it is their soil from their (*shambas*) that is going to the rivers and they want to know what the County Government is going to invest there by constructing sand dams. I totally oppose withdrawal of those amendments. What are we in hurry for? We can do it even in a day. Thank you.

Hon. Chairman (Benard Musau): I want to inform the Member who just left the floor that the fact that this Assembly through the Committee went to the public and got the views of the public and maybe the Committee and House decides to ignore the views of the public does not demand that Members get surcharged. I therefore want to inform the Member that let us not instill fear in to Members that they will be surcharged by not taking into account views of the members of public. Hon. Member for Kalawa.

Hon. Member for Kithungo/Kitundu Ward (Christant Keli): On a Point of Order.

Hon. Chairman (Benard Musau): Hon. Keli what is your Point of Order?

Hon. Member for Kithungo/Kitundu Ward (Christant Keli): I want to draw attention to Point of Order 121 in reference to what Hon. Kee insinuated. We are surcharged for mis-appropriation but not failing to consider views of other people. Therefore, if we actually accounted for the money that we did public participation and there is a report we cannot be surcharged for that because we are not only called upon to consider some things for a certain Committee. We cannot be surcharged for failing to consider them. That is why we are called decision makers. Thank you.

Hon. Chairman (Benard Musau): Hon. Member for Kalawa.

Hon. Member for Kalawa Ward (Patrick Kithale): Thank you Mr. Chairman. I am in support of adopting this Bill without amendments ---

Hon. Chairman (Benard Musau): We are talking about the withdrawal of the Motion

Hon. Member for Kalawa Ward (Patrick Kithale): Pardon me, the Motion. Once we taking about the electorate we should remember they are the ones who are talking about us being defeated by passing the Sand Bill. That is why---

Hon. Member for Mulala Ward (Cosmas Mutunga): On a Point of Information.

Hon. Member for Kalawa Ward (Patrick Kithale): That is why I am in support

Hon. Chairman (Benard Musau): Information to whom?

Hon. Member for Mulala Ward (Cosmas Mutunga): Information ---

Hon. Member for Kalawa Ward (Patrick Kithale): I am in support of the Motion to...

Hon. Chairman (Benard Musau): Information to whom?

Hon. Member for Mulala Ward (Cosmas Mutunga): The House.

Hon. Member for Kalawa Ward (Patrick Kithale): I am in support of the Motion of withdrawal---

(Loud Consultation)

Hon. Member for Kalawa Ward (Patrick Kithale): I do not need information please.

Hon. Member for Mulala Ward (Cosmas Mutunga): Mr. Chairman I think this is in accordance to the law. I will quote Article 196 (b) and this is what it states, 'A County Assembly shall facilitate public participation and involvement in legislative and other business of the Assembly and its Committees' why am I saying we should not avoid amendments? It is because one objective of devolution was to bring self-governance to the people. Ignoring what the people told us as a House will be going contrary with the law. It is better we go procedurally through each and every Clause so that I and those of my opinion be defeated on the Floor of the House --- *(Applause)* but we do not ignore the procedure. Thank you.

Hon. Chairman (Benard Musau): I want to put things right by putting ---

(Hon. Martin Mutuku and Hon. Gideon Mwangi upstanding)

Hon. Chairman (Benard Musau): Hon. Member for Mavindini can you take your seat. Hon. Mwangi just take your seat I will give you an opportunity to air your views. I think Hon. Members by moving this Motion it does not mean that we are avoiding these amendments but it is up to this level that we will decide whether we will go for the amendments or not. If this Motion is defeated on the Floor of the House then we will go back to the amendments. If it gets the light of the Floor then it means that whoever is opposing this Motion will have lost so it is now up to

Members to lobby and make sure that your views are supported by your colleagues. I want to give this opportunity to Hon. Member for Mavindini.

Hon. Member for Kee Ward (Jonathan Mutua): Point of Information Mr. Speaker.

(Loud consultation)

Hon. Member for Mavindini Ward (Martin Mutuku): To whom Mr. Speaker.

Hon. Member for Mulala Ward (Cosmas Mutunga): To me.

Hon. Chairman (Benard Musau): To whom?

Hon. Member for Kee Ward (Jonathan Mutua): Point of information to Mr. Speaker.

Hon. Member for Mavindini Ward (Martin Mutuku): You cannot inform Mr. Speaker I think that is out of Order.

Hon. Member for Kee Ward (Jonathan Mutua): It is clarification---

Hon. Chairman (Benard Musau): He can even be allowed to inform me, allowed.

Hon. Member for Kee Ward (Jonathan Mutua): Mr. Chairman it is obvious that the proponents of activism were 10% but in Kee I have got 90%, so the views of Kee are 90%. We had those proponents when we went for public participation. They were even opposing there but did not succeed. Let does not capitalize on 10%. The big mouths are only 10% and majority is 90% and that is what we have. Thank you.

Hon. Chairman (Benard Musau): Hon. Member for Mavindini then Hon. Mwangi.

Hon. Member for Mavindini (Martin Mutuku): Thank you Mr. Chairman. I am happy because you also allow anybody to give you information and I would like to say that the issue of us being surcharged because we went for public participation is out of Order. We went for public participation even in Mavindini. It took one day for public participation to be overtaken on that material day but personally when I was on recess, I went for public participation to almost twenty seven polling stations---

Hon. Chairman (Benard Musau): Hon. Member what do you mean when you say it was overtaken?

Hon. Member for Mavindini Ward (Martin Mutuku): I am trying to say the public Participation took place at Mavindini Headquarters.

Hon. Chairman (Benard Musau): Okay.

Hon. Member for Mavindini Ward (Martin Mutuku): They got the views of the people of Mavindini in just one day within that Ward.

Hon. Chairman (Benard Musau): You mean it was undertaken in one day?

Hon. Member for Mavindini Ward (Martin Mutuku): Yes one day.

Hon. Chairman (Benard Musau): Thank you proceed.

Hon. Member for Mavindini Ward (Martin Mutuku): When I was left I went ahead to get the views of those people who were not in a position to arrive at Mavindini Headquarters and when I talked to my people who elected me as a Member of County Assembly for Mavindini, they advised me to come to the Assembly and pass the Bill without amendments. When I am giving my views here, I am giving my views as I was elected in Mavindini with more than four thousand votes and every Member here represents his people so when you get every vote within a County and you also add the Governors, almost 70% are represented. I think the Governor had a wish for this Bill and also for the Members who have a wish of this Bill that should be okay. I think we can just put the Question or we go for Division and the majority will take the right way. If you opposed the Motion you will also stand to oppose. If you support the Motion you will also take the day and I hope the Majority take the day. Thank you.

Hon. Chairman (Benard Musau) Hon. Mwango and I will allow him to be the last contributor.

Hon. Gideon Mwango: Hon. Chairman, there are two points I want to clarify. Point one, relates to when Hon. Musau is in the Speakers seat. According to me there is no school that has no headmaster so when he is there I think we ought to address him as the Speaker --- (*Hon. Member interjects*). That is my feeling not your feeling can you let me finish then you argue out your points. You can say the Chairman but I say because we are saying the Deputy Speaker, we are mixing. Secondly --- (*Hon. Member interjects*) No you will come up and give your views. Those are my views whether they are wrong or right.

Hon. Chairman (Benard Musau): Proceed.

Hon. Gideon Mwangi: When the President formed the Commission if you listened very well and read he did not say he has formed the Commission to go and do Dissolution but he said to bring out the possibilities and if they will find that you have done a lot of mess then the County will be dissolved. If not you will continue. Thank you.

Hon. Chairman (Benard Musau): Okay thank you Hon. Members. I now want to put the question that the Assembly withdraws all the amendments appearing on the Order paper.

(Question put and agreed to)

(Applause)

Hon. Chairman (Benard Musau): Hon. Members what has now been effected is from Clause 7 to 38 and now the new Sub-clauses 27 (3) (a) which was coming as an amendment is also covered by what we have passed so I now want to now propose the question.

(Question that Clause 7 to 38 be part of the Bill proposed)

(Question put and agreed to)

Hon. Chairman (Benard Musau): Members we now need to move to Clause (2) on the Interpretation.

Clause 2

(Question that Clause (2) be part of the Bill proposed)

Hon. Chairman (Benard Musau): Members I think as I allow for this debate now that the mood of the House is to pass the Bill, then you make sure you avoid the 'Nays'.

Hon. Member for Ivingoni Nzambani Ward (Cosmas Nzilili) Mr. Chairman I think directing on how this House is going to vote is unprecedented.

Hon. Member for Mulala Ward (Cosmas Mutunga): Chairman withdraw.

Hon. Chairman (Benard Musau): Hon. Members the Chairman is just directing and I am not dictating I am giving direction so that the Bill remains as it

was and that is the responsibility of the Chairperson to give direction. I think I am in Order and I am supported by Members.

Hon. Member for Kithungo/Kitundu Ward (Christant Keli): *(Inaudible)*

Hon. Deputy Speaker (Benard Musau): Thank you Hon. Keli. Hon. Minority,

Hon. Member for Mavindini Ward (Martin Mutuku): Thank you Chairperson go ahead you are in Order.

(Laughter)

Hon. Minority Leader (John Mwenze): Thank you Chairman of the Whole House. I think the Members say that Clause (2) be amended by inserting the following interpretations, "Committee" which means the Sub- County Sand Management Committee established under Section (2). "Sand...

Hon. Chairman (Benard Musau): Hon. Member---

Hon. Minority Leader (John Mwenze): Yes.

Hon. Chairman (Benard Musau): We are in Clause 2.

Hon. Minority Leader (John Mwenze): Clause 2?

Hon. Chairman (Benard Musau): Yes Clause 2.

Hon. Minority Leader (John Mwenze): Then we need direction on this because number two says Clause 2

Hon. Chairman (Benard Musau): I want to inform Members and that is why I was giving directions. We have dealt with Clause 7 to clause 38. We are now going back to Clause 2 which is now the interpretation of the Bill so now Hon. Minority Leader can you now pick up from there.

Hon. Minority Leader (John Mwenze): Thank you Chairman. In support of the amendment I am sure in any Bill the citation should be there and it is there to guide us to understand the meaning of some of these terms as they are used in the Bill. As we see such interpretations probably if I remember they could have been lacking and were missing in the original Bill and this is the right place to include such interpretations so I support the amendment to include Clause 2. Thank you.

Hon. Chairman (Benard Musau): This is now very clear because we have removed all the amendments Clause 2 remains unamended.

(Question put and agreed to)

The Title

(Question that the Title be part of the Bill proposed)

Hon. Chairman (Benard Musau): Members you can debate.

(Question put and agreed to)

Clause 1

(Question that Clause 1 be part of the Bill proposed)

(Question put and agreed to)

Hon. Chairman (Benard Musau): I now want to call the Chairperson; Hon. Jackson Ngovi to Report to the Assembly.

Hon. Majority Whip (Jackson Ngovi): Thank you Mr. Chairman. I beg to move the following Motion THAT this Committee do now report to Assembly on its consideration of the Makueni County Sand Conservation and Utilization Bill, 2014 Makueni County Assembly Bill Number 3 of 2014 and its approval thereof without amendments.

(Question Proposed)

(Question put and agreed to)

Hon. Chairman (Benard Musau): We are now through with that session Members. Thank you.

(The House resumed)

(Hon. Speaker took the Chair)

Hon. Speaker (Stephen Ngelu): Hon. Members I call upon the Chairperson of the Committee of the Whole House to give the Progress Report.

REPORT AND THIRD READING

Hon. Chairperson (Bernard Musau): Mr. Speaker sir. I beg to Report that the Committee of the Whole Assembly has considered the Makueni Sand and Conservation Utilization Bill 2014; Makueni County Assembly Bill No.3 of 2014 and have approved the same without amendments. Thank you.

Hon. Speaker (Stephen Ngelu): Thank you, I call upon the Mover.

Hon. Majority Chief Whip (Jackson Ngovi): Thank you Mr. Speaker sir. I beg to move that this Assembly do agree with the Committee of the Whole Assembly in the said Report.

(Question proposed)

Hon. Speaker (Stephen Ngelu): Yes, the Hon. Member.

Hon. Member for Mavindini Ward (Martin Mutuku): Thank you Mr. Speaker. While you were away there was very serious business and the mood of the House was to pass this Bill without any amendment to back the mood of the County. Members were complaining that the Standard Gauge Railway is being built and sand is being carried without any taxation. We are hoping after passing this Bill the way it is we will see this County getting revenue from sand; over a billion. I think without wasting time you can put the Question because it was a conclusion made when the able Deputy Speaker reported the progress of business. I think I am in order. Thank you.

(Laughter)

Hon. Speaker (Stephen Ngelu): I call upon the Hon. Member for Thange.

Hon. Member for Thange Ward (Martin Masila): Thank you Mr. Speaker. There are only three functions of this House which are representation, legislation and oversight. We have been dealing with a lot of oversight that has caused us problems and---

(Laughter)

Hon. Member for Thange Ward (Martin Masila): The reason this House has adopted unanimously to pass this Bill and any other that will come is because on representation we are supposed to do what the people we represent want and they have said categorically they want us to pass this Bill and any other with record speed. By passing this we are dealing with two of our functions; legislation and representation. Thank you.

Hon. Speaker (Stephen Ngelu): Thank you. I call upon the Hon. Kitunga.

Hon. Janet Kitunga: Thank you Mr. Speaker for this opportunity. I would like to say that when the petitioners were complaining against this Assembly this is one of the issues which they raised. They said we have failed to pass the Sand Bill and so

much money is getting lost. If we pass this Bill we will have addressed the need of the people of Makueni. Hon. Members it is good for us to put the people's needs first. Thank you.

Hon. Speaker (Stephen Ngelu): Thank you. I call upon the Hon. Member for Kasikeu.

Hon. Member for Kasikeu Ward (Paul Malinda): Thank you Mr. Speaker, I stand in support of the Bill. I think this is a very good move which this Assembly has made because the sand issue has been a hot topic in Makueni County. Even today there have been demos in Mulala and some senior leaders in this County have taken that opportunity to blame the Assembly as the cause of that demo. I want to believe when this Assembly passes this Bill maybe such leaders will look for excuses elsewhere because the time is now for us to perform and those who are not able to perform I think they will direct their excuses elsewhere and not to this House and so I support this Bill. The County has been losing a lot in revenue because we have not been having a law that can be imposed to collect revenue. Again, on the destruction of the environment—our environment has been destroyed because there has been no control on how to harvest sand in our County. Whatever has been happening is scooping which is not environment friendly. I want to believe that after we pass this law there will be control and there will be saving of environment because people will not be going to scoop sand anyhow from our rivers and there will be controlled harvesting.

There is also an aspect of destruction of morals. The moral fiber of our youth has also been affected by the uncontrolled scooping of sand in our County. I want to believe this law will be able to look into such issues and the people who have been given the duties-The Board- we hope will be people with high morals so that they can be able to implement the law as expected. Thank you, I support.

Hon. Speaker (Stephen Ngelu): Thank you. I call upon the Hon. Member for Kitundu.

Hon. Member for Kithungo/Kitundu Ward (Christant Keli): --- (*Technical hitch*) simply because and contrary to what many people think it is not a lifeline to sell sand. It is actually what I believe a conservation Bill meaning that we would be expecting to see our rivers with more than less sand. It only the surplus that maybe will be sold procedurally in such a manner that we will get revenue. Therefore this Bill anticipates a situation whereby our environment is also conserved and

harvesting of soil as opposed to scooping is controlled so that our rivers do not run dry. For that reason I join the rest to support.

Hon. Speaker (Stephen Ngelu): Thank you. I call upon the Hon. Member for Ivingoni.

Hon. Member Ivingoni/Nzambani Ward (Cosmas Nzilili): Mr. Speaker, thank you for the opportunity. The other day I met a few of the traders who have been dealing with sand and some of them are getting too disgusted by the situation in the County and the only reason why some of them have been harassed is based on this document; that since there is no Sand Bill in Makueni sand business is banned. One of them was arrested by officials of the County and the court was on the spot and he was fined Kshs. 530,000. If this House requires further investigation I can deal with that and the sand was also taken away and poured at Sultan Health Centre. He was supposed to pay around Kshs. 200,000 for trespassing from Kajiado to Makueni and so all the sand harvesters are looking forward to see an end to this harassment. If this Bill stops the harassment of the people of Makueni who have been doing the sand business we have no duty to continue putting them on hold. However, I also want to say that in future we really need to approach issues with decorum. We have approached the Sand Bill issue as if there was a vacuum in the issue of sand. We know very well that EMCA;1999 which is quoted in this Bill is existing and Section 42 which is dealing with sand has been there and the NEMA people had come up with directives in terms of regulations and indeed the Sand Bill we are passing today has been drawn from the same regulations. It is actually a copyright of the Regulations that were developed by NEMA.

Secondly, we also need not operate in vacuum. You are aware that the Senate and the National Assembly were passing what is called the County Resource Sharing Bill which is about to be passed. I think it is in its Third Reading now. We attended a forum with Hon. Keli and Hon. Malinda on the same and what is going to happen immediately after that Bill is passed will need a further interpretation on whether it overrides the County Bills on resource allocation so at that time we shall get to know what happens but I am saying let us not operate in vacuum. Let us not take everything in to political wrangles that are trying to show that there is nothing else that can be done. We are also aware that the Finance Bill would have unlocked the issues of how much we would raise from sand and it did because we are still using last year's Finance Bill and the people are paying around 80,000 per lorry in a month. We cannot say we are totally losing the revenue from sand. I am happy that at last

today it we have come to this conclusion and I support competently the passing of this law so that the House gives the *Mwananchi* what he has awaited for a long time.

Hon. Speaker (Stephen Ngelu): Thank you.

(Question put and agreed to)

Hon. Speaker (Stephen Ngelu): I call upon the Mover.

Hon. Majority Whip (Jackson Ngovi): Mr. Speaker, I beg to move **THAT** the Makueni Sand Conservation and Utilization Bill, Makueni County Assembly Bill of 2013 be now read a Third Time.

Hon. Speaker (Stephen Ngelu): A seconder?

Hon. Deputy Majority Leader (Bernard Kiswii) seconded.

(Question proposed)

(Question put and agreed to)

(The Bill was read a third time accordingly)

ADJOURNMENT

Hon. Speaker (Stephen Ngelu): Hon. Members there being no other business to be transacted the House adjourns to today Wednesday 11th February, 2015 at 2.30p.m.

(House rose at 10.56 a.m.)