

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 23<sup>rd</sup> February 2022***The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.**[The Temporary Speaker (Sen. Nyamunga) in the Chair]***PRAYER****PAPERS LAID****REPORTS ON FINANCIAL STATEMENTS OF  
VARIOUS COUNTY FUNDS/COMPANIES**

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Speaker, I beg to lay the following Papers on the Table of the Senate, today 23<sup>rd</sup> February, 2022.

Report of the Auditor-General on the financial statement of Nyeri County Elimu Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Gatanga Community Water Scheme for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Taita-Taveta County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor General on the financial statement of County Assembly of Taita-Taveta Car Loan Scheme for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Taita-Taveta County Datu Sawazisha Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Mathira Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of County Assembly of Turkana Car and Mortgage Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Turkana County Biashara Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Turkana County Education and Skills Development Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Turkana County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Gatundu Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2020;

(12) Report of the Auditor-General on the financial statement of Othaya Mukurwe-ini Water Services Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kiambu County Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Laikipia County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Limuru Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Murang'a (Fort Beverage Industries Company Limited) for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Gatamathi Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kisumu Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kirinyaga Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Migori County Ward Development Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Migori County Assembly Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kericho County Bursary Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Embu County Education Support Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Baringo County Youth and Women Fund for the year ended 30<sup>th</sup> June, 2016;

Report of the Auditor-General on the financial statement of Baringo County Youth and Women Fund for the year ended 30<sup>th</sup> June, 2017;

Report of the Auditor-General on the financial statement of Baringo County Youth and Women Fund for the year ended 30<sup>th</sup> June, 2018;

Report of the Auditor-General on the financial statement of Baringo County Youth and Women Fund for the year ended 30<sup>th</sup> June, 2019;

Report of the Auditor-General on the financial statement of Baringo County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kakamega County Dairy Development Corporation for the year ended 30<sup>th</sup> June, 2019;

Report of the Auditor-General on the financial statement of Kakamega County Agricultural Inputs Fund for the year ended 30<sup>th</sup> June, 2020; and,

Report of the Auditor-General on the financial statement of Kilifi County Ward Scholarship Fund for the year ended 30<sup>th</sup> June, 2019.

I thank you, Madam Temporary Speaker.

*(Sen. Poghiso laid the documents on the Table)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Members, we will defer Orders Nos. 8, 9 and 10. We will go ahead with Order No. 11.

**COMMITTEE OF THE WHOLE**

THE HERITAGE AND MUSEUM BILL  
(SENATE BILLS NO.22 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL  
(SENATE BILLS NO. 17 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO. 38 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

*(Order for Committee Read)*

*[The Temporary Speaker (Sen. Nyamunga) left the Chair]*

**IN THE COMMITTEE**

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

THE ELECTIONS (AMENDMENT) BILL  
(SENATE BILLS NO. 42 OF 2021)

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are ready to proceed to The Elections (Amendment) Bill (Senate Bills No. 42 of 2021) by Sen. Murkomen.

*Clause 2*

**Sen. Murkomen:** Thank you, Madam Temporary Chairperson. I beg to move-  
THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause –  
Amendment of section 22 of No. 24 of 2011.2. Section 22 of the Elections Act is amended by deleting subsection (1) and substituting therefor the following new subsection –

(1) A person is eligible for nomination as a candidate for an election under this Act if that person -

- (a) is qualified to be elected to that office under the Constitution and this Act; and
- (b) holds a certificate, diploma or other post-secondary school qualification acquired after undergoing a period of at least three months of study in a recognised institution and in such manner as may be prescribed by the Commission; or
- (c) has served as a member of Parliament or a member of a county assembly under the Constitution of Kenya or as a councillor under the repealed Local Government Act.

Madam Temporary Chairperson, a brief explanation of this is that if you look at the original amendment that was in place, it was to the effect that I propose that to be elected to be a Member of Parliament (MP) or Member County Assembly (MCA), you should have the ability to read and write. However, after the debate in the Chamber and consultation with the Committee and Members of this House, it was proposed generally that basic education is important. Someone should at least have a form four certificate unlike before where in law the degree requirement was proposed.

If you look at the people who have basic education in Kenya, it is a reasonable number. It is over half of the population. Therefore, one can be accommodated in my proposal unlike the situation where you say a degree qualification and yet only 3.5 per cent of the population has it.

For that reason and in consonance with what the Members proposed in the House, I propose that the qualification be basic education. This is a form four or secondary education certificate if it was in the old system and then you must have a certificate on top of it that is acquired at least after undergoing a study of three months in a recognised institution.

Another thing to be captured is if you look at that qualification of post-secondary with a three months certificate, it is also important to capture that. If a person has been an MP for five years, that qualification is automatically achieved. The relevant experience that has been captured in this law, is experience of having served at least for five years as an MP or MCA or as a councillor in the local authority in the previous Act. That gives you the leeway in lieu of the other education requirements. This becomes a necessary and relevant experience to be able to give you the gate pass to qualify to run.

What many people do not appreciate is that this is not an appointive office. There is no way you can say automatically; because you have the basic qualification you are automatically going to be a MP or a MCA. You still have to go through rigorous campaign processes that will ensure that you are elected. This is at least the minimum we can give to our people in the beginning.

One thing that Sen. Sakaja captured as a Member of the Justice, Legal Affairs and Human Resource Rights Committee is that, in their study, they did not find a country where academic qualification was necessary, except in Uganda, where it is necessary to have at least O level education. For the rest of the countries in the world, nobody thought about academic qualifications as a necessary requirement.

One of the reasons why people came up with these academic qualifications was not actually because of the professional knowledge. No, it was about the ability to speak

English and Swahili to be able to debate. In the rest of the world, that is not a mandatory requirement. If you go to a country like South Africa, they have more than one national language. You do not have to debate in English in the Parliament of South Africa. You can use Afrikaans or any of the Bantu languages.

If you go Europe and United States of America (USA) and all the other countries, English is their mother tongue. Therefore, speaking good English is not an achievement by itself because you were born and brought up speaking it.

The problem with us is that we have glorified ability to speak in English to the extent that it is forcing us to say “you must have certain academic qualifications”. If you look at the qualifications of all the other countries, for example, Spain, they speak Spanish. In Italy, they speak Italian. They do not have to worry about ability of their leader to communicate.

In Kenya, if we were appreciative enough of the situation we have as country Swahili language, which we can use to communicate. However, because of where we are moving, this minimum academic qualification should be the highest we should ever go and allow Kenyans to make a determination.

Madam Temporary Chairperson, today, there is no degree requirement for you to be a Senator. However, this Chamber has 95 per cent degree holders and maybe 50 per cent post-graduate degrees yet the qualification is just post-secondary. If you go the National Assembly, the same applies. More than 90 per cent of the Members there, have degrees. However, it is not written anywhere that you must have a degree.

If you go to many of the county assemblies, you will get at least four or five people or a third of the Chamber with university degrees. It means, Kenyans by their own choice during voting will say “no, this person has relevant academic education. We educated this man, let us vote for him”. It should not be an opportunity for us to block others who would have served if they do not have that very high level of qualification.

If there is nothing else that should convince anyone, it is what the court said, that you cannot expect that the 3.5 per cent of Kenyans should be the only ones enjoying the rights of the Political Act under Article 38 of the Constitution.

Thank you, Madam Temporary Chairperson, I beg to move.

**The Temporary Chairperson** (Sen. Nyamunga): Who is seconding?

**Sen. Murkomen:** It does not need to be seconded.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*The Title and Clause 1*

*(Question that the Title and Clause 1  
be part of the Bill, proposed)*

The Division will be at the end.

We are now reporting progress. Sen. Murkomen, you may have the Floor.

**Sen. Murkomen:** Madam Temporary Chairperson, pursuant to Standing Order 148, I beg to move that the Committee of the Whole do report progress on consideration

of the Elections (Amendment) Bill, Senate Bills No. 42 of 2021 and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Speaker (Sen. Nyamunga) in the Chair)*

### **PROGRESS REPORTED**

#### THE ELECTIONS (AMENDMENT) BILL (SENATE BILL NO.42 OF 2021)

**Sen. Murkomen:** Madam Temporary Speaker, on behalf of the Chairperson, I beg to report progress that the Committee of the Whole has considered the Elections (Amendment) Bill (Senate Bill No.42 of 2021) and seek leave to sit again tomorrow.

**The Temporary Speaker** (Sen. Nyamunga): Senate Majority Leader, proceed.

**The Senate Majority Leader** (Sen. Poghisio): Madam Speaker, I beg to move that the House do agree with Committee in the said report and ask Sen. Seneta to second.

**Sen. Seneta:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, for the convenience of the House, we are going to skip Orders Nos.12, 13, 14 and 15.

### **COMMITTEE OF THE WHOLE**

#### THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL (SENATE BILLS NO.53 OF 2021)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

#### THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL (SENATE BILLS NO.7 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE LIFESTYLE AUDIT BILL  
(SENATE BILLS NO.36 OF 2021)

*(Committee of the Whole deferred)*

**BILLS**

*Second Reading*

THE COUNTY E-HEALTH BILL  
(SENATE BILLS NO.39 OF 2021)

*(Bill deferred)*

**The Temporary Speaker** (Sen. Nyamunga): Let us proceed to Order No.16. Senate Majority Leader, please, proceed.

*Second Reading*

THE LANDLORD AND TENANT BILL  
(NATIONAL ASSEMBLY BILLS NO.3 OF 2021)

**The Senate Majority Leader** (Sen. Pogishio): Madam Temporary Speaker, I beg to move that the Landlord and Tenant Bill (National Assembly Bills No.3 of 2021) be now read the Second Time.

This is a very important Bill. It was published on 12<sup>th</sup> February, 2021, passed by the National Assembly and referred to the Senate on 21<sup>st</sup> December, 2021.

The Bill seeks to introduce a legal framework which balances the interest of landlords and tenants in a free market economy by ensuring that landlords earn reasonable income from their investments in housing and also protect the tenant.

Additionally, the Bill consolidates the laws relating to the renting of businesses and residential premises and seeks to regulate the relationship between the landlord and the tenant.

Currently, Madam Temporary Speaker, there are three main types of legislation that regulate the relationship between a landlord and the tenant. They include the Rent Restriction Act, Chapter 296; The Distress for Rent Act, Chapter 293, Laws of Kenya; and, The Landlord and Tenant Shops, Hotels and Catering Establishment Act, Chapter 301 of the Laws of Kenya.

Madam Temporary Speaker, tenant and landlord disputes are inevitable. Despite the most mutually beneficial relationship between them, disagreements arise for various reasons. In most cases these disputes have to do with tenant rights, responsibilities to repay rent, eviction and several other conflicts.

For this reason, this Bill seeks to introduce some far-reaching provisions that address the interest of both the landlord and the tenant. For instance, the Bill makes

provision to allow rent to be determined by mutual agreement. Where there is no mutual agreement, a tribunal on application by either parties will determine the rent based on the comparable premises within an area.

Madam Temporary Speaker, Clause 3(1) of the this Bill says:

“(1) This Act applies to—

(a) all residential premises, other than

(i) excepted residential premises;

(ii) residential premises let on service tenancies; and

(iii) residential premises whose monthly rent does not exceed such amount as the Cabinet Secretary may prescribe.”

Clause 3(b) of the Bill goes on to say:

“(b) a tenancy of a business premise –

(i) which has not been reduced into writing; or

(ii) which has been reduced into writing and which—

(a) is for a period not exceeding five years;

(b) contains a provision for termination otherwise than for breach of a covenant within five years from the commencement thereof; or

(c) relates to premises of a class specified under subsection

(2).”

Madam Temporary Speaker, specifically, the Bill proposes several amendments. In Part II, the Bill provides for the establishment, composition and jurisdiction of the Landlord and Tenant Tribunals. It specifies the powers of a Tribunal and provides for the staff and expenses of a Tribunal.

In Part III, the Bill provides for the administration of a Tribunal. It specifies the functions of the chairperson, deputy chairperson and the secretary of a tribunal. This part also also provides for the removal of a member of a tribunal and the investigation of complains by it.

Part IV of the Bill provides for general matters relating to tenancies, including fair rent, permittal increase of rent, notice of termination and the right to assign or sublet rental premises. This part also provides for alteration of terms and conditions in the tenancy, reference to a tribunal and decisions of a tribunal.

It further provides for keeping a statement of rent paid, the keeping of a record of payment or rent and the condition of statutory tenancy. It further provides for keeping of a record of payment of rent and the condition of statutory tenancy.

Part X of the Bill deals with eviction orders. The Bill provides for the power of the tribunal in matters relating to eviction.

Part XI contains miscellaneous provisions including service of documents, enforcement of orders, prosecution of offences, distress for rent, disposal of property upon death or abandonment of the premises by tenant and the power to make rules and regulations. Section F of the Schedule specifies terms and conditions to be implied in tenancies.

Notably, this is an important Bill which makes and takes some preemptive steps to avoid problems arising between landlords and tenants. It has good intentions of reinforcing and safeguarding the rights of the two parties. Already it passed through the



National Assembly. It is for me to plead and ask the Senate to go ahead in support and pass it so that we will have a better relationship between our landlords and tenants.

There are many problems right now that have been straightened by this Bill. There are sections that deal with that, for example, subletting. There are people who can take your property and sublet it and there could be misuse of these properties and then get into conflict with people who are not the primary tenants. This Bill wants to deal with that. It is a straightforward Bill and I therefore, ask my colleagues to support it.

With these remarks, I move and ask Sen. Murkomen to second.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Murkomen.

**Sen. Murkomen:** Thank you, Madam Temporary Speaker, for the opportunity and thank you, Senate Majority Leader for ambushing me to second this very important Bill.

Those who understand management and practice of landlord and tenant know that the legal regime regulating this sector at the moment is fragmented. We have three laws that regulate this sector. These are the Distress for Rent Act; Rent Restrictions Act; and Landlords and Tenants Act, which deals with Shops, Hotels and Catering Establishments Act. These three laws are the ones regulating the relationship between landlords and tenants.

The first responsibility of this Bill is to create one regime of law to amalgamate all provisions of these three laws and have one legislation that is governing this relationship.

The law recognizes that the relationship between a tenant and landlord is imbalanced in the sense that one of them is a property owner and the other is leasing or renting that property. That relationship can adversely affect not just the tenant but also the beneficiaries of the tenant. In cases of family, you have a family member who has rented a premise but you have children who are dependent on that family.

The law practically appreciates that in that relationship, money is not available all the time but at the same time that the landlord has a responsibility to continue receiving rent. In some cases, that rent received goes to a loan that developed that property. There is that recognition, therefore, protected. However, to know that the social fabric of the country depends on having citizens who are living in humble abode or basically, having achieved Article 43 right to housing.

This law also has something to do with Article 43. Once you have someone renting your premises, there are certain expectations from that person but the landlord also has his expectations. It also recognizes that disputes can arise as a result of this relationship. Section 3 of the Act provides circumstances under which the law applies. It deals with situations that deal with residential premises.

The law recognizes that there is an exemption of certain residential premises by the order of the Minister. There are also residential premises let on service tenancy and residential premises whose monthly rent exceeds that which has been said by the Cabinet Secretary. That relationship is not regulated here.

The most important thing to know about this Bill is to first realize that it is protecting small people who are renting premises from being harassed by the landlord and also protect the landlord to ensure they get their rights. That is the imbalance they deal with. This also includes tenancy for business premises and so forth.

This law establishes a tribunal to deal with disputes that may arise. In Section 4, there is establishment of Landlord and Tenant Tribunal whose jurisdiction is to ensure within the territory of Kenya--- and has a lot of responsibility to give orders.

On the Tribunal, first, there is an oversight in the law. At the Committee Stage, Section 4 needs to be amended accordingly because it only recognizes the deputy chairperson of the tribunal. It does not state the other members and their qualifications. That has to be sorted out. I am glad the Bill recognizes that Tribunal chairperson must have the qualification of being a judge and vice chairperson one who has practiced law for more than five years.

The responsibilities of the Tribunal are listed. What is notable in this law is that the Tribunal has a responsibility to make a decision within three months. It recognizes that you cannot use mechanisms for delay to deny a particular member right to continue collecting rent from his premises.

It also gives the power to the Tribunal to issue orders of injunction to a member who may want to get orders to stop evictions from a premise. This is a very progressive provision of the law. There is provision of how to appoint, administer Tribunal, the roles of the chairperson and vice chairperson and how to remove a member from the Tribunal.

There are General Provisions related to what is the permitted increase of rent. You cannot just wake up and tell a tenant tomorrow to pay a certain amount the following day. First, there is permitted increase as required. The law says a landlord shall not increase the rent payable by a tenant for rented premises unless the landlord gives the tenant at least 90 days written notice of the intention to do so.

That gives you enough time to say you no longer want to live in that premise and can move to another. That provision will have the landlord's intention, amount of increase. Any increase established by the law that is going to be given without the three-month notice is declared void. That is where the tenant can resort to the Tribunal to be able to get the necessary orders.

The landlord may also increase rent in accordance with this Clause if he has carried out the necessary capital investment in the property or has provided new services. Sometimes, that is the reason why landlords increase rent. Maybe, security has been increased, CCTV cameras have been installed or perhaps there is an increase of supply of services, for example, water and security which was being paid by the members. Those are some of the grounds that may lead to increase of rent.

Of course, most of the increases are usually linked to the cost of living. If the cost of living becomes high, the landlord is force to do so.

The law also provides for notice of termination, which is that the landlord or a tenant may give notice to terminate the tenancy agreement. You must be clear about which premises, the date which, the tenancy will terminate and it must be at least two months in case of residential premises and three months in case of business premises. Again, you must give three months' notice. The notice must be signed and presented in person or through the agent.

There are other limitations to increase of rent that is provided for by the law. Clause 20 of the Landlord and Tenant Bill, provides that-

“A landlord who is lawfully entitled to increase the rent charged to a tenant for premises may do so only, if at least twelve months, in the case of

residential premises, and twenty-four months, in the case of business premises has lapsed since, the date-

(a) of the last rent increase for that tenant in the rental premises, if there has been a previous increase.

There is limitation of period within which a landlord can increase rent. If it is residential, he or she cannot increase rent within the first 12 months since tenant has leased the property. If it is business premises, there must be guarantee of two years of payment of that rent. Thereafter, you now give two months' notice and three months' notice respectively. However, in the first 12 months, there must be guarantee of what a tenant can pay.

Madam Temporary Speaker, let me just give a story here. Of course, this is the law but sometimes, it can be varied by the parties themselves. In the case of Central London Property Trust Ltd vs High Trees House Ltd, a 1945, High Court Case in London which was before Lord Denning, there was a crisis in United Kingdom (UK) at that point in time because of the Second World War and people were unable to pay rent.

Therefore, the landlord gave an undertaking to the tenant and told them not to leave the premises and that they can stay and not pay the rent until the economy improves because of the effects of the Second World War. It was not written; it was just an undertaking and there was not consideration on the part of the tenant. In law for a contract to become viable, there must be an offer, acceptance and something called consideration, which may be monetary in nature.

The landlord had given this undertaking that he is not going to ask for the rent. After the period, the owner of the property went back to the tenants and told since the economy has improved, they pay for the period that they had lived in the premises and never paid anything.

The case proceeded and when it went before Lord Denning, he came up with a principle called the promissory estoppel which says that if a person gives a promise to another, even though there is no consideration, and they rely on that promise and change their situation because of that, in this case, continue living in the premises, no considerations is given then, the law says it is now an established common law principle that you are estopped from going back to your word because you have relied on that promise. That is how the promissory estoppel principle was established.

I was just digressing to say, issues of tenancy and landlord and the promises that they give each other, goes way to the beginning of 18th Century and has been developed to have a time. Now it is being concretized in law so that the tenants and landlords cannot depend on common law principles but must go by the statutory provisions that we have given here.

If you look at the law here, it is very detailed because the landlords and tenants relationship has been there for over 300 years in the world and a lot of experience has been gained over time. That is why you see notice is very important. What is the notice entailing and what rent provisions are being waived and presented? It must be in writing. It cannot be a promise like the case of High Tress where the promise was verbal.

The law provides for grounds on which a landlord may seek to terminate the tenancy and there are many grounds here. Where under Section 25 a landlord has served a notice of termination of a tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be as are stated in the notice.

There are provisions of what the limit of that notice is so that you cannot wake up and say you do not like his face or say you do not want Indians or Maasais to live in the premises.

I have seen some of our colleagues campaigning in their counties saying they do not like people of this tribe, this community and all that. Those are grounds unaccepted in the Constitution. The same way there must be limits as to why.

If I am meeting all the conditions of tenancy, it would be discriminatory for you to just wake up and say this is my property you must go. This property also exists for public good and is regulated by the public and it is protected by the State, which is members of public for a particular common good. Therefore, there must be grounds with which a landlord can seek to terminate a tenancy. If I am meeting all the conditions then, there is no reason why the landlord should terminate the tenancy.

Those grounds are obvious. One, is failure to pay rent for a period of one month and persistent delays in paying rent which has become due payable. Where under the tenancy, the tenant also has any obligation in respect of the repair and maintenance of the premises comprised in such tenancy.

If the agreement says you must do certain repairs and the tenant comes to the premises and you have kicked everything, for example, the toilets, sinks, doors are in disarray. It can be grounds of termination of tenancy.

When the tenant has committed other substantial breaches of obligations, which are related to the management of the premises. Maybe, you have done some things. You have turned the premise from being residential and now it is a place where you are having disco, making a lot of noise to the neighbors and the other tenants are complaining about you. All these provisions are here.

When you sublet, if you go to all those county council properties in Eastlands, of course, you will find that a house which was expecting one person to live, there is a *mabati* extension behind there that has been sublet to somebody else. Some people rent premises and then they sublet to another person to carry out business. It is common. If the tenant is not aware of the same or it is not part of the tenancy agreement to sublet then, it can be a basis.

It can also be terminated by the landlord if he wants to demolish and reconstruct the building and so forth or by operation of law. That is where there is a new law or Government policy that has changed or has been acquired by the State for purpose of construction of a road or railway. So, again the tenancy can be terminated by such acts. There is a specific notice for demolition and repairs and so forth.

The tenant also may, with the consent of the landlord, assign a premise to another person. Again, if there is the consent of the landlord. However, there are restrictions that are given by law under Clause 30, that you must meet the conditions set by the landlord and if the tenancy agreement has not been revised to deal with it.

It deals with how you can sublet and then application to the Tribunal to deal with subletting. It also captures all issues related to recovery of sums of rent, how you go about recovering property or salary and of course processes that require the Tribunal's involvement.

Madam Temporary Speaker, in Part V, the Bill captures how to come up with an eviction order. That is a notice that is given for eviction. There are also other

miscellaneous provisions, including the role of the Cabinet Secretary with the approval of the Parliament setting categories of premises that may not operate in the Act.

A few amendments will be required. Among them, we have membership of the Tribunal and the role of county governments. The Cabinet Secretary has been given the responsibility to establish premises that can be exempted and those that cannot.

The exemptions should be approved by the National Assembly. I believe the committee will look at it. The approval should be done by both Houses of Parliament, just like all other miscellaneous regulations and subsidiary laws.

Remember that relationships between landlords and tenants are highly regulated or rather dealt with at the local level. There is a role played by county governments in as far as relationships are concerned. We have collection of taxes, licensing of the properties and designation of residential and business premise. All these should involve county governments.

The best way to involve county governments is to involve the Senate. It is the role of this Senate to ensure that the role of the Cabinet Secretary is checked by both Houses of Parliament and not just the National Assembly only.

I beg to second.

*(Question proposed)*

**Sen. Olekina:** Madam Temporary Speaker, I would like to begin by saying that I support The Landlord and Tenant Bill (National Assembly Bills No.3 of 2021) because it is quite timely. However, reading through the Bill, there are important issues omitted. I have skimmed through the Bill. Looking at the way the Bill has been drafted, it is mostly to protect landlords.

In most cases, in all developed countries, there are legislations to ensure that even the tenants understand their rights. In this Bill, the tenants' rights are not clearly defined. One of the things which I find a bit contradictory in the Bill, which I would like to point out, are issues of tenancy agreement.

We have general provisions relating to the tenants. Clause 17(1) states that-

“The rent payable for any premises shall be determined by mutual agreement of the parties to a tenancy agreement.”

The second Clause, which is 17(2), contradicts the first one. It states-

“Where an agreement cannot be reached by the parties at any time during the tenancy, the Tribunal, on reference by either of the parties, shall determine the rent payable for the premises based on comparables or similar lettings.”

My concern with the second Clause is that if the rent payable is supposed to be on mutual agreement, if we cannot agree on the rent payable, why should we go to the Tribunal to tell us? That is saying we have a big shortage of properties that a tenant can rent in this country. If they are not in agreement, they have to force the landlord to go to the Tribunal to determine how much should be paid. I find that a bit contradictory.

I request the Senate Majority Leader, who is the Mover of this Bill, to consider removing or amending that Clause to make it simple, that where there is a mutual agreement, that is a covenant between two parties. You do not want to antagonize any of the parties by bringing a provision that says a party that has no interest in a building---

Remember I spent a lot of money to construct a building and decided to charge “X” amount of rent. If you are the tenant and you want to occupy my building, we should

agree on how much should be paid, but not referring to the Tribunal for them to determine and take a sample of the area and force you, the landlord, who instead of putting a tile that costs Kshs300 per square metre, put one that cost about Kshs10,000 per square metre, but you are forced to charge what a neighbour who used a tiles that cost Kshs300 is charging.

I do not think that is fair to either the landlord or the tenant. I will be seeking an amendment. I hope the Senate Majority Leader will look into that and consider making those changes.

Clause 18(1) states as follows-

“A landlord shall not increase the rent payable by a tenant for rented premises, unless the landlord gives the tenant at least 90 days’ written notice of the intention to do so.”

Let us go back to the initial covenant. If you want to rent my premise, we agree that it will be for a period of time, say three years, and I am going to charge you “X” amount of shillings. I have no business increasing rent within the first three years. It will be sealed for those three years. If I intend to renew the lease agreement, then at that point in time, we can discuss whether I am going to increase or reduce the rent. I think this Clause also needs to be amended.

Clause 18(2) states-

“The notice to be given under subsection (1) shall be in the prescribed form and shall specify the-

- (a) Landlords’ intention to increase the rent; and
- (b) Amount of the new rent.”

That will only be necessary if the covenant period has lapsed. In the event that it is within the period of the covenant, it is unnecessary. I do not think we should over legislate, or make it difficult or create room for landlords to find ways to exploit tenants.

With the current living conditions in this country where things are expensive, middle-class people or even us legislators who are working, do not get an increase in salary. If you choose to stay at a place for three years because you have a contract with a company to work for three years, you should know how much you will pay. That should be the case.

Therefore, Clause 18 also needs to be re looked. In fact, if you look at the entire Part IV, it does not take into consideration the interests of a tenant. It only looks at the interest of the landlords.

Let me proceed further and reiterate on one other important issue relating to the tenancy agreement. Every time there is a tenancy agreement, a deposit is always paid. Most landlords in this country look forward to getting deposits so that they spend the money.

It behooves us, as legislators, to look at what happens around the world in terms of protecting that deposit. In countries like the USA where I lived for so many years, there are normally laws that govern the tenancy deposits.

There are two areas where you are supposed to protect that tenancy deposit. It could either be custodial or an interest-based tenancy deposit security where the landlord is supposed to protect that deposit in a government-backed deposit scheme. If it is a government-backed deposit scheme, if you decide to make it custodial, they earn interest and it pays them to be able to protect that deposit.

If it is an insured scheme, then the agreement between the tenant and the landlord must clearly specify how that interest is going to be utilised or shared. Is it going to be 100 percent taken by the landlord and yet that money does not belong to him or her or is it going to be taken by the tenant who has decided to put that money aside so that it can protect in the event that something needs to be fixed in that house?

Madam Temporary Speaker, I would have also hoped we would think of a situation where this tenancy agreement creates an escrow account. In terms of escrow account, it mostly relates to mortgage schemes. However, in this country, Kenya Revenue Authority (KRA) now requires a certain amount of money to be paid by the landlord as a tenancy income in taxes.

It would be important for us to amend this legislation and factor in all those issues of the escrow account. If it was a tenancy agreement and you do not have to pay any taxes to KRA, then the escrow issue would not come into play.

Today, I am aware that even in our Senate offices which are spread across the country, KRA requires us to hold 15 percent taxes on the rent that we pay to our landlords. In the event that, that money is withheld, because KRA assumes everyone is a tax agent, so long as you are collecting any money, you automatically become a tax agent whether you have signed an agreement with the KRA or not.

It is time for us now when we are drafting legislation to take into consideration all these issues that will come in to dictate how the tenancy agreement should be run.

I will be seeking either the Senate Majority Leader or the Committee Stage amendment and if they do not, then I will be bringing the amendments, one, to define how the tenancy deposit will be handled during the period of the deposit, whether it will be the Government protected scheme or insured account. The tenants need to know and understand their rights.

There is one thing that makes me happy here. I think all the landlords ought to be alive to this fact that you cannot just evict a Kenyan living in your property without the consent of the Rent Tribunal in the event that that tenant has not paid rent.

The tenant may have not paid for one month or could be having a tendency of delaying in paying rent; you then need to report that person to the Rent Tribunal - this has been brought up by this Bill - then you get consent from the tribunal to convict that person

This Bill also talks about that duration where, if the eviction is not carried out within a stipulated period of time, I think it is 60 days, then it lapses. That person continues to stay in that house. It can be extended if the landlord goes back to the Rent Tribunal and seeks for an extension. These are issues the tenants and the landlords must be alive to.

I would really request that as part of the tenancy agreement, the piece of legislation that deals with this like the Landlord and Tenancy; if it becomes an Act, should be attached to the tenancy agreement or; it should be cited in the terms and condition for rental so that the tenant and landlord are well aware of their rights.

Madam Temporary Speaker, the other issue is in Section 31 which deals with the issue of subletting. The law as it is proposed sets as follows;

Section 31 (1) "A tenant may with the consent of the landlord assign premises to another person.

Section 31(2) says a tenant may give the landlord notice of termination within 30 days after the date of the request made under subsection (1) if the tenant requests the landlord to consent to an assignment of the premises and the landlord refuses to consent.

Madam Temporary Speaker, these are things that we need not to over-legislate. These are things which need to be clearly defined during the time of signing the agreement. The agreement should be very clear, that in my premises as a landlord, I do not approve any subletting. Then you as a tenant have a right to say since you do not want me to sublet, then I am not interested in renting your property.

When you now give room in Section 31 to say that you should seek approval from the landlord and if he refuses, then you choose to leave the property. If you do that, you will be negating all the other terms and conditions that you agreed upon.

To protect both the landlord and the tenant, the agreement must be clear from the onset that in this property, there will be no subletting or in this property, you can sublet but just notify us but the terms and conditions continue being the same as the initial tenancy agreement.

Madam Temporary Speaker, to conclude this, let me reiterate on the two issues that I raised.

One, has to do with the issue of how you secure the deposits. There are properties here where tenants are required to pay about six months deposit before they can occupy the premises. It could be about Kshs6 million. That is a lot of money.

If that money is not protected either in either custodial or an interest bearing account, then there are chances that by the time the tenancy agreement comes to an end, there will be a big “micky mouse” sort of competition between the landlord and the tenant, when the tenant wants to get their deposit and leave. We know and have heard of so many stories where tenants do not get their deposits or landlords make it very difficult to release the deposit paid by the tenants.

Instead of giving the Rent Tribunal so much power in every Bill, they should be given powers to determine whether the premises or the tenants knew the terms and conditions when they leased the house or the property

To finalize is the issue of the rights of tenants. Tenants need to know that they can live anywhere they choose to live in this country and that during the period that they are occupying that house, since they are paying for that house, it is assumed they should enjoy all the rights that any Kenyan can enjoy in their own private place. This business of landlords entering into the premises as they choose must also come to an end. They can only do that - and maybe this is an amendment that we should put in - if they notify the Rent Tribunal that there is a challenge with that tenant and they seek approval to enter the premises. The premise ceases to be 100 percent owned by the landlord because there is a person who lives there and is paying for it.

Otherwise, I fully support and I hope that the Senate Majority Leader who moved this Bill has taken note of the areas of concern and they can propose some amendments to make it very clear.

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cherargei, proceed

**Sen. Cherargei:** Madam Temporary Speaker, thank you for this opportunity to contribute to the Landlord and Tenant Bill (National Assembly Bills. No.3 of 2021).



This is a very important Bill to those of us who own property or rentals and Kenyans who live on our property will need the protection of the law.

The Senate Majority Leader is working very hard to ensure that there is expeditious handling of the Bills that originate from the National Assembly. I wish that the same could be replicated at the National Assembly whenever we have Bills that originate from the Senate. That has been our contention since we moved to court the other time. I hope that the Senate Majority Leader will also ensure that the way we are prioritizing, giving adequate and rare high-level wisdom like that of Senator Ledama Olekina on the matters that are before the House, the National Assembly must also give adequate attention to our Bills so that we complement each other.

Madam Temporary Speaker, I have a few comments about this Bill because it is straightforward. These are things that have been done in terms of tenants and landlords. We are just establishing a legal framework that will guide and ensure that there is protection of the law. Most of the people who own rental properties, residential homes and other many places and now we have ownership of sectional properties where there is sharing of clubs, swimming pools, stairs, or the open spaces within apartment in the city and other towns within the country. This guides and gives appropriate framework which should be done in good faith on the engagement of the tenant's agreement and should always be done in good faith.

There is also the issue of the rent increment and reduction of rent increment. This became a challenge during the COVID-19 period. We saw a number of Kenyans lose their jobs and some of them could not sustain to pay the rent. In spite of this, some unscrupulous landlords went ahead and increased rent. It is good now that the law has provided that at least ninety days, that is, around three months. When a landlord has an intention of increasing rent of residential property and other properties, he should give adequate notice. That is very important because one interesting thing in this country that is currently under discussion is the issue of the increase in food prices. Income, such as salary will remain constant but the expenses will keep on going up.

You can imagine if someone was paying Kshs10,000 for a property or a residential home or where they live and maybe their salary is around Kshs30,000. With the caveat of three months, it can give an opportunity to that person to relocate so that they can look for affordable housing. This stop-gap measure is very important. Sometimes, the landlords in our small towns and villages can frustrate you. They wake up one day and say that your rent is no longer Kshs1,500 and that your new rent is Kshs2,500. You can imagine the horror that such a family goes through to adjust with the hard economic times.

On the reduction of the rent, we saw a number of landlords of goodwill in Kenya and across the world reduce house rent during the COVID-19 pandemic. Some of the landlords gave rent reliefs of up to three months while others ensured that there was a decrease in house rent as well. I like the wording of Clause 21. It states that-

“A landlord shall decrease the rent to the tenant if the tenant ceases to provide any prescribed services with respect to the tenant's occupancy of the rental premises”.

Madam Temporary Speaker, landlords are very good people when you are moving into their houses. They will tell you that we will be mowing your grass, weeding your flowers, washing your cabro pavements, provide security by having a watchman at

the gate and providing garbage collection services. After sometime when they are comfortable, after taking your money, you have paid deposits, you have paid your rent for maybe two or three months, the landlord disappears *na anakuwa mteja* when in some cases they have taken payment for utility such as electricity and water. Before you know it, you were already misled because there was a misrepresentation of facts. The landlord was excited and wanted you to rent their property while promising Heaven but failed to deliver.

According to this Bill, when you are paying your rent, you know the services that will be provided. Apart from the rentals, there will be other additional services that will be provided. When you move in, a landlord can promise to paint your house in a month's time or fix other fixtures in the house but they fail to do so. I am pleased that this has been covered by Clause 21.

Madam Temporary Speaker, the clause on powers and appointment of tribunal are procedural issues. There is nothing much I can add. The powers that the tribunal has been given in the Bill have always been there. This has assisted in providing for litigation.

Clause 27 of the Bill states-

“A landlord may by notice terminate tenancy if the landlord in good faith requires possession of the premises for occupation of the landlord, the spouse of the landlord, the child or the parent of the landlord,”

The date of notice for such shall be at least 60 days. However, I think that it should be 90 days so that you do not wake up one day to inconvenience tenants when we all know the inconvenience of moving to a new house. Maybe where you live had proximity to your place of work. It will be unfair to give such a tenant only two months' notice. It will be better if we maintain the notice period at ninety days so that it will be convenient to the tenants.

It is okay if the landlord wants the house for the child or the spouse but the timeliness should be three months or 90 days. This time, in my view, is sufficient to even get an area that has proximity to public facilities like schools, churches or mosques.

If a tenant is given three months' notice, you have enough time to look for a church or mosque or church that is proximate for your prayers. If you live far from the church or mosque, your prayers may take long to reach Heaven. Tenants would like to relocate to areas where their spiritual nourishment, access to utilities like supermarkets and other facilities are available.

Clause 28 states that-

“A landlord may give notice for termination of tenancy if he requires possession of the premises in order to demolish.”

This has been the biggest problem. That is where creation of infrastructure which are called forest evictees, internally displaced people, but there is the biggest menace in this Republic called infrastructural evictees where they either want to demolish the premises or residential you are using to expand the roads. However, how they do it is unfortunate. Houses and homes have been demolished without due regard of the law. That is where the growth of infrastructure evictees emanated from.

The threat to this country is no longer the forest or political evictees who are popularly known as Internally Displaced Persons (IDPs). The biggest menace in this country is infrastructural evictees. It is very unfair when you wake up one day and find

that people have been displaced. It is good to build roads, public utilities and hospitals but you must also be fair and have due regard to the law.

Therefore, the 120 days which is four months, is sufficient. Not unless somebody has grabbed land and there is an issue, so that they can demolish it at night. As a country, we need to move away from this. Four months or 120 days is very important so that we prevent the creation of infrastructural evictees.

Madam Temporary Speaker, you may remember that some people were evicted in Ruai and other areas outside the city, during the Corona Virus (COVID-19) pandemic.

Another aspect that has become a challenge especially to “hustlers”, is the payment of goodwill. I do not know where that thing emanated from, especially in business premises. The people are paying goodwill in Kisumu and Nairobi cities as well as Eldoret and many other big towns.

Madam Temporary Speaker, you will find a young person has maybe taken money from the Youth Fund and wants to rent some space in the Central Business District (CBD). The rent may be Kshs40, 000 or 50,000. The landlord then demands goodwill of Kshs2,000,000.

This is what the Senate Majority Leader needs to look at because most young people cannot do business because of the goodwill. This is an issue that must be addressed once and for all. I know many young people who are in business but I do not know where this culture of goodwill running into millions of shillings came from. A friend of mine wanted to lease a property – not even to buy it – to do business within Eldoret Town. He was told to pay Kshs6 million. It left me wondering where a startup business is supposed to get this money. This will assist us to stop unorganised or illegal demolitions, violation of property and many others.

Madam Temporary Speaker, I agree with Clause 29. In some estates in Nairobi City County, you will rent a residential house and before you know it, it is a club where people club or pray. I do not mean that prayers are bad. However, you were living in a residential home but before you know it, there is *kesha* or a club. This happened a lot especially during the COVID-19 pandemic. I agree on the termination for illegal reasons.

Madam Temporary Speaker, there are estates where even drug and human trafficking is happening. It is important to have these powers for termination notice.

The other important thing is damage to property. Sometimes you rent your property and when you go for a routine check, you find the toilet and plants have been destroyed. There is the right to possession by the tenant. The issue of criminal elements, be it drug trafficking or using residential areas as bars is uncomfortable. Those powers are very important and especially when they are legal.

The fifth point is on re-assigning and subletting. The biggest victim of such incidences is normally the former Municipal or county government houses. You find a grandson living in the same house where his father and grandfather lived. This is happening in cities and towns like Nairobi and Eldoret, in what used to be town council or municipal council houses. You will be amazed to find five generations of one family living in a public house.

Madam Temporary Speaker, there should be a law to guide that. Some people have even turned these public houses into their homes. This also includes the Kenya Railways houses.

(Loud music)

Madam Temporary Speaker, I hope that it is not within the Chamber. It looks like there are people who are playing *twisti*. I hope that music does not affect recording of the HANSARD. It is outside of the Chamber, though.

I was on the importance of a law to guide residency in the former municipal council houses. You can imagine the police are always involved when those people are being removed. This is especially for the Kenya Railways houses. In fact, the people living in those houses build *mabati* structures as a form of extension to the main house. Before you know it, they have relocated their whole clan and want to take forceful possession of such property. I do not know how we will handle this.

Regarding offences, we need to be specific. For instance, saying forfeiting one month's rent would be punitive enough. It is important that offences become specific and punitive so that it is deterrent.

In Clause 62, I know the National Assembly Majority Leader might argue that it is because the Cabinet Secretary (CS) makes the policy. They might say the National Assembly but why do they not say Parliament? The Senate Majority Leader, we will need to amend this.

*[The Temporary Speaker (Sen. Nyamunga) left the Chair]*

*[The Temporary Speaker ((Sen. (Dr.) Lelegwe) in the Chair]*

Mr. Temporary Speaker, Sir, the issue of ownership of rental houses and many others issues are managed at the county government level. Why would the National Assembly have selective amnesia? They know that under Article 93, Parliament refers to both Houses. It is the National Assembly and the Senate.

We went to court because of that simple issue and they want to take us back. The Senate Majority Leader should handle this in a *kikao cha wazee* between the National Assembly and Senate. We do not want to be fighting over small issues. We should be fighting for serious issues of lowering food prices in the country and looking at serious issues of national importance.

I want to assure you that the landlord-tenancy issues will be handled very well under the Kenya Kwanza Government. Most of the people that are affected by these issues are normally the "hustlers." I thank the Senate Majority Leader for this law because it looks very fair to the "hustlers", the "hustler nation" and all Kenyans.

Finally, we should process this law. My request to the Senate Majority Leader is that there are so many gray areas. Allow our input so that we can fine tune and improve it. I am happy today the Senate Majority Leader has been in the House and listened to us very keenly.

I know Sen. Olekina has been busy traversing the country doing campaigns of *kuzimia*. It is good to see him back in the House. We still need to work and legislate for the betterment of the country and look forward to---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Olekina?

**Sen. Olekina:** Mr. Temporary Speaker, Sir, is it in order for my good friend, the Senator for Nandi--- Is it Nandi? Which county is he from? Is it proper for him to impute

improper motive, that I have been traversing the country campaigning for “Azimio ya Kuzimia”, when he knows very well that his own team is clearly referred to as “Kenya Kwisha”?

*(Laughter)*

Mr. Temporary Speaker, this gentleman should restrict himself to debating on relevant issues. The Bill currently on the Floor is the landlord and tenancy agreement. He should not go into issues that he does not have any niche to discuss.

Mr. Temporary Speaker Sir, you should find him completely out of order for discussing issues to do with “Kenya Kwisha”, thinking that he is talking about Azimio la Umoja.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Cherargei, restrict yourself to the Order.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, he is making it worse. There was no point of order there. I just meant that this law is good. Any presidential candidate should tell the country what they will do.

The biggest problem around this city – it looks like “Kuzimia” do not know what is happening - is that most people have challenges of tenancy on rented property. I wish Sen. Olekina well. I did not mean that he has abdicated his duties. I only wanted Baba to notice that you are campaigning for him.

I support with amendments.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. (Rev.) Waqo.

**Sen. (Rev.) Waqo:** Thank you, Mr. Temporary Speaker, Sir. I stand to support this very important Bill from the National Assembly; The Landlord and Tenant Bill (National Assembly Bills No.3 of 2021).

As I was going through it, I realized that it can help all the citizens. As we know, majority of Kenyans, especially those who live within Nairobi City County, are tenants. For the landlords, this will guide them to be able to treat their tenants well.

The Bill proposes the introduction of rent control based on market value. Previously, landlords have always been charging rent as they wanted. They could change within no time or giving notice. The Bill will now help the tenant because the rent will be based on market values. This will help the tenants because nothing will be extraordinary or out of order.

It proposes to repeal The Rent Restriction Act and the landlord and tenants. That is a good suggestion that makes me support because I know the benefits it has. In the past, tenants in Kenya have gone through many challenges, especially at this time when we face economic crisis even now when we are preparing for the General Elections.

COVID-19 has affected people economically and many people are facing a lot of challenges. Others are trying to even relocate from the City to rural areas. This Bill will be of great benefit to both the landlords and the tenants.

The overview has 65 Clauses divided into six parts, which Schedules outline the terms and conditions that are deemed and implied in tenancy agreements. That then means that a lot of seriousness has been put into this, so that the many people who go through this can benefit in different ways. If you look at the Part II of the Bill that establishes the power of the tribunal you can see that under, Clause 4 (1) creates the tribunal, which is granted jurisdiction throughout the Republic of Kenya.

It means that the Commission shall appoint a chairperson of the tribunal and it explains how that is done. That means it will be under good guidance and all shall be put into consideration.

Part IV is the General Provisions relating to the tenancy and mutual agreement. Clauses 18 to 20 set limits, conditions and procedures on the matter in which landlords may increase rent payable by tenants. This means there will be control over that.

The Bill further issues the manner in which a notice of termination maybe undertaken in Clause 19. Clause 21 outlines the condition under which the landlord shall decrease rent and services charged to the tenant.

If you critically go through this, it will really favour the tenants and all will benefit. I believe that when this is approved and implemented, Kenyans will celebrate this Bill that concerns the common citizens.

I support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Mr. Temporary Speaker, Sir, I stand to support the Bill. This Bill has a lot of improvement and amendments. This Bill cuts across the agreement of the two parties, especially where the tenant and the landlords are to discuss the issues they face in terms of service provided.

It is very important for us to support this Bill. I speak as one of the people who have been both a tenant and a landlady. There are so many challenges that need mutual agreements governed by the law, especially when it comes to payments.

Mr. Temporary Speaker, Sir, there are so many challenges that came especially during COVID-19 pandemic, which we have experienced globally in the past few years. Most of the tenants were rendered jobless and unable to pay their rents. At the same time, it also affected the owners of the properties who had probably taken mortgages to pay for their properties.

Some of the regulations that were brought about by the pandemic have been lifted and people are attaining statuses of living. However, we still have “rocky” tenants who do not want to feel for the landlords; that as the situation resumes they pay for the services being rendered by the landlord. We still have those tenants who sit in the houses and claim that the situation still prevails.

Kenya has reclaimed its glory and has moved on when it comes to the pandemic. Many people have resumed work and we have changed the way we were living. Tenants need to respect the property owners because the property owners are still paying for those services.

I like the Clauses that have been put there; that there is mutual agreement, consideration and all that appertain to the Tribunal that have been put across. I wonder about the dispute resolution period of three months. If you are a landlord the law states that you have been given three months to settle or agree on what is to take place.

Within those three months, we have a landlord who is being surcharged interest on the mortgage that they have taken. What about them? Should they go ahead and stop the courts or banks from increasing the interest rate or vice-versa? If you get a rogue tenants who is not paying the rent and you are supposed to pay the mortgage, then you are at a loss.

You have somebody staying in your property, but they are not considering your suffering because you wanted the rent to pay the mortgage. I find that a bit hard. Having

to wait for three months yet you are the one paying for the mortgage, is a big challenge. Let us also consider the timeframe that is given. We also know that in Kenya most of the payments, especially in terms of loans, are done monthly.

If the interest continues to pile because you are waiting for the tribunal to settle your issue and you do not have any other source of income to replenish when it comes to the property you took using a loan, then you will suffer.

Speaking from both sides, we also have rogue landlords or property owners who frustrate these tenants. Probably, the tenant's job was terminated because of one reason or another and has no saving or income as a breadwinner, and there is some misunderstanding.

This Bill will solve so many issues here. It is always good for people to think about what is being brought to the table and whether it is guided by this framework. This will assist both parties to agree and ensure there is proper understanding.

The tribunal needs to understand that there are people who need to pay rent as well as those who need to pay for the loans of the properties. My problem is on the timeframe. A period of a month or two months' notice for termination should be reconsidered. Other than the 90 days stated here, unless otherwise, it is very important.

I urge that based on this framework we are making; landlords should collapse them into a small agreement that is signed by both parties when the leasing of the property is done.

It is important for people to realize that those properties are owned by people. When they are collapsing them into an agreement, they should agree on either side that any circumstance can change the agreement. However, sticking to the law is very important.

I support the Bill. It will help Kenyans especially in situations like the COVID-19 pandemic, which distract the normal living of not only Kenyans, but people across the world.

Mr. Temporary Speaker, Sir, I support.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Temporary Speaker, Sir. I want to declare from the onset that I have both interests. I am a tenant and a landlord; I can speak from both platforms. Historically, I have lived as a tenant in Nairobi for many years. I have lived nearly everywhere in Nairobi. I have lived in Dandora, Huruma, Umoja, Kibra, Ndumbuni, Lavington, Karen, Runda and Langata.

I am, therefore, familiar with the challenges of either being a tenant or a landlord. I also own a few properties in and out of town. I, therefore, have the experience of a landlord.

Mr. Temporary Speaker, Sir, the purpose of legislation, specifically this one, is to minimize the friction and dispute that is prevalent between landlords and tenants. This is a key achievement in a society that is developing.

We know that ownership of property, particularly where tenancy is required, is an investment many Kenyans or people within and outside Kenya, particularly, our people in diaspora, aspire to. Therefore, they need stability in this sector.

We know that one of the areas of high potential is housing. The Government now has a policy on low-cost housing. That will definitely give rise to multiplicity of tenancies.

It is important that the Senate and the National Assembly, dubbed “Parliament”, come up with a long-lasting solution to minimize this friction. If you go to court and tribunals, you will find that they are clogged by frequent disputes arising from such relationships. Therefore, this Bill is timely. I hope that when it is fully implemented, we will unclog the Judiciary and the tribunals with disputes that would have otherwise been unnecessary.

Secondly, when there are disputes between tenants and landlords, there is likely to be suffering. The landlord may have borrowed money by way of mortgage to finance an investment or gotten into an arrangement of financial nature that requires repayment.

If the tenant-landlord relationship gives birth to a dispute, there could be foreclosure, suffering or loss of investment on the part of the landlord. With loss of investment, there could be loss of family income leading to instability in families, hence children may drop out of school and so on and so forth.

On the other hand, when the relationship between the tenant and the landlord goes south and it is the tenant on the receiving end, there could be loss of shelter, comfort and many other things.

I want to appreciate those who have brought this Bill from the National Assembly. They are led by our Senate Majority Leader, Sen. Poghio, whom we share a lot of history with, including ethnic ancestry of Nilotic nature. Therefore, this is one Bill that I call upon my colleagues to support unreservedly.

Mr. Temporary Speaker, Sir, you may find that because of lack of a smooth relationship between the two parties, there are other third parties called brokers, auctioneers, estate agents and so many intermeddlers, including lawyers, who take advantage of the relationship to encourage and make a living out of the dispute. This unnecessary altercation and fights between the two parties is a waste and suffering that can be avoided.

I am happy that there is a good attempt that is worthy of our support to address this wastage. There is a good attempt in this piece of legislation to address arbitrariness on the part of landlords, to try and squeeze more money from tenants and get more income from people who may be vulnerable without regarding the fact that there is inflation and generally difficulties and challenges.

The aspect of this Bill that mandates or decrees that in order to raise rent, there has to be a process, a form of hearing, engagement and other considerations is highly welcome.

Those of us - as I described myself earlier - who have been tenants all over this City and in other places, know what it means when there is arbitrary increase in rent and arbitrary eviction. I mentioned that I am still a tenant. I have an office somewhere in Elgeyo-Marakwet Road for which I pay rent. I am happy with my landlord because during the difficulties of COVID-19, he became flexible and decreased part of the rent. After COVID-19, now we have now gone back to where we were. A few of the people who I am privileged to call my tenants, we also had similar arrangements.

However, we cannot run such an important sector on the basis of goodwill of two people. We must understand that inherent in any and every relationship are potentials for dispute, misunderstanding and suffering.

This Bill is timely and to the extent that it provides for expeditious resolution of such disputes; to the extent that it provides for steps through which increase in rent is



provided; to the extent that it is defining the process of appointment of tribunals to hear such disputes and that it decrees that rent should be regulated to cushion people of low income from arbitrary hikes in rent, I think the Bill is wonderful.

Mr. Temporary Speaker, Sir, I want to applaud Members of the Senate who are supportive of this Bill. I join them and say that this should go on record as an act of patriotism and magnanimity on the part of the Senate in so far as protecting Kenyans of low income, if we pass this piece of legislation.

With those few remarks, I thank the Senate Majority Leader for moving this Bill in line with what the law says. We should debate it having come from the National Assembly.

Thank you, Mr. Temporary Speaker, Sir.

**Mr. Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, there being no other requests, I call upon the Mover to reply.

**The Senate Majority Leader** (Sen. Poghio): Mr. Temporary Speaker, Sir, I beg to reply. It is always gratifying when a Bill is supported 100 per cent. I thank Senators who have supported the Bill, spoken and given their opinion on the Bill. Everybody has given it a nod.

I thank Sen. Murkomen who seconded the Bill; Sen. Olekina who spoke and made a good number of comments on it and wanted some things re-looked at; Sen. Cherargei, Sen. Waqo, Sen. Shiyonga and Sen. (Dr.) Ochillo-Ayacko, who also has made very strong comments, including giving his own example, which is a very practical way of debating. I thank all of them.

This Bill tries to combine three different legislations into one and make it easier for us to deal with landlords and tenants issues. The issues that have been discussed here are as old as we can remember. The laws have been in existence for such a long time.

Mr. Temporary Speaker, Sir, even where there are no laws, tribunals come up in the villages and places where there are not actual tribunals and there are people who can resolve some of these issues. However, this now brings in an official involvement of one tribunal being the standard.

For those who have misgivings, I suggest to them that they should look at this document in detail. They should also remember that this document requires that regulations be made, and that is where the crack is going to be. The issue is going to be in the regulations.

I, therefore, recommend that we pass the Bill as is. If possible, during the moments of subsidiary legislation, we can have what is required. I say that because if you look at the Schedule of the Bill, you will find details on the relationship on what the roles of the tenant and the landlord are. The leasee and the lessor have all been given specific responsibilities. This makes it easier to put together three different laws.

With those few remarks, Mr Temporary Speaker, Sir, I would like to thank the Members who have contributed. Pursuant to Standing Order 61(3), I request you to defer putting of the question to a later date.

Mr. Temporary Speaker, Sir, I beg to reply.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I, therefore, defer putting of the question to that Order until this afternoon.

*(Putting of the Question on the Bill was deferred)*

Hon. Senators, Order Nos.12, 13, 14 stands deferred.

**COMMITTEE OF THE WHOLE**

THE KENYA MEDICAL SUPPLIES AUTHORITY  
(AMENDMENT) BILL (SENATE BILLS NO. 53 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE STREET VENDORS (PROTECTION OF LIVELIHOOD)  
BILL (SENATE BILLS NO. 7 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE LIFESTYLE AUDIT BILL,  
(SENATE BILLS NO. 36 OF 2021)

*(Committee of the Whole deferred)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Pareno is not in the Chamber to execute Order No.15. The Bill is, therefore, dropped.

**BILL**

*Second Reading*

THE COUNTY E-HEALTH BILL  
(SENATE BILLS NO.39 OF 2021)

*(Bill dropped)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, there being no other Business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until today, Wednesday, 23<sup>rd</sup> February, 2022, at 2.30 p.m.

The Senate rose at 12.08 p.m.