BILLS

First Readings

The Constitution of Kenya (Amendment) Bill

MR. KILIKU: On a point of order, Mr. Speaker, Sir.

MR. SPEAKER: Mr. Kiliku, what is your point of order?

MR. KILIKU: On a point of order, Mr. Speaker, Sir. I seek your guidance here because I do not know whether the Standing Orders have changed. This is because, when the Mover was called ~~xx~~ upon to reply, hon. Biwott also seconded.

(Laughter)

MR. SPEAKER: They were merely complimenting each other!

THE ASSISTANT MINISTER, OFFICE OF THE VICE-PRESIDENT, MINISTRY OF HOME AFFAIRS AND NATIONAL HERITAGE (Mr. Lalampaa): On a point of order, Mr. Speaker, Sir. Was hon. Kiliku in order to rise on a point of order when the Clerk of the ~~x~~ National Assembly was on his feet reading Order No. 6?

MR. SPEAKER: Can we move on now?

The Firearms (Amendment) Bill

(Orders for First Readings read—— Read the First Time——Ordered ~~x~~ to be read the Second Time today by leave of the House)

Second Reading

The Constitution of Kenya (Amendment) Bill

(By leave of the House)

THE ATTORNEY-GENERAL (Mr. Muli): Mr. Speaker, Sir, I beg to move that The Constitution of Kenya (Amendment) Bill be now read a Second Time.

When I published this Bill last Thursday, it occurred to me that the intention of ~~x~~ the amendment was not clearly understood. Therefore, I withdrew that Bill and replaced it with the one dated 29/7/88. The first one was dated 28/7/88. Probably hon. Members have got both ~~xx~~ Bills, and I would like to ask ~~xx~~ them through you, Sir to disregard the one dated 28/7/88 and use the one dated 29/7/88. Of course as we are all aware, the publication period has been reduced

THE ATTORNEY-GENERAL (Ctd.):

from 14 days to five days by the House.

A lot has been said about the intended amendment, both through the Press and from the pulpit by clerics. In addition, the Chairman of the Law Society of Kenya, I do not know whether speaking for himself or for the Kenya Law Society of Kenya as whole, also came out with a lot of hot air. With regard to the clerics, I wonder whether they had prepared their sermons for the weekend, or whether by my publishing the Bill provided them with a sermon for last Sunday. Some of the clerics are reported to have converted the sanctuary of the church to be the Parliament itself when they actually led the congregation to pray to the Almighty God, that---

MR. WASIKE-NDOMBI: On a point of order, Mr. Speaker, Sir. We are all anxiously waiting for the Attorney-General to explain to us the business before us. Is he in order to take us to the prayers and what-have-you? Can we not go straight to the business which is before the House?

(Applause)

THE ATTORNEY-GENERAL (Mr. Muli): Sir, hon. Wasike-Ndombi will realise that I was not near the pulpit, but now I am in my right place to reply to the clerics. The clerics even called upon the congregation to pray to the Almighty God to block and kill this Bill. You can see how pulpits are being used these days. Bills are meant to be debated in this Parliament, but to call on the Almighty God to block the Bill or to kill it is tantamount to invoking the name of the Almighty God in vain. God created the institution of Parliament and so as to debate such matters ~~to see this~~---

MR. MANG'OLI: On a point of order, Mr. Speaker, Sir. Why can the Attorney-General not speak near the microphone? We are not hearing what he is saying and we do not know how we are going to respond to ~~contribute on~~ what he is talking about.

THE ATTORNEY-GENERAL (Mr. Muli): I do not know whether the microphone is faulty. However, I was saying that, the institutions of ~~the State are~~ Parliament are creation

THE ATTORNEY-GENERAL (Ctd.):

God and the cleric himself knows it very well because these institutions are mentioned both in the holy Bible and the Koran.

Therefore, the intentions of the clerics to come out and try to intimidate this august House to abdicate its duties of debating these matters was to create what one may call fear and despondency. That was not wise and I would perhaps ask the clergy men to keep away from inciting the congregations that way.

Again, I was surprised to read what the Chairman of the Law Society of Kenya said to the media. As I said earlier, I do not know whether he was speaking for himself or on behalf of the Law Society of Kenya. Whatever capacity he was speaking in, he missed the point completely. The Chairman of the Law Society of Kenya who is a lawyer and is supposed to be leading the council of the Law x Society, missed the point completely. I am surprised that the Chairman chose to misconstrue the Constitution and in particular the provisions which this House is being asked to amend.

MR. KUBO: On a point of order, Mr. Speaker, Sir. We expect to be told by the Attorney-General the reasons why he has brought this Bill. But now he is debating it with an outsider who is not even an hon. Member of this House. He is replying to views that have not been presented to this House. Can he now tell us the reasons why he has brought this Bill instead of replying to people who are irrelevant to us?

THE ATTORNEY-GENERAL (Mr. Muli): Sir, perhaps we need you guidance here. Is hon. Kubo trying to frame my speech? Is he trying to show me when and in what manner I should introduce the Bill? I would like your ruling here Sir.

MR. SPEAKER: Hon. Members, my ruling is that, let us n continue with the today's Business.

THE ATTORNEY-GENERAL (Mr. Muli): Thank you very much, Mr. Speaker, Sir. Contrary to what the Chairman of the Law Society of Kenya says, that this House is being asked to tamper with the tenure of office of the members of the Public Service Commission or even the Judges of the High Court——

MR. ANGATIA: On a point of order, Mr. Speaker, Sir. Mr. Speaker, Sir, you did make a ruling that we get on with the business before us. If the Chairman of the Law Society of Kenya and the clergy issued press statements, the Attorney-General has the liberty to also issue a press statement outside Parliament in reply to their allegations. Can he get on and explain to us why the Constitution should be changed? He can only reply to what we say about this Bill.

MR. SPEAKER: Order! Will you kindly allow the hon. Attorney-General to move the Bill the way he prefers?

THE ATTORNEY-GENERAL (Mr. Muli): Thank you Mr. Speaker, Sir. I do not see why there is excitement when I refer to what the Chairman of the Law Society of Kenya said. If he misled the public, I have the right to correct him. What is wrong with that?

So, the Chairman of the Law Society of Kenya should read the Constitution and the Amendments carefully before he can go to the—

MR. MANG'OLI: On a point of order, Mr. Speaker, Sir. My first point of order was that the Attorney-General should use the microphone so that we can hear him clearly. The microphone he is using now has occasionally been used by the Minister for Finance during the Budget Day and we have been hearing him so well. We do not know why he is finding it difficult to use that microphone? We would like to hear him clearly.

THE ATTORNEY-GENERAL (Mr. Muli): I do not know whether it is only Mr. Mang'oli who cannot hear me clearly or whether it is this microphone which is not working properly. Should I put these two microphones together to be heard clearly?

(The Attorney-General put the two microphones together)

MR. WAMALWA: On a point of order, Mr. Speaker, Sir. The Attorney-General said that the Chairman of the Law Society of Kenya referred to the issue of the Members of the Public Service Commission. The Attorney-General says that that provision was not in the Bill. In the Memorandum of Objects and Reasons of this Bill, which is appearing on page 250, states here categorically—

MR. SPEAKER: We can raise points of argument later on. Let us wait for him to finish Moving the Bill.

THE ATTORNEY-GENERAL (Mr. Muli): I will now introduce the Constitution of Kenya (Amendment) Bill. Firstly, I would like to draw the attention of the House to what they know very well - the actual clause 3 of the Constitution of Kenya, and not the Amendment. In Chapter one, clause 3, it states as follows:-

> "This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

The point I would like to make here comes under section 47 which is provided for in that clause. Section 47 of the Constitution goes on to give Parliament the power to amend the Constitution. It provides this in clear terms. Section 47 (1): states that:-

> "Subject to this section, Parliament may alter this Constitution."

So, Mr. Speaker, Sir, this august House is given the right, by the Constitution itself, to alter the Constitution when it deems fit to do so. In the same section, Section 47, protects and safeguards the sanctity of this Constitution. We know that it is the substantive law of this land. It is the primary law of this land and all other laws are subject to it and stem from it. It is, therefore, agreed that to amend the Constitution, matters that are to be amended must be of importance, necessary and in the interest of the nation as a whole.

So, coming to this House with amendments of this nature, which I am about to mention, we as the Government have considered very carefully and have actually seen them in practice and we have come to a clear conclusion that the amendments are necessary. That is why we have brought them to Parliament. I have not brought these amendments here as an individual, but I am the one who drafted the Bill. Government has found the amendments to be necessary and of importance to such an extent of bringing them to this House for you to invoke the powers conferred upon you by Section 47 of the Constitution to amend this Constitution.

THE ATTORNEY-GENERAL (Mr. Muli): ctd:

So, we do not rush to tamper with the Constitution as we are being accused of. We are beinging about the amendments to improve and assist the administration of which the Government is entrusted to administer. So, the idea that we have brought the minor amendments to tamper with the Constitution must be done away with right at the beginning.

The amendment that I would like to start with is the one which seems to have raised a heavy hullabaloo. I will like hon. Members to look at Section 47 of the Constitution and go through it before I introduce the actual amendments. They will be found at the back of the Bill on page 251. To start with, the fundamental rights of the individual are guaranteed under what we have been knowing as early as the days of Magna Carta - the Bill of Rights. The rights of the individual are so guaranteed in our constitution except in certain matters. Section 72 starts off by giving that protection, and states as follows:-

> "No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-"

That liberty can only be removed in certain limited matters that are specified in the Constitution itself. You cannot deny an individual that liberty, otherwise when that is provided for. Over the page, you will see a list of up to sub-section j, enumerating matters under which a person may be denied his liberty. They are as follows:-

(a) in execution of the sentence or order of a court, whether established for Kenya or some other country, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(c) in execution of the order of a court made to secure the fulfilment of an obligation imposed on him by the law;

(d) for the purpose of bringing him before a court in execution of the order of a court; and

(d) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the laws of Kenya;

END H.....

THE ATTORNEY-GENERAL (Ctd.):

Mr. Speaker, Sir, I would like to emphasize that and to take that notion right through as we proceed to discuss the amendment I am about to introduce. There are other matters which may not be relevant but go up to part (j) as I have said. Those are the only matters for which the liberty of a person may be denied. For the purpose of this amendment, I would like the notion under (e) to be carried along and I quote:-

> "Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya."

So, if a person has been reasonably suspected to have committed an offence, or being about to commit an offence, that liberty can be denied of him. Therefore, he is denied that liberty under section 72 of the Constitution of Kenya. What then happens to that person? If you look at sub-section (2) of section 72 of the Constitution, it provides that:-

> "A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons of his arrest or detention."

I would like the notion of "as soon as reasonably practicable" to be indelible in the hon. Members' minds because that is the operative point right through the amendment I am about to introduce in that section. This means that if a person has been arrested for having been suspected of committing an offence, or about to commit it, he must first of all be informed "as soon as reasonably practicable" why he has been detained and then the other matters follow.

The amendment is about to come in sub-section (3) - after that person has already been informed of the reason of being arrested or detained - and it says:-

THE ATTORNEY-GENERAL (Ctd.):

"A person who is arrested ~~x~~ or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence---"

As you will remember, I said that we should keep in mind the notion of "reasonable suspicion of having, or about to commit an offence". That provision is quoted word for word ~~xx~~ ~~xxxxx~~ in sub-section (3) as I have just read out. What happens then if such a person is not released immediately? He shall be brought to court as soon as reasonably practicable. I said that this phrase will recur over and over and the notion must be kept in mind. ~~It~~ Therefore, it does not mean---[illegible] This is where I take arms with the chairman of the Law Society of Kenya for interpreting the Constitution wrongly and even to publish for the whole world to read, a wrong provision which is not one of our constitution's requirement. I have to take arms with him because that is not to say that a person must be brought into court within 24 hours. That is not a ~~constitution~~ constitutional requirement at all in our law. I ~~xx~~ will repeat, for the purpose ~~f~~ of clarity, that a person who has been arrested or detained must, as soon as reasonably practicable, be told why he has been arrested or detained. He must also, as soon as ~~xxxx~~ reasonably practicable be brought before court. That is our constitutional law.

It is only ~~then~~ when he cannot be brought to court within a reasonable time, should he remain still in detention ~~of~~ for 14 hours or beyond 24 hours. I would like you to look at the provision and see what it says because that is where the misconstruction is and it is where the damage has been done.

THE ATTORNEY-GENERAL (Ctd.):

It says in part:-

"---and where he is not brought before court within twenty-four hours---"

It does not say anything else except the burden of proof to show that he has been brought before court "as soon as ~~xxxxxxxxx~~ reasonably practicable" - not within those twenty-four hours - will depend on the person detained." What this means is that this person must be brought before court as soon as practicable. But the if that is not so, the burden of proving that he was brought to court ~~beyond~~ beyond the period of twenty-four hours ~~x~~ goes back to the person detained.

So, in this amendment we are trying to introduce is trying to retain the period of twenty-four hours for what we call minor offences, or in other ~~x~~ words, misdemeanours. Those are the offences which carry penalties below life imprisonment. But, in the an offence carrying life imprisonment or ~~xxfx~~ a death sentence---Let me mention the offences that carry a life or death sentence. They are treason and ~~allied~~ allied offences, murder and robbery with violence, and they carry a death sentence while the misdemeanours do not. So, we still require that the misdemeanour offenders be brought before court within reasonable practicable time. If the time exceeds twenty-four hours, then the onus of proving that one was brought ~~beyond~~ beyond a ~~xxx~~ reasonable time - not within twenty-four hours; it can be beyond twenty-four hours - is on the person detained.

The amendment we are trying to make is to separate the two categories of offences - misdemeanours and felonies which carry a death sentence. The reason is quite simple and it is straightfoward.

THE ATTORNEY-GENERAL (Ctd.):

I would now like to give illustrations of the two categories that I have mentioned. Before I do that, let me mention that in the case of felonies, the idea or anyone trying to advance an argument that a person arrested for a felony can be brought before court within twenty-four hours has never happened and I cannot foresee it happening. Therefore, that argument does not hold water. Take for example, a murder case.

END I....

if a person has killed another one with malice, or aforethought, he may be caught within a short period after the actual commssion of the offence. But you cannot simply take him to court. What offence will you charge him with?

Mr. Speaker, Sir, there are elements which must be established in order for an offence of murder to be constituted. First of all, since somebody has been killed, you need to carry out a post-mortem examination. This will enable you to determine whether death was caused by way of, for instance, stabbing. Now, that takes time; it cannot be done within 24 hours.

There are also analytical examinations to be carried out, such as blood tests. The alleged murderer may not have been caught on the spot committing the offence. So, we must have blood tests to confirm that the suspect has committed the offence. There must be what we call prima facie evidence to support a charge of murder. This evidence cannot be collected within 24 hours. Therefore, we feel that in order to remove the presumption that a person who detains another one must prove that he has not exceeded a reasonable time, a period well over 24 hours is necessary. But that does not mean that if the necessary evidence is available within a shorter period, a policeman should continue detaining the person.

I must state straightaway that this amendment does not give anybody, includi g the police, permission to detain arrested people for more than is reasonably practicable. But in the case of a felony, evidence cannot be easily gathered. So, a period of 14 days is required. However, this is not to say that you must detain the suspect for 14 days. That would be a wrong interpretation of this amendment. You must take a suspect to court as soon as is reasonably practicable. But if you have not gathered all the necessary evidence, and you are asked why you have detained a suspect for 14 days, you can prove that circumstances justified it,

THE ATTORNEY-GENERAL (CTD):

and you will be absolved of the burden of proof.

Mr. Speaker, Sir, take the case of ~~x~~ robbery with violence, where you have several robbers involved. They have robbed, for instance, somebody in Mombasa and scattered; some escape in a plane, others in a train and others in a bus. You happen to have caught only one of them in Mombasa. You know there are others who are on the run. Now, is it reasonable to charge that person with the offence of robbery with violence when others are still at large? Take, also, the case of cattle ~~rf~~ rustlers - and this is why we have brought this particular amendment. It is true that we have cattle rustlers, who are attacking manyattas. It is taking us upto even two weeks to look for them. A lot of activities, including killings, are taking place. You may catch one and wound ~~another one.~~ the other. ~~But,~~ Mr. Speaker, Sir, you will agree with me that 24 hours within ~~xx~~ which we are being asked to take such people to court is not reasonably practicable. Consider, also, that some people within the cattle rustling areas are injured and taken to ~~xxx~~ hospital by aircraft; others ~~xxx~~ may have been injured seriously, or even maimed. The cattle rustlers are still at large, but these people cannot speak so as to provide ~~xx~~ clues of what happened. Yet, we are being asked to take such suspects to Court within 24 hours. That is not proper administration of justice. We have to do proper investigations; the police have to follow up the matter until, perhaps, they have good evidence to support a charge of robbery with violence. Cattle rustling is more or less a war, because guns are involved in it. That is why I am saying that the main reason of bringing this sort of provision is because we are having a lot of difficulties in dealing with this serious felony. So, 24 hours is not enough period to carry out investigations into it.

If we take an example of treason, we find that this offence is not hatched overnight. It is a well-planned matter to commit a reasonable offence, such as the overthrow of a government, assassination,

THE ATTORNEY-GENERAL (CTD):

and so on. There are several offences allied to treason. Now, the mastermind of such a plan may not be ~~xx~~ easily found. Perhaps, a lot of seditious documents have been 'floated' everywhere. They ~~x~~ plan may not have been properly hatched out. One person may have been caught. But, Mr. Speaker, Sir, you will agree with me that investigations into a matter like this one cannot be completed within 24 hours. It is in connection with these type of offences that we are saying we need a little bit more time before the presumption on after how long somebody should be brought to court can be rebutted.

Mr. Speaker, Sir, I would now like to go through the amendment as quickly as possible. Before I do so, I must repeat that the amendment does not give the police, or anybody, a licence to detain an arrested person for 14 days before taking him to court, if such a person can be taken to court earlier. The operative words are, "as soon as is practicable". The word "practicable" may not be a relative one, but I would hate to think that this amendment should be construed as giving the police a licence to detain any arrested person for longer than is necessary before taking ~~xx~~ him to court.

So, in the case of a felony, the amendment is enlarging that part of Section 72(3) - I would like you to look at it - to read:-

"(3) A person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, of being about to commit, a criminal offence,

and who is not released, shall be brought before ~~x~~ a court as soon as is reasonably practicable;"

That is the positive aspect of it.

END J

THE ATTORNEY-GENERAL (ctd.):

Now let us see the negative aspect.

> "... and where he is not brought within twenty-four hours of his arrest or from the commencement of his detention ...

the following words should be inserted:-

> "or within fourteen days of his arrest or detention, where he is arrested or detained upon reasonable suspicion of his committed or is about to commit an offence punishable by death;"

and then continue with the old sentence:-

> "the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable ... shall rest upon the person who is detaining that other person."

That phrase I have used was inserted in sub-section 5 of the Constitution only last year by this august House. We inserted it so that the offences which carry a death sentence - felonies - shall not be capable of being given bail; they shall not be bailable. You will remember that is the extension of our principle. No bail can be given to felony suspects.

Similarly, Mr. Speaker, we are submitting that the period needed to investigate felonies is much longer than that needed to investigate misdemeanour. Therefore, a longer time for the investigation of such cases should be permitted. This means that all that we have seen in the newspapers, that we are licensing people to be detained before they go to court within 14 days, is not correct. The principle still remains that a person who has been arrested or is detained, must be brought before a court within a reasonable time, and if he is not brought within that time, this must be explained. In the case of a felony, this should be within 14 days, and within 24 hours in the case of a misdemeanour.

So, Mr. Speaker, Sir, that is the proper construction of that section, and I invite the House to accept it as the

THE ATTORNEY-GENERAL (ctd.):

correct construction, and hon. Members should not be misled by what has been expounded in the Press or elsewhere. Hon. Members have gone through that particular provision rakk with me rather patiently, and I hope that I have made myself quite clear in order to dispel the myth of what misleading proposition was given.

Mr. Speaker, Sir, the next amendment touches on certain offices. I will start with the offices of the Public Service Commission because it has got a longer list of amendments. We are dealing with section 106. This has been reproduced on page 252 of the Bill. I hope hon, Wamalwa will listen to this because he was trying to attack it.

Section 106 of the Constitution creates the public office known as the Public Service Commission, and its members are also mentioned. The tenure of office of the members of the Public Service Commission is provided for under sub-section (5), which states:-

> "Subject to subsection (7), the office of a member of the Commission shall become vacant-
>
> (a) at the expiration of three years from the date of his appointment; or
>
> (b) if circumstances arise that, if he were not such a member, would cause x him to be disqualified to be appointed as such."

Take is from me that the tenure of office of a member of the Commission is three years. In the course of the three years, or an extended period of three years, if a person becomes seriously ill and is unable to function because he is seriously ill, and is in hospital, in order to remove him in the course of that three years or extended three years or two years, the Constitution provides that there must be appointed by the President a tribunal to investigate his inability to function or the mis-

THE ATTORNEY-GENERAL (ctd.):

conduct he has committed. First of all, before the President appoints the tribunal, he has already been satisfied that that person is unable to function or has committed a misconduct. That is why he appoints a tribunal. The tribunal will then continue to investigate when it is very obvious, in the case of inability, that someone has fallen ill and is unable to function. In the case of a misconduct, the commission is obvious. Then a tribunal has to look into all these matters and report back. I say this is contradictory, inconsistent, and untenable with the rest of the Constitution, and it should be removed.

Mr. Speaker, Sir, I would like to refer you to Section 24 and 25 of the Constitution. These are the vested powers of the President in the Constitution. Section 24 states:-

> "Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointment, shall vest in the President."

This is mandatory since the word "shall" has been used. There is nowhere in the Constitution where that power has been delegated to any other person.

Section 25 states:-

> "Save in so far as may be otherwise provided by this Constitution or by any other law, every person who holds office in the service of the Republic of Kenya shall hold that office during the pleasure of the President."

END K.

THE ATTORNEY-GENERAL (Contd.):

Mr. Speaker, Sir, that again is an absolute vested power under Section 25: "Any Officer, including myself, holding a public office holds that office under the pleasure of the President". There is nowhere in the Constitution that power has been delegated to anybody else. Now, Sir, even using the layman's language that he who hires must have the power to fire, it is quite as simple as that. He who hires must have the power to fire.

What Section 106 does, Mr. Speaker, Sir, is to cut short those powers of the President and say that although you hold that office during the pleasure of the President, nevertheless, under Section 26, I refer the question of your removal to the Tribunal. That is not a delegation. I refer the matter to the Tribunal to determine. I submit that that is a contradiction. It has never happened with reference to a Tribunal, and I cannot foresee it happen in any near future. So, why have a sort of a provision in our sacrosanct Constitution which is a dead duck?

Mr. Speaker, Sir, you will remember last year or two years ago when I was moving an amendment to Section 109, removing that provision dealing with reference in respect of the Office of the Attorney-General, I used the phrase "similar provisions were dead duck". They have never been used and they will never be used. Leave aside the question of contradictory or inconsistency which is in itself null and void, as a matter of fact, these provisions are null and void this provision because they are inconsistent. If you remember, Mr. Speaker, Sir, I did start by referring you to Section 3 of the Constitution which says, and I quote:-

> "This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

I submit, Mr. Speaker, Sir, that within the Constitution, that that is that other law which is now contradicting the provisions I have referred to. I also submit, Mr. Speaker, Sir, that those provisions will do more harm than good if they remain as purely flowers which cannot be used while this august House has what we call "the mopping powers" to remove what cannot be inconsistent -

AN HON. MEMBER: "With those few remarks, I beg to move".

THE ATTORNEY-GENERAL (Mr. Muli): No, I have to go on. I have got another one hour to go.

MR. SPEAKER: Carry on, Mr. Muli.

THE ATTORNEY-GENERAL (Mr. Muli): Now, Mr. Speaker, Sir, I would like to submit that provision, tied up with provision of Section 62 of the Constitution, that deals with similar provisions, and all those similar provisions are in respect of offices held by the Judges of the High Court and the Judges of the Court of Appeal.

But before I come to that, Mr. Speaker, Sir, I would like to mention that Section 61 of the Constitution does provide that the appointment of Judges is by the President on the advice of the Judicial Service Commission, and the provision is provided for under that Section in the event of an acting appointment, removal and so on.

Mr. Speaker, Sir, I submit that the provisions of that Section which we are removing paragraphs 3, 4, 5, 6, and 7 are purely a duplication. In other words, we are creating another Tribunal for the purposes of re-examining the question of removal of a Judge when there is already another Tribunal which advises the President on the appointment of Judges and matters related thereto.

So, in addition to what I have said in relation to Section 106, even this Section affecting the Judges is even worse because it duplicates another Tribunal which is the Judicial Service Commission, and to that extent, with a duplication, it is inconsistent and contradictory. I submit that those provisions are not relevant and should be removed.

So, Mr. Speaker, Sir, although I said I will go on for one hour, it is not so. I would like to finish up now by tidying up of another little amendment which is provided for within the actual little Bill, and that is really to regularise Clause 3. This is to regularise the offices to which the Judicial Service Commission may make appointments.

You will remember, Mr. Speaker, Sir, that we did not have the Chief Magistrate time back, the Principal Magistrates and so on. So, these are all newly

THE ATTORNEY-GENERAL (Contd.):

created offices, and in order to enable the Judicial Service Commission to make appointments in respect of the Chief Magistrates and the Principal Magistrates, that amendment is brought. It is purely a consequential amendment.

Now, coming back to the Bill, Mr. Speaker, Sir, we are proposing to this House the amendment of Section 61 of the Constitution so that we are removing a phrase which is within the Bill, subject to Sub-Section 62(7) of Section 6. It is a "mopping" consequential.

Mr. Speaker, Sir, Clause 3 is the amendment to Section 62 of the Constitution by removing sections 3, 4, 5, 6 and 7. Those are in respect ~~to~~ 5/6 reference to the Tribunal the question of removal of a Judge only on the question of infirmity or misconduct. The power to remove him at any time arises, but there is reference in case of infirmity or misconduct.

Now, we have also discussed Clause 5 at length, dealing with that removal of the stricture of the 24 hours extending it to 14 days in respect of felonies, and Clause 106 deals with amendments proposed by repealing sub-paragraph 6, 7, 8, and 10 of the Constitution.

Mr. Speaker, Sir, I do not think I can be of any further assistance to my hon. Members. I think I have tried to explain, and I think I have also discharged the onus which is upon me in respect of Sections 62, 72 and 106 of the Constitution.

With those few remarks, Mr. Speaker, Sir, I beg to move.

(applause)

End L.