



EAST AFRICAN COMMUNITY

Official Report of the Proceedings of the East African Legislative Assembly

27TH SITTING – FIRST ASSEMBLY: THIRD MEETING – SECOND SESSION

Thursday, 22 May 2003

The East African Legislative Assembly met at 9.00 a.m. at the Chamber of the Assembly, Ngorongoro Wing, Sixth Floor, AICC Complex, Arusha

PRAYERS

[The Speaker, Hon. Abdulrahman Kinana in the Chair]

The Assembly was called to Order.

MOTION

Ms Ovonji-Odida (Uganda):
Seconded.

THE LAWS OF THE COMMUNITY (INTERPRETATION) BILL (2003)

(Question proposed)

Mr Jared Kangwana (Kenya): Mr. Speaker, Sir, I beg to move_

Mr Jared Kangwana (Kenya): Thank you, Mr. Speaker, Sir. If I were asked to name the order of priority of Bills, I would have started with the Bill that has been presented to this House; that is the Acts of the East African Community Law, and the second one would have been this particular one. I say that because those two pieces of legislation lay the foundation for the procedures, in the first instance, and for the interpretation of the laws of the Community in the second place. But as it were, we never followed that order.

THAT, this Assembly:

TAKING COGNISANCE of the provisions of Article 59(1) of the Treaty; and

PURSUANT to the provisions of Rule 64(5) and (9) of the Rules of the House;

DO NOW RESOLVE to grant leave to the Chairperson, Standing Committee on Legal Rules and Privileges, to introduce a Private Member's Bill entitled "The Laws of the Community (Interpretation) Bill, 2003.

The Laws of the Community (Interpretation) Act, 2003, which is in the form of a Bill details the general provisions and other details of what certain words that will be used in this

and subsequent Acts of this House will mean.

If you look at part 1, there is a long list of definitions of all the words that will generally be used in Acts. In fact, it takes about seven pages of words that are defined, so that when a member is using a word in relation to any Bill or Act, the member and the House will understand what that word means.

Part 3 provides definitions of rules of interpretation in an enactment, which apply to the construction of provisions of any Act. It also will detail what grammatical forms Acts should take, what rules relating to gender and numbers will look like, so that members, when using certain expressions, will be clear as what that means.

Part 4 provides details as to the assent of Bills, the numbering of Acts, words of enactment, how the sections will be divided, how the Acts will be published, when the Acts will commence and what publication of an Act and its commencement mean and so on and so forth.

This proposed Bill also provides for the procedure to be followed in the passing of Bills. That procedure at the moment has been basically derived from the Treaty and the Rules of Procedure. But we are now passing an enabling Act that will provide details of how a Bill becomes law.

The House will see that from part 5 it is provided that there will be a procedure for the preparation of assent copies, the submission of copies of assent to the Heads of State, presentation of the Bill for assent under Article 63 of the Treaty, the numbering, what happens to original

copies and the publication by the Secretary General.

Part 6 of the Bill provides what is known as subsidiary legislation. This Bill will provide details as to the publication of subsidiary legislation, commencement of subsidiary legislation, retrospective operation of subsidiary legislation and the construction of subsidiary legislation and Acts done under subsidiary legislation when they are deemed to be done under the enabling Act.

This Bill also provides details as to the revocation and amendment of subsidiary legislation and the provisions with respect to power to make subsidiary legislation.

This is a long Bill, and I request members to take their time and go through it because they will realise that it is the longest Bill that we have presented to this House and, therefore, we will expect substantive contribution from members.

Therefore, the necessity of this Bill is obvious on the face of it. This is because it is going to be our 'Bible' or our 'Koran', on how the House will conduct itself in passing Bills, and it will also provide definitions- a dictionary in that respect- of what each word that is used in an Act or a Bill will mean.

With those remarks, I would like to divert from the Bill a bit and refer to the Rules. I did comment, this week, on the provisions relating to Bills that have been presented in one Session and go over to the next Session. I indicated at that time to the House that there are no specific provisions that would make the Bill lapse if it is not completed within one Session. Should that turn out to be the case, however, it

is the intention of the Committee on Legal, Rules and Privileges to re-submit these Bills at the next Session. But at the moment, the Rules do not bar us from doing that. Therefore, I would request members to support this Motion.

The Counsel to the Community, (Mr Wilbert Kaahwa) (Ex-officio): Thank you, Mr. Speaker, Sir. I must admit that I am not well positioned to debate the Bill as it is, and I thought that at this stage it goes to the Committee. But there is one particular provision that strikes me, and which I have to point out in the first instance.

As soon as I opened the first pages, it struck me because it is a matter that is likely to give rise to some controversy. This is, with due respect to the Chairman of my Committee, within part 3 of the provisions, and specifically on the item titled 'Rules as to Gender and Number' on page eight of the draft Bill. With your permission, it reads:

"In an enactment_

- (a) words and expressions importing the masculine gender include the feminine gender; and
- (b) words and expressions importing the feminine gender include the masculine gender."

Mr. Speaker, Sir, as I have always stated, when this august House is legislating, it behoves us to take into account what is contained in the supreme law of the Community, and that is the Treaty. I would be happier if we followed the format used in the Treaty when referring to matters pertaining to gender.

Mr Kangwana: Mr. Speaker, sir, first let me put on record that as Hon. Marando said yesterday, we had referred to him, as a Committee, the duty to produce this Bill. The Bill was subsequently given to a draftsman, Mr. Obel from the Republic of Uganda who has been helping us, whom I believe works in the Ministry of Justice and Constitutional Affairs of that country. The issues raised by the Counsel will be appropriately addressed when this Bill is referred to the Committee of Legal, Rules and Privileges.

Secondly, the issues will also be adequately addressed when the House meets as a Committee. So, we look forward to members' contributions, and I anticipate with excitement the contributions that will come from the Counsel to the Community.

The Speaker: Honourable members will be pleased to note that in recognition of his usefulness to the Committees, the House Committee on Legal, Rules and Privileges has extended an invitation to hon. Kaahwa as the Counsel to the Community to be attending to the Committee's proceedings. So, I think he will find himself useful, and especially during this Motion.

(Question put and agreed to)

BILLS

FIRST READING

THE LAWS OF THE COMMUNITY (INTERPRETATION) BILL (2003)

*(Bill read the First Time and
committed to the relevant House
Committee)*

MOTION

THAT THE REPORT OF THE SELECT COMMITTEE ON THE RESIGNATION OF MR WERUNGA BE ADOPTED

(Debate Continued from 21 May 2003)

Mrs Rose Waruhiu (Kenya): Mr. Speaker, Sir, I beg to move that the Report of the Select Committee on the resignation of Mr. Werunga be adopted.

Hon. Amb. Isaac Sepetu (Tanzania): Seconded.

(Question proposed)

Mrs Waruhiu: Mr. Speaker, sir, on the 20th of February this year, the House set up a Select Committee. On the 11 of March 2003, the Select Committee gave a progress report to the Assembly and on Tuesday, 20th May 2003, I had the honour to present this report on behalf of my colleagues, Hon. Amb. Isaac Sepetu and Hon. Sarah Bagalaaliwo.

In presenting the report, I took the opportunity to both try and summarise the report and also to highlight specifically what we thought were the challenges and the recommendations. It is now my view that this report is a property of the House, and having done what I did, I think that it is only fair that we do more listening today that speaking. However, I would like to say one or two things, just to ensure that the members assist the work of the Committee and treat the report in a way that it will have some impact on the matters that we have referred to in this report.

In our findings, we have pointed to the issue of how the plans were made for the setting up of the East African

Legislative Assembly. We have referred to the fact that in our view at that time, no one could have realised the work and the scope that would be required from the Assembly, and that it is only becoming apparent now. Right from the start we therefore looked out for any background or any reference to the issue of separation of powers, and our comments on this issue run throughout the body of the report.

We then moved to the subject that led to the setting up of the Committee. This matter is almost integrated into the growth of the Assembly, both because the Assembly was new and the Clerk was new. And the problems started surfacing at the first meeting during the seminar at Lake Manyara. That is when we all got to know one another.

We spent three days in a seminar, and before we left Lake Manyara, it was already obvious that there were some difficulties. I am mentioning this deliberately, hoping that members will pick up these issues and direct the decisions on the fate of this report to the emerging issues. So, I am emphasising the fact that the problems emerged from our first encounter.

We had all arrived from our Partner States, we did not know one another, but immediately, we had common issues, which we felt could not be dealt with. I am only referring to that issue in terms of the sequence that the problem emerged from the first meeting and continued right through to the end.

Therefore, the issues of why members thought they could appoint the Clerk and then they found they could not do it, why members felt they had a right to participate in the short-listing and this process was stopped, and we point to

the problems in the appointment of the Clerk substantively at the beginning.

I am very confident that members have had time to read this report because it is very short. But the areas of conflict in the matter of the Clerk had substantial consequences because in the report, we point out the fact that if the Clerk was unable to get the support to work for the House in the way he felt was deserving its independence, the consequence of that was that the House then did not get the service it required.

The arguments we have mentioned in the report range from major conflicts to do with the availability of staff to brief members in Committees to what could almost be called very petty arguments. We included them just to illustrate the fact. There was an argument, for example, on sitting arrangement of the House. An issue would arise in a meeting to discuss why the Clerk sat in the Hall and after the podium. This may sound petty, but we have included it just to show the range of the arguments; from the very major arguments about whether the Clerk can authorise expenditure to why the Clerk wants to sit next to members in the Hall.

Another issue, which I do not think we detailed, had to do with whether the House should be sworn in one room or another, and the last function of the visit of the former President of the Republic of Kenya. There was an argument on where the tree could be planted and who was going to pay for it. So, some of these are issues. As I said, you can collect the information from the documents.

On the resignation, we have emphasised the fact of the rapidity within which this process was finished.

The resignation was dealt with, with speed, and again we have pointed out to the members that here are two persons who have a history of disagreements that was obvious to the staff, but the resignation letter and the acceptance make no reference at all to this long history of acrimony.

The Committee discussed at great length what to do. In fact, when we first started our work, we thought, now what is the issue here? The Clerk resigned and wrote a very good letter and the response to him was to commend him for how hard he had worked all alone to assist in the setting up of the House.

I am sure members will see our difficulty in trying to look to recreate this history. It was possible for somebody to challenge us and say, "What are you doing then if there is no complaint on either side, what is your Committee doing?" Then we thought, this is not about complaints. This is about an incident, which has brought to the front exactly the difficulties that are going on. We did hear from Members on this issue, and that is why I am repeating this issue because our comments on it are quite brief.

All we have said is that we found that issue very difficult to understand. We do know, because both the Clerk and the Secretary General talked to us about the meeting they had after this letter, but the matters they discussed should not necessarily occupy the House. If they were not able to put in black and white what exactly was going on, at least with the Committee, they shared with us to the minute details the meeting they had together after that. Again, this information is available.

Our conclusion, which I hope member will comment on, is that this whole incident became a pointer to underlying problems, and that is how we proceeded. It was very important, therefore, for us now to go into the structures to try and find out what it is that could be done to ensure that any remedies or any areas that need clarification can be clarified before we recruit a new clerk.

Mr. Speaker, sir, I spent a great deal of time, during my presentation, in going through the rest of the report. As I said in the beginning, it is very important to speak on this report with the intention of adopting it. But as we think about adopting it, may I humbly ask members that in putting down the recommendations we have done, we are mentioning very important issues just in passing. It is not for lack of time; we could have gone deeper, but the action required literally on each of these recommendations is a task on its own. This is where I feel that members should make their effort to come up with extra recommendations or clarification on how these matters could be dealt with.

We went as far as suggesting, in our conclusion, that the recommendations contain matters which have short term considerations and others are long term, but they also contain what we think is urgent. This House needs to discuss the process to be used in the pending business of recruitment of the Clerk. In other words, since the Rules are there, and we have said the Rules have brought conflict, and we have referred to the areas that are not clear and we are waiting to recruit the Clerk, even before we deal with the other matters, the House should discuss the process to be followed in recruiting the Clerk.

This House has stayed without the Clerk, and we have been very lucky that our Acting Clerk has performed his work with devotion, and we need to recognise that - (*Applause*). But we need to recruit the Clerk. We did not go into details as to why no temporary Clerk was sought from the Partner States. Again, these are the areas where the House should redirect itself.

Mr. Speaker, sir, I do not need to guide members. Our task was to give the House our findings, to make recommendations and to let the House debate and show the way forward. As I have said, one way forward we have pointed out is the pending matter of the recruitment of the Clerk.

When I tabled the report on Tuesday, I also made reference to documents, which we had placed in the Chamber on Tuesday. We moved those documents to custody for two reasons. One is that some of the documents were delivered to us right at the end, when we were literally binding the report, and a quick glance made us very uneasy in that they were now going to areas, which we did not have the time to exhaust.

For example, matters to do with the health of staff, including doctors' reports should be treated confidentially so we took the decision not to withhold the information from this House because we would like assistance in looking at what to do with private information.

There is no provision for the House to classify documents, but at the same time, we had this uncomfortable position where we have medical reports and private information on persons, which should not be made available. It is, therefore, our proposal that this information be referred to a

Committee that can then help us to sort out what information can be classified and what can remain public.

The second reason is probably more disturbing in that, as we said in our report under the heading of “Staff Matters”, which is on page 34, I would like to share with the House my own experience, and to say that when we talk about fear, we are reporting fear of other people. We are not saying we are afraid. If somebody says they are afraid, we can only report that they are afraid. It was therefore the finding of the Select Committee that there is fear within the Secretariat. It was not our responsibility to defend it or to examine it. But if a member of staff feels afraid, then it is our business to bring that to this Assembly.

I do not have an answer, but I have a concern that today we shall probably finish this report, go back to our respective countries, but we will not have solved this problem. And I want to say that there is anxiety, there are members of staff who are worried about being victimised, and there are others who feel that they may be intimidated. There is already curiosity about what it is that they brought to this Committee. I would like to end there and seek guidance on what to do about the documents, and what to do about the underlying reasons for this fear among the staff.

With those remarks, I beg to move.

(Question proposed)

The Counsel to the Community (Mr Wilbert Kaahwa) (Ex-officio): Thank you, Mr. Speaker, sir, for according me the first opportunity to debate on this report. This afternoon I am scheduled for other meetings relating to the Common External Tariff and the

further development of the Protocol on the Customs Union, a matter in which the House has been keenly interested. So, your giving me the first opportunity appropriately fits the bill of my programmes.

First of all, I would like to thank the Select Committee for discharging its obligations. This august House gave the Committee a task and it has reported. There are some circumstances where you have Committees, which do not report back. The fact that this one has reported and honourable members are able to debate their report is healthy for the growth and development of our organs and institutions.

Let me indicate the nature of my contribution. Although the Select Committee on pages 21 to 24 of the report dwelt extensively on the small role I played in the matter which triggered off its appointment, mine will not be a statement of self explanation because I appeared before the Committee in its probe and answered its questions.

Now, in its wisdom, the Select Committee has made recommendations after examining what we discussed. So, it is not my intention to appear as if I am making a statement of self-explanation. I rather stand here to urge this august House to look at this report from a wider context as we develop the integration process and the East African Community from its infancy, wean it to adolescence and later on to puberty and maturity, towards a political federation.

To me, the role of the Select Committee and the report it has produced before the House should be a learning process. It should be part of the growth and development as we

develop our organs and institutions and the Community at large, and as we implement the Treaty to the expectations and benefit of the peoples of East Africa.

The report in itself contains matters, which will appear to some of us to be positive, and negative to some of us. It is not my intention to go into those matters, as I have already stated. It is not my intention to applaud those areas that are positive or condemn those that are negative. This is the wider context I am referring to.

The report addresses a lot of issues. First of all, it addresses the key matter that triggered off the setting up of the Committee, that is the resignation of Mr. Murumba Werunga, a man I must point out I have known together with hon. Kaggwa since the year 2000, during the initial stages of initiating the implementation of the Treaty, going back to the meetings we used to have in Mombasa.

Apart from the matter of Mr. Werunga's resignation, the report addresses other matters like the provisions of the Treaty and its implementation. When I talk of the Treaty, includes the annexes of the Treaty, like the Staff Rules and Regulations and the Financial Rules and Regulations.

The report also dwells on a matter, which is key to our deliberations, the separation of powers. It is not worth my while, as I have already indicated, to talk about Mr. Werunga's resignation. My comfort in this is drawn from the recommendation of the Select Committee, which is contained on page 40 under item 8.1, paragraph (a), where the committee says: "The Select Committee considers that this issue should be closed." To me it appears closed. However, I have to

address matters pertaining to the Treaty, and this is the wider context I am talking about.

The Select Committee talks about restrictions contained in the provisions of the Treaty. As the hon. Chairman of the Council said yesterday, the Treaty as it is now is a basic document; it is our initial document in the integration process. If you allow me, I will read out something that I wrote for the African Journal of International Law:

"I regard the Treaty to be a basic document, which represents the broad consensus of the Partner States and peoples of East Africa. It is an enabling document which provides the basics for the development of dynamic co-operation in the social, economic and political fields as well as boosting the region's capacity as a solid bloc in its trade and other relations."

Now, this being a basic document, it is bound to have shortcomings here and there and people are expected to express misgivings here and there. But as we develop it, we note that we will have the opportunity to see these misgivings and how they can always be addressed in the appropriate context, just like some of the financial rules and regulations and staff rules and regulations are being addressed in the context of the study being carried out currently by a team of eminent persons. But it is always very healthy to point them out because that is how we learn.

On the matter concerning separation of powers, I must say that when you read the provisions of Chapters 3 to 10 of the Treaty, you find that there is a development akin to what appears within the context of separation of powers, as we have known them in the context of the sovereign states. But

during the first days of the Community, we have to develop them because the Community is not a sovereign state. We develop them by learning where there are positive and negative aspects.

Mr. Speaker, sir, I totally subscribe to the doctrine of separation of powers. If you recall, during the Second Sitting of the Assembly's First Session in Kampala, there was a Motion moved by the Chairman of the Council, urging all the organs and institutions of the Community to work together to develop the Community. I am on record as having talked about the separation of powers then. I proudly feel that it was I who first talked in this House about the separation of powers, and the Hansard will bear me out.

Further to that, I have also written on this matter on what I feel are challenges to the Community. I have written an occasional paper on this matter, which the honourable members may have had time to read. I have said that the achievement of the objectives of the Community will depend on how cohesive and co-ordinated its organs and institutions are in the discharge of their respective obligations.

Although the Treaty spells out the different functions of the organs with particular reference to establishment and roles of those organs, a primary or literal interpretation of the Treaty would indicate that the intention of the contracting parties, the Partner States, is that the organs and institutions should play their roles with one ultimate objective – development of the Community for the benefit of the people of East Africa. Therefore, the introduction and sustenance of a mechanism for cordial and collaborative interfacing and interrelationship between the organs

and institutions of the Community remains, to me, unassailable.

Now, what we have before us, even within the context of what I am calling a learning process, are challenges: how to manage the separation of powers within the context of the Treaty, even before we amend the it; how to co-ordinate efforts and how to work out those administrative and strategic arrangements for actualising the separation of powers without causing misunderstandings and undue infringing on institutional development. That is our challenge.

I feel that in this we have a forum. This House, during its Eighth Session on 19th February resolved to establish a forum where the organs of the Community would always sit to work out collaborative arrangements. We can face some of these challenges by actualising that forum.

Mr. Speaker, sir, having talked about the matters brought about by the Select Committee with regard to the Treaty and its limitations, and about the need to emphasise separation of powers, let me also talk about one matter that concerns my office.

As I have indicated, the Select Committee carried out its probe; I was interviewed and they made an opinion. The Select Committee has made a recommendation on page 42, recommendation number 8.2 (f), which reads: "The Counsel to the Community should be implored to perform its role independently and objectively."

Since I said this is not a statement of self-explanation, I am not going to appear as if I am being defensive. I just want to say that I happen to be a lawyer who is not within the definition of the "Devil' Dictionary". I am sure

my honourable Learned Friends may have had the benefit of referring to the Devil's Dictionary. It is one document written by one Ambrose Bierce that you find in our jurisprudential collections. According to the Devil's Dictionary, a lawyer is somebody adept at circumventing the law. I would like to say that, in my career, I have not fitted and do not fit within that definition.

The provisions of Article 69 of the Treaty and the Staff Rules and Regulations govern my service to the organs and institutions of the Community, and ultimately the people of East Africa. Article 69(1) says, "The Counsel to the Community shall be the principal legal advisor of the Community." My service is governed by that provision, the Staff Rules and Regulations and the Oath of Allegiance I took before the Council in the service of the Community. I take it that my service should be governed by integrity, maturity, intelligence, professionalism and objectivity. There are challenges in the discharge of obligations pertaining to that type of office, which I meet and deal with.

What guides me are those requirements of integrity, the highest traditions of the learned profession, which I am proud to belong to, objectivity, diligence, etc. I am comforted in this by a few tenets, for example, the tenet by US President Theodore Roosevelt in his 1903 State of the Union address where he said, "No man needs sympathy because he has to work far and away. The best price that life offers is the chance to work hard at work worth doing." That is what guides me. I do not want to sound poetic but the past has judged me, the present is judging me and the future will judge me.

So, the short point I am making now is that my resolve to serve this august House as one of the organs and institutions and the Community as a whole and ultimately the people of East Africa remains total, committed and *unbwogable*- (*Applause and interjection*).

Mr Ochieng-Mbeo (Kenya): Mr. Speaker, sir, is it in order for the honourable member to speak a language that is not in the dictionary of this House?

The Speaker: Order, hon. Mbeo. The word '*unbwogable*' is not a preserve for the National Rainbow Coalition (NARC) alone! (*Laughter*)

Mr Kaahwa: Mr. Speaker, sir, I had actually ended my contribution, but thank you for coming to my rescue, because it shows that the English language, like the Kiswahili language, is dynamic. The Kiswahili language, which hon. Kanyomozi and hon. Kawamara are now very conversant with, having had illustrious stints at Usa River recently, is very dynamic. For example, we never used to have the word 'basin' but now we have it and the word "glass" is now being used interchangeably with the word '*kioo*'.

Now, English is also a dynamic language. The word '*unbwogable*' which is an adverbial derivation from the word to 'bog' the meaning of which I am sure hon. Mbeo and hon. Marando know very well is a word that is gaining prominence in the English language. It was even used in the wake of the outcome of elections in Kenya on the English service of the British Broadcasting Corporation – (*Interjection*).

Mr Ochieng-Mbeo: Mr. Speaker, sir may I now inform the Counsel that the

NARC government has officially donated to the Community the word 'unbwogable' and you can now use it in the House - (*Laughter*).

Dr. Harrison Mwakyembe (Tanzania): Thank you, Mr. Speaker, Sir. May I begin by commending the three Members of the Select Committee for a job well executed? To me this is an excellent report, and I am happy that it set the requisite high standard for future Select Committees of this House. I do not expect any future Committee to go lower than this one.

When I was looking at the annexure, I realised that it is only the Chair and the members from Kenya who were interviewed. I do not see any member from Uganda or from Tanzania. I would need an explanation as to why only members from Kenya were singled out as the best source of information on a matter that has nothing to do with ethnic or national politics or affiliations.

Let me go straight to page 14 of the report. Below the page, in the last sentence, we are informed that Mr. Werunga was given his letter of appointment on the 24th of September last year. Of course we are not told the date when the letter was written. We are also told that Mr. Werunga tendered his acceptance letter on 1 October 2002. My concern here is simply to make the report much more coherent.

On page 15, we say soon after his appointment, which is after 24th September, he received three warning letters. But when you read below that, you realise that this is not the case because the first letter is dated 13th September, that is eleven days before his appointment. The second letter is

dated 17th September, seven days before his appointment. But of course the last letter is dated 25th September, just a day after his appointment. So, I simply wanted the record to reflect the reality. I would propose that the first phrase on top of page 15, instead of reading 'soon after his appointment' maybe we can say 'shortly before and after his appointment'.

Let me now turn to page 16 of the report. We are informed that Mr. Werunga wrote his letter of resignation to the Secretary General on 21 January 2002. We are also told that the Secretary General accepted the letter on the 28th of January, after the consulting with the Chairman of the Council by telephone. From this background, one can clearly see the following:

First of all, I can see the Secretary General's *mensrea* here, or his statement of mind, for handling a matter involving an extremely senior member of staff of this important Community organ by telephone as if it was an emergency. It is as if this guy had SARS; get rid of him quickly, he should go! Why by telephone when the resignation was in writing? This matter should have been handled in writing as well. This is the first thing one can observe.

Secondly, is the act by the Secretary General to by-pass the Speaker as if he never existed at all, the Speaker being the immediate boss of Mr. Werunga! It is really interesting to see such a kind of working relationship. (*Interruption*)

(*The Secretary-General rose to catch the Speakers eye*)

The Speaker: I would kindly request the Secretary-General, because it is likely that there will be many things

said about the Secretariat and him, to just take note of them and I will give you enough time to respond. Could you please take your time, be patient, cool down and just take note. I will give you time to respond. Please proceed, hon. Mwakyembe.

Dr. Mwakyembe: Thank you, Mr. Speaker, sir, for your sagacious ruling.

One can also see Mr. Werunga's ill-advised move from this background, to tender his resignation letter to the Secretary General. I did not expect that from a person of Mr. Werunga's background, who knows the procedure and who projected himself as defending the integrity of the House, to tender his resignation, not to the Council but to the Secretary General! I thought the Secretary General was simply a person to be given a copy, even the Speaker. But he ought to have sent his letter to the Council. So, I think this was a case of *voluntri non fit injuria*. He knew he was not in the good books of the Secretary General and he sent him a letter. It would be responded to with laxity, of course.

Thirdly, I think everybody is to blame on this matter. It is not only the Secretary General or Mr. Werunga. I have to be very frank here that even the Speaker cannot be exonerated from blame for not putting his foot down firmly. This is a Legislative Assembly. Its integrity is reflected, not only in its operations, but also even on the staff it has. If they can just be moved left, right and centre and we keep quiet without making the system realise that this is wrong, then we cannot enjoy the independence we always cry for!

The British fondly talk about their Parliament as being both omnipotent and omni competent. Why? Simply because it can make and unmake any

law, it can destabilise, modify or repeal any law; it can even interfere in a judicial decision. We are not near to that, but we are also a Legislative Assembly representing the will of more than 80 million East Africans, and this is why we must defend our independence with all the energy we have. I would have really loved to discuss even further on the mandate theory, but we do not have time for that. We are a House representing the will of the people of East Africa simply because we were elected by the legislators of East Africa, who have been directly elected by the people of East Africa. They enjoy the mandate of the more than 80 million East Africans.

From pages 23 to 29, the report thoroughly discusses the question of staff rules and regulations. I agree with the Select Committee's analysis, except what it proposes on page 27. It says, "Since Article 70 of the Treaty provides for staff of the Assembly, the only conclusion to be drawn is that the Assembly and the Court should each come up with staff rules and regulations, which should be submitted to the Council of Ministers for approval." That is what I do not accept, in respect of the Assembly. Why? I think it is important to put this matter in the proper perspective. Article 48(4) of the Treaty says, "The Council shall appoint a Clerk of the Assembly and other officers of the Assembly whose salaries and other terms and conditions of service shall be determined by the Council."

The Speaker: Could hon. Mwatela help me to establish whose telephone is ringing?

Mr Mwatela: Mr. Speaker, sir, I can only help the Chair by pleading with the members to check there is

anybody's phone which is on and switch it off.

Dr. Mwakyembe: Thank you, Mr. Speaker, sir. I was talking about Article 48(4) of the Treaty on the role of the Council to appoint the Clerk of the Assembly, and there is emphasis here that the Council shall determine their salaries and other terms and conditions of service. It is very specific there, and the reason is that this involves the charge on the finances of the Community, and of course they have got to have a say on that.

But what I want to emphasise here is that the Treaty, for the avoidance of doubt, goes further to explicitly provide the manner and the mode of getting these Assembly officers. It goes further than that, and it says in Article 49(2)(f), "The Assembly shall recommend to the Council the appointment of the Clerk and other officers of the Assembly." We encounter the word here 'shall'.

This means that this is a mandatory procedural requirement, and its very subject is specific. It is the Clerk and other officers of the Assembly, not any other officer of the Secretariat or the Community; it is only the Clerk and other officers of the Assembly who have a specific requirement. I do not see in the Treaty such specificity with regard to the other officers of the Community.

Let us take the case of the Registrar of the Court of Justice. Article 45(1) says, "The Council shall appoint the Registrar of the Court from among citizens of the Partner States, qualified to hold such office in their respective states." There is no requirement for the Court itself to suggest somebody.

Let us also take the case of the Counsel to the Community. Article 69(3) says, "The Counsel to the Community shall be appointed on contract and in accordance with the Staff Rules and Regulations and terms and conditions of service of the Community." You can see that he does not have security of tenure. He is really at the mercy of the Secretary General.

This probably explains some of the apologetic opinions sent to the Secretary General that was in the report, which really smacks of some kind of sycophancy. That is understandable because he is here on contract. Sometimes, you give an opinion exactly to please the boss. This is why the Select Committee correctly said that the Counsel to the Community must be implored to discharge his duty objectively.

Mr. Speaker, sir, in respect of the Clerk and other officers of the Assembly, there are two distinct provisions. The Council is the appointing authority and the Assembly is the recommending authority. One could ask; why these elaborate procedures regarding the Assembly staff? I do not think this one needs special knowledge in statutory interpretation to see why the staffs of the Assembly have been singled out. It is simply to guarantee the independence of this House. This is why they have a special procedure.

The independence of this House is also reflected on the independence of the staff of this House, both at a personal level and also at functional level. The Germans who can claim to be very much advanced and rich in the philosophy of constitutionalism call this principle *sachliche und personliche unabhaengigkeit*. I think Hon. Amb. Sepetu knows this very

well. It simply means personal and functional independence.

The independence we are accorded is simply in recognition of the fact that we are a very relevant institution within the theory of representative democracy. We are representing the wishes and will of the more than 80 million East Africans simply because we were elected by the legislators of East Africa, who were directly elected by the people of East Africa. We enjoy the people's mandate.

The second reason why we have a special procedure for the Clerk and other officers of the Assembly is that the Clerk of the Assembly has very special functions. He presides at the election of the Speaker. That is a very important function. He presides at the election of the Speaker or the Acting Speaker. Secondly, the Clerk administers the Oath of Affirmation to the Speaker. The Clerk also presides over the process to remove the Speaker. Those are very critical functions of the Clerk, and this is why his appointment must involve the full House. It is in this context that I see sense in the Assembly adopting its own staff rules and regulations, and not to take them again to the Council for endorsement because that would be defeating the spirit in the Treaty.

Mr. Speaker, sir, in the report we see a clear breakdown of communication between the office of the Secretary General and the Assembly. But let me be very clear that we are also partly to blame for this rift. Why? We have been looking at the office of the Secretary General, not as an office, but as an office of hon. Amanywa Mushega. I have reasons for that. We have personalised that office. The Secretary General is secretary to the Council and also to the Summit. But we have never

allowed this very critical link even to be a full member of our House Business Committee. We should blame ourselves for the breakdown.

As hon. Kaahwa has said, this report should be taken in its broader context. We have a situation here, which is pregnant with meaning, and we need a caesarean operation to see the factors behind it. Unfortunately, the baby is dead but the success of this operation lies in its post mortem value. This report simply amplifies that we need to put our house in order in many areas, including restructuring our House Business Committee, which is so critical, so that its membership is all-inclusive.

I would propose that our new House Business Committee should be constituted by at least one member from each Partner State, all Chairpersons of Standing Committees and the Secretary General. It should be the office of the Secretary General, so that when hon. Amanywa Mushega is not there, his Deputies must be there.

Mr. Speaker, sir, I know many members want to contribute to this Motion. Let me end here by supporting this Motion to adopt this report, but with the suggested amendments.

Ms Ovonji-Odida (Uganda): Thank you, Mr. Speaker, sir. I would like to share with the previous speaker in congratulating the Members of the Committee for completing this arduous task of interviewing various witnesses and compiling the report. The whole of last week as we were going in and out of the Clerk's office, we saw our colleagues laboured under the heavy responsibility that had been placed upon them by the House and I think they deserve to be congratulated for completing the report.

I would like to start off by saying that in my view, this report should not be about individuals, and the comments that I am making will not be about individuals. The issue facing the Assembly and the Community organs is not about hon. Amanywa Mushega but it is about the office of the Secretary General, and even more broadly, about the Secretariat. Likewise, in my view, it is not about the former Clerk, Mr. Murumba Werunga, but it is about the office of the Clerk of this Assembly, a key organ of the Community. So, I hope that as we have this debate, we will not focus on the personal differences, but we will look for a mechanism to enable these two organs to relate and enable the Community organs to grow.

Likewise, this issue, for me, is not about Kenya, Uganda or Tanzania. The position I will take will not be as a member from a particular Partner State, but as an East African. I am not here to defend the Secretary General either. That is not my job and I do not think it is the job of any of us.

Personally, I certainly have issues relating to the handling of that office, related to management by the incumbent. I have concerns about the relationship between the incumbent and individuals in this House, and I would like to see much more diplomacy and attention to issues. I would expect better public relations between the Secretary General and the Members of this House. This is because I believe it is important for each of us to address the offices that we hold professionally.

Having said that, I do have concerns about the report, which I hope can be taken into account by the members of the Select Committee, with a view to

possibly amending the report in order for me to feel comfortable with adopting it as a report to which I am party.

I would like to note that there are areas in this report where allegations are made. Many of these allegations are serious. For example, on page 9, the second and third paragraphs where it says, "The Members were already anxious to entrench themselves and to appoint Mr. Werunga substantively." That is an allegation of fact, and I would like to see it substantiated. Was there a formal decision taken by this Assembly that supports this position that could be quoted? On page 10, the second paragraph to the top, there is a reference to the struggle where it says, "The ground had been laid for a struggle between the Secretary General and the Assembly." Likewise, this is a very broad statement, which I would urge the members of the Committee to substantiate.

I would like us to look at this report, not as a report that is for today. In one of our previous meetings, we looked at the report on federation prepared in the defunct East African Community. This, too, should be a report that would be referred to in 30 years time. So, let it be a document that we can stand by and say that every allegation made in it is based on facts and we can stand by it.

There is another allegation on page 19, where it says, "The Assembly considers that the Secretary General was responsible for..." and various issues are laid out there. These too are very strong sentiments and need to be supported by facts presented in this very report. I think it is not enough for us to raise them on the Floor. Future generations will read this report and not necessarily look at our debate in

the Hansard to find the supporting information. So, I would seek that such facts are put in the document so that the report is complete.

Mr. Speaker, Sir, I would also like to differ with the interpretation of the Treaty in relation to the issue of separation of powers. I do not have to belabour that fact because the Counsel to the Community has talked about it. Under Article 66, the Secretariat is the executive arm of the Community and under Article 49(1) the EALA is the legislative organ of the Community. Under Article 23 the Court of Justice is the judicial arm of the Community. Under Article 14(1) the Council of Ministers is the top organ of the Community. There is separation of powers, but perhaps it needs to be strengthened. But we need to interpret the Treaty on what it says. So, this contradiction needs to be cleaned up so that the reports are based in what is in the Treaty.

In relation to the role of the Secretariat and the role of the Council of Ministers, I think what this Report brings out clearly is that there is a function and responsibility of the Council of Ministers, which is not being discharged. I think this is a step in the right direction, and this Report has helped us to identify this. The Council of Ministers as the top policy-making organ has that responsibility to ensure that the different organs, including the new organs like the Assembly, are given the space that the Treaty creates for them. This is not the role of the Secretariat but that of the Council of Ministers.

Mr. Speaker, sir, where reference has been made to the Staff Rules and Regulations, I think it would be helpful to cite the specific provisions being relied on and to analyse whether or not

those procedures were followed. There is a critique which is helpful of the existing Staff Rules and Regulations, have those been followed or not. We need some reference to them and some analysis as to where they were followed or where they were not followed; more specifically on the process of recruitment and relationship between the Secretary General and the Clerk, and the handling of the resignation of Mr. Werunga.

Finally on the issue of the staff, I think it would be helpful if we could have some comparison with other international bodies of this type. We have institutions like the EU and others, which we could refer to, to learn the relationship between the different organs. That comparative analysis could help us in charting the way forward as a young Community.

On the Rules and Regulations affecting staff, I would like us to have consultations with members of the Public Service Commissions of our Partner States - I believe the consultations of the Clerks of our National Assemblies were partly in that light - to get some advice about the handling of staff. But we also have Public Service Commissions that handle those issues at national levels. This Report could be informed by the manner in which staffs are handled by the Rules and Regulations relating to employees of governments under those various bodies. Thank you very much.

Ms Kawamara Mishambi (Uganda):

Mr. Speaker, sir, I thank the members of the Select Committee for all the work they did to ensure that this Report is tabled in the House.

Mr. Speaker, sir, the Report made some very interesting reading; I made sure that I read every part of it.

However, I had a problem with the title of the Report. It talks about the resignation of Mr. Werunga. Since this House constituted the Select Committee, the title of its report should be talking about the Clerk of the Assembly, rather than Mr. Werunga! The title should contain both the names, Mr. Murumba Werunga, to avoid any doubts.

Mr. Speaker, sir, after going through this Report I was perturbed because it was like an evaluation of the Secretary General and the Secretariat. I really wanted to know what happened when the Clerk resigned. I went through this Report, looking for the reasons as to why the Clerk resigned, but I did not find any. I would like the Members of the Select Committee to actually tell me why the Clerk resigned.

Mr. Speaker, sir, I had a problem in the facts in this Report, which is going to be adopted by this august House. Some of these facts should really be substantiated. For instance, there were some contractions. On Page 5 of the Report, it is said that the Select Committee was not able to contact Members of the Council for an exhaustive discussion. But on Page 6, it says the Committee met with some Members of the Council and this raises the question why not all?

Mr. Speaker, sir, when I read Page 9 of the Report, I wondered whether Mr. Murumba Werunga was not appointed for his professional experience. Is this something that this House was trying to get back at the Secretary General? Somewhere in this Report, it is stated that while we were in Zanzibar, the members were extremely agitated. But I do not remember a meeting where this agitation was put forward. So, this Report binds all of us on certain statements.

Mr. Speaker, sir, the report reads as follows on Page 11: "To entrench independence, the Clerk would insist on a process and that to the Secretary General manifested insubordination." I would be glad if the Select Committee would substantiate this statement and tell us which process they are referring to. East Africans will not have a chance to read all the documents that were tendered to the Select Committee. We would want this in our Report.

Mr. Speaker, sir, I have problems with the continuous reference to the feelings of the Kenyan National Assembly. It is said they were disappointed. How did that impact on the performance of the Clerk of this Assembly? When we appointed the Clerk of this Assembly, we did not get any guidance from the Clerk of the Kenyan Parliament. Why is it that when the Clerk has resigned, we are referred to a Parliament of a Partner State? I think we are slowly diverting from the spirit of this Community! If we are going to carry out our work objectively, let this objectivity be reflected in what comes out of this Assembly.

Mr. Speaker, sir, why was the Clerk of the Kenyan Parliament not interviewed? Was he not party to the decisions taken in the appointment of the EALA Clerk? Why did the Select Committee fail to get in touch with the Clerk of the Ugandan Parliament; the Clerks of Kenya and Tanzanian Parliaments were duly interviewed?

I will not talk about the unprofessionalism of the Secretary General. I am glad he is here and he is going to talk for himself.

Mr. Speaker, sir, we all worked with Mr. Werunga and I know that he had a number of shortcomings on both sides,

and I wanted that reflected. We had problems communicating with the former Clerk. Sometimes it inhibited our performance. Maybe those who worked more closely with him found a different experience. But let me go on record that the former Clerk failed to deliver in many ways, and I wanted that to come out.

As we move to adopt this Report, I think the Select Committee should move fast and improve this Report. Let them improve the Report, substantiate some of the allegations and so on. I know that a lot of energy was put in this Report but it needs to be balanced. Thank you – (*Interjection*).

Mr Jared Kangwana (Kenya): Mr. Speaker, sir, is it in order for Hon. Kawamara to imply that this House adopts this Report and at the same time says it should be sent back?

Ms Kawamara Mishambi: Mr. Speaker, sir, the Report should be fine-tuned before it is adopted.

Mr George Nangale (Tanzania): Mr. Speaker, sir, first of all, I would like to commend the three honourable members who have spent their time and energy to look into this very important matter, which emerged when we came back from recess in February. Mr. Speaker, sir, I am not going to use a lot of political metaphors as most honourable members did. What I found in this Report is that the Rules and Regulations of the Tripartite Commission for East African Co-operation are still being used in the Community. The staffs of the Assembly and the Court are subjected to those Rules, and yet the two organs were not in place when these Rules and Regulations were promulgated. I call upon the House to ensure that new Rules are in place so that all of us are

taken on board and are not subjected to Rules that are out of date. Some of those Rules might still be applicable.

Mr. Speaker, sir, this takes me back to the fundamental African problem, which most countries in Africa, 40 years after Independence, are still using; the old colonial Rules and Regulations. This has shaped the way our governments behave, the relationship between the politicians and civil servants. The English bureaucratic system put more power to civil servants than the role of Parliament.

On page 33 of the Report, the Select Committee highlights the alleged unprofessional and unethical conduct of the Secretary General. This raises a lot of questions, and one would wonder whether this is the tip of the iceberg. We need to look into that so that all these allegations are substantiated. This Report informs me of the alleged resentment on the part of the Staff and the Assembly.

Reading Larry Hitchom, who is one of the leading post-mortem gurus, he says the following about resentment: “Resentment will not only divide us from others, it also estranges us from the sources of our authority. A resenting person or group is locked into physiological dependency on the person resented. Dependency limits the resenting person’s ability to negotiate with the authority for a different relationship”.

If there is resentment from the staff and the Assembly, how are we expected to negotiate our relationship with the people we represent? So, if there is resentment in the House, it means that they will not be able to fulfil the expectations, which the East African people have in them. So, this is

the question, which I am trying to put forward.

Mr. Speaker, sir, while I agree with the rotational basis on which the Secretary General is appointed by the Summit, I strongly feel that the Assembly should be empowered to approve such appointments. That will help to harmonise these positions. This would have enabled us to move a Motion of no confidence if the allegations in this Report are true. Thank you very much.

Ms Lydia Wanyoto (Uganda): Mr. Speaker, sir, I would like to join my colleagues who have thanked the Select Committee for this enormous task, but add that I am part and parcel of this Report because the House endorsed the Committee to do this work. I would like to say that whatever is in this Report, whether we amend or put more recommendations or pass resolutions, I am part and parcel of this Report.

Mr. Speaker, sir, I have read this Report, and if I were a Member of the Select Committee, given the introduction which Hon. Waruhiu took us through on Tuesday, I think my mind is set that I would not be very far from what is contained in the Report.

According to me, this Report meets our expectations. This Report is not indicting somebody like a court of law or to establish beyond reasonable doubt some of the issues that are here.

I have been in this Community for about two years now, and I do not want to pretend that things have been well in the three organs of this Community. I want to submit that there have been strained working relationships, whose root cause many of us did not know. We wanted to know whether the Assembly would be of any use to help

this Community work as a family towards the goals for which we were brought to Arusha.

Mr. Speaker, sir, the Treaty is a heavily negotiated document and that is public knowledge. It is my humble opinion that all the organs of the Community should work with the spirit of negotiation, give and take and fostering the integration of the East African countries and also learning to sacrifice, but also accepting that others gain and others lose. That is a virtue in which this Community can only grow.

Mr Speaker, I would like to submit more emphatically that the issues in this Report should emphasise the growth and independence of institutions. But I would be very unfair to myself and to the people I represent and those who work in the Community if I did not say that people who take the offices are as important as the institutions, and that issues pertaining to human resource development and office bearers should be given due attention. We cannot say we are building institutions without attending to the people who are working in those institutions.

Mr. Speaker, sir, we are in the African continent where we have seen people build institutions as heads of those institutions but we have also witnessed people wreck institutions as heads of those institutions. So, it would be very unfair for me to stand here and say I am not going to look at who is in this office, and the laws and regulations. These things are handled, run and managed by human beings.

When we do good things in the offices we run, we are appreciated but when things go wrong, we should accept, apologise and move forward. That is a virtue, which I have seen in some

institutions. But really, in African institutions we should learn that we are human beings and that we can have problems. We should also appreciate that public institutions are not public properties. When things go wrong, we should accept and when they are right, we should also be applauded and then we move forward. That is the spirit in which I would like to push us we look at this Report.

Mr. Speaker, sir, the EAC Secretariat existed with Secretary Generals in the past before this Assembly came into being. As an Assembly, we have not received any complains or corridor talk about problems of the office of the Secretary General before the office was taken over by Hon. Amanyam Mushega. But that office had a Secretary General before Hon. Amanyam Mushega. So, when we get a Report like this one, it would be very unfair to me, not to request Hon. Amanyam Mushega to have an interest in this Report because he has been referred to. He is the Chief Executive of this Community. We should also see how we can assist his office to perform its duties well and play the facilitative role to the two other organs that are newer than his office and move the agenda of the East African Community forward.

Mr. Speaker, sir, I urge this House, the office of the Secretary General and the current holder of the office of the Secretary General to consider this Report in that spirit so that people are eager to come and work for the EAC, and that the discomfort that I have personally had and felt is not repeated.

Staffs have complained informally and formally. These complains could be exaggerated or could be truth. Factual information might not be here, but I think there is cause for us to support all those who think something must be

done to help the spirit of togetherness, negotiation and working together. Thank you.

The Secretary-General of the EAC (Mr Amanyam Mushega) (Ex-officio):

Mr. Speaker, sir, first of all, I would like to put on record my appreciation to you in person, and as the Speaker of this august House for the advice you have continuously given on the Floor of this House and outside this House, even before you became a Member of this Assembly and the Speaker of this House. I value it; I respect it.

Secondly, as I mentioned to you in my note, I wish to make my comments about the Motion on the Floor and seek your permission to leave. It is not out of disrespect of this House, but because I have got an appointment with the President of the United Republic of Tanzania tomorrow morning. I do not control flight schedules to Dar es Salaam or elsewhere.

Mr. Speaker, sir, before I make any comments, I would like to make some corrections on this Report, so that the record is put straight. Let me start with the resignation of Mr. Murumba Werunga.

The Report says his letter of resignation was dated 21 January 2003. The truth of the matter is that his letter of resignation was dated 2 January 2003. We closed the Community offices on 16 December 2002 and nobody was here. We had all gone home. I think the period has been shortened so that I am seen to be viciously anxious to have the person out of the way. His letter of resignation was copied to the Hon. Speaker, and secondly, I learnt of Mr. Werunga's resignation from the Speaker himself.

I had a conversation with him on 8 January 2003 and he asked me whether I had seen the letter. I was perplexed because I did not know which letter he was referring to. When I inquired more, he informed me that Mr. Werunga had resigned as the Clerk of the Assembly. The Speaker faxed to me a copy and I got that letter before the one Werunga had written arrived.

Mr Speaker, sir, my acceptance of his resignation is dated 28 January 2003, and I have to read it. It states as follows:

“I received your letter dated 2 January 2003 on the above-mentioned subject. After carrying out consultations with the Chairman of the Council of Ministers, the Speaker of the East African Legislative Assembly and the Clerk of the Kenyan National Assembly, I, with regret, accept your resignation with effect from February 01, 2003.” In his letter, he had said he was resigning with effect from February 01, 2003.

Mr. Speaker, Sir, the other correction that I would like to make is on Page 19 and it states as follows:

“The Assembly considers the Secretary General was responsible for:

- The lowly placing of the Assembly;
- The poor budgetary provision; there was little to show that the Secretary General was pushing for the Assembly while sourcing for funds.”

Mr. Speaker, sir, it is not my habit now and before, to go to the Press to tell them whom I am working for and how I am doing it. I do not and I will never

say what little or nothing I have done for the honourable members of this House.

Another accusation on Page 19 against me is that I do not attend parliamentary sittings. I am surprised that I am accused here while some honourable members of this House sometimes fail to attend sittings of the House. I want to state very clearly that as long as I am the Secretary General of the East African Community, with the diverse and various responsibilities, it will be impossible for me to attend every Committee and every Session of this Assembly. But I would like to put it on record that I will always attend Sessions of this Assembly as long as I am not engaged in other business of this Community.

Mr. Speaker, Sir, you will forgive me for this, but I would like to draw a parallel here, using yourself. The other day, the Session of the Assembly started with the Chairman of the Council but with your absence. This Assembly was presided over by Hon. Marando, who steered it very ably, and he was not happy that you came back so quickly. The Assembly met in your absence and neither Chairman of the Council nor I and nor Members of the Assembly considered that to be disrespectful – (*Interjection*).

Mr Mabere Marando (Tanzania):

Mr. Speaker, sir, is it in order for the Hon. Secretary-General to imply that I complained to him that I was not happy with your return from abroad?

The Speaker: I think he is not in order!

Mr Amanywa Mushega: Mr. Speaker, I withdraw that reference. I meant that he was very happy when he was the Acting Speaker. I am sorry that I

mixed the two. I want to correct all these things because they have gone into the records of this Assembly. I have a future; children and friends who need to know what this is all about! I am not yet too old to go into the grave. Even in the grave, you need a record.

Mr. Speaker, sir, another assertion in this report states that the Secretary General was responsible for its principal officer, the Clerk, being graded below the grades of other professional staff of the Community. I would like to put it on record that the position of the Clerk is at par with that of the Registrar of the Court and the Council to the Community. That is a fact. The Council approves these ranks! That should be corrected. But if you insist on it, then that is a different matter.

Mr. Speaker, sir, the House Business Committee in Kampala held a meeting and recommended that some Members of the Assembly should be involved in the recruitment of the Clerk. But there was another meeting in Arusha, which agreed that the secretariat should continue to advertise the jobs. I have no personal interest, even in recruiting my messenger, because I have more responsibilities to carry out than that. But as I mentioned to the Select Committee, Amanywa Mushega as a person sometimes disagrees with the Amanywa Mushega the Secretary General.

As a person, I have no interest in carrying out the recruitment of the Clerk, but since in the Rules and Regulations, recruitments of staff are chaired by the Secretary General and the House Business Committee conferred that responsibility on me, Amanywa Mushega the person had to succumb to the office of the Secretary

General. So, that accusation is not a factual statement.

Mr. Speaker, sir, there was something about the meeting in Zanzibar, which is very interesting. It is on Page 10. It states as follows:

“By the time the Assembly members met for a seminar in Zanzibar, the ground had already been laid for a struggle between the Secretary General and the Assembly. Although the Secretary General took trouble to informally meet the members as country chapters to enforce better understanding, some of his comments did not augur well with the already agitated members.”

I approached the members for reconciliation, they repulsed me and now I am now being accused of being responsible for that! I thought that should be taken note of.

On Page 33 the Report states as follows: -

“Notice of the Clerk’s resignation should have been brought to the attention of the House as it was a crucial matter, and mere notification of the Speaker is insufficient.”

As I have already mentioned, in the absence of the Assembly and the Council, I always deal with the Speaker. Even when the Assembly is in Session, I deal with the Assembly through the Speaker.

On Page 35 the Report states: -

“Staff work long hours, are generally dissatisfied and lack an in-built system of airing grievances. Overtime allowances were abolished in the year 2001.”

As I speak now, staff of the Secretariat receives their overtime allowances

when the money in the Budget is available. When there are no remittances, we stop the payment. When the remittances come, we resume payment.

Mr. Speaker, sir, I had some disagreements with the Clerk of the time which, was healthy. One of them was about the shape of this House and drawings are there. The Clerk had proposed that for the dignity of this House, the Speaker would be coming through where the Sergeant-at-Arms is seated. That we would split this horseshoe shape, he passes in the middle, lays the Mace here and then goes to sit. I disagreed with him, and I told him that we were going to have the horseshoe for the dignity of the House, and the Speaker would enter through the door we are using now.

I am giving this information in the House so that tomorrow, you can reverse my absurd decision and put the corridor through the centre, so that there is happiness between you and me.

The second disagreement is that, when you were about to come in February, he proposed that the Sergeant-at-Arms goes to Dodoma and he reported to the Select Committee – (*Interjection*)-

Mr Mwatela: Mr. Speaker, sir, is it in order for the honourable member to ridicule the House? I thought this was a proper and fitting discussion?

Mr Kangwana: Mr. Speaker, sir, I am keen to listen to both sides of this case, but I would like to be guided by the Chair as to whether this House should sit here and listen to contributions on matters that are not in the Report before the House? Matters such as the shape of this House are being referred to, but they are not in the Report! I do

understand the concerns of the Secretary General, but those issues he is talking about should have been raised with the Select Committee. If they were reflected here, they could have been commented on. If we open up other matters, there will be no end to the debate on this Report!

Mr Amanywa Mushega: Mr. Speaker, sir, I would also request that honourable members keep their cool as you did request me to keep cool and take notes, which I did. One of the marks of dignity is the ability to listen to what you do not want to hear, and take note of it.

Mr. Speaker, sir, the gist of the Report is that there was a big war between the Secretary General and the Clerk. That is far from the truth. It is not possible and it is improper to say that there is a big war between the Hansard Reporter and the Speaker and it becomes an issue! Unless the members of the Select Committee assumed that the Clerk of the Assembly is at par with the Secretary General of the Community!

There was an advertisement for the post of the Clerk of the Assembly on 21 September 2002. For your information, I was appointed Secretary General on 24 April 2001. That advert put the age of the Clerk between 35 years and 45 years. When you gave me the duty to do the job, and to avoid this controversy, we lifted the age of the Clerk from 45 years to 50 years simply because Mr. Werunga was above 45 years. I thought you should know this.

We went out of the way to show magnanimity in our limited way. Mr. Werunga was not the only officer appointed this way! Why is it that there has never been any controversy raised between the Secretary General and

other officers of the Community like the Registrar of the Court? Why Mr. Werunga alone? The House should take note of that fact

But to cut the long story short, I will be providing a written rejoinder to this Report. But before I do so, let me mention a few things. As I have already said, my absence from the House should not be construed as disrespect for the House. For example, today I came late because I was signing documents critical to Members of this House. If I left for Dar es Salaam without signing them, then I would be held in contempt!

Secondly, in that statement, I have a duty to protect my staff. I never go personal on my staff because I have a lot of confidential documents about them. Even the documents you are considering confidential and keeping from the Assembly are in my office. I have got a full record of it. I have got all the details. That is why when I was meeting the Select Committee, they told me to comment on Mr. Werunga, and I told them I was not going to comment on the things I hear people say.

I told them that I was going to give written comments to his written complaints. His letter of resignation was well couched and I had to couch mine in a similar manner because the man has a family, he has a future and he has another job. And it is not in my interest to do that. If I can do that to him, then which officer in this Community will trust me with their confidence?

You can get stories from the corridor of the Community, you can get letters smuggled to you but you will not get a response from me, talking ill of the staff under my charge!

Secondly, Mr. Werunga is an adult. But unfortunately for us, he never worked on the Fifth Floor! He wrote his letter of resignation when we were in recess and copied it to the Speaker. His letter reads as follows: -

“In tendering my resignation, I am not oblivious of the tremendous support availed to me and facilitating my various functional institutional activities in that office.”

That is what he said which I found wonderful. He mentioned in his letter that he had talked to the clerk of the Assembly in Kenya and so on. So, if somebody says you are a nice man then who am I to say no? So, Mr. Werunga chose to resign in writing and I had no power to stop him from resigning. After consultations with the Speaker and the Chairman of the Council, I accepted his resignation.

Mr. Speaker, sir, my worry is the precedent we are setting. Every step we take as leaders we set precedents. In my language they say, “When the head of the family walks with bended shoulders, the entire family can reach the ground with their noses because they want to imitate the father.” What will happen in future to other staff that will resign? Secondly, what will happen when somebody is actually sacked according to the Rules and Regulations of the Community? Those matters need to be pondered over.

Mr. Speaker, sir, we are talking about the separation of powers, which I adhere to. But there is another basic principal of natural law, which states that man shall not be a judge in his own case. One of the members of the Select Committee is aware of a saying in her language that says, “When the forest is on fire, the monkey which

lives in the forest is not the best judge.”

My observation in this case is that there was no complainant. The person who resigned showed dignity, we held a party for him, a party that was attended by the honourable members of this House, I invited them and they came. Hon. Ochieng-Mbeo, Hon. Sepetu and Hon. Ogalo came. We wine and danced and there was no problem.

The Assembly, according to the Report, had a grudge with the Secretary General. The Assembly complained to itself, investigated the matter, reported to itself and it is sitting in judgement and soon, it will be the prison warder and the executioner! I am just mentioning this so that I can walk safely tomorrow. The principles of natural justice should also be considered. That is why when it came to the terms and conditions of service for the Assembly and my staff, I appealed to the Council of Ministers that my staff and the Finance and Administration Committee should not be the final judges because they have an interest.

The Council in their wisdom appointed a committee of wise people who have served in high offices and have no interest in that matter. If I were to be the one to work out terms and conditions of service of the Secretariat and the Assembly, people would always read an ulterior motive in all my actions.

Secondly, there is a question of a perceived Messiah. When people are overworked and underpaid in some instances, there is bound to be some disgruntlement. So, when somebody stands up and says, “I am your Messiah”, that can create great anxiety.

Just like you have said in your Report that the Secretary General was responsible for not getting good pay, some of my staff think that if I argued harder they would even be paid overtime three times.

My worry is that if the Assembly tries to micro-manage the Secretariat as it is doing now, collecting documents on the corridors, receiving memoranda that is not official as it is already happening, we are moving from insubordinating Werunga to a totally disorganised Secretariat. I am already getting one of my most junior staff writing letters about one of my deputies and rushing them to Members of this Assembly. That is already a discipline case.

The Bible says you will harvest what you sow. I would like to appeal to this Assembly that in everything you do, do not bring indiscipline in the organs of the Community. If Amanywa Mushega is the obstacle, let him be removed, but let us have some respect for the office of the Secretary General, from the deputies to the lowest, and let the Secretary General respect his officers.

There is a saying in my language that: “*Omukuru Omutanga narugayo*,” which means, when somebody is senior and is going the wrong way and meets a little boy on his way who shows him the right way, he would refuse to listen. On his way back with surprise he would ask the boy: You little boy, what were you talking about. Since he lost his way he will be ready to accept the guidance of the young boy.

Mr. Speaker, sir, this Assembly embarked on the project to recruit the Clerk at all costs from day one in the Assembly. We tried to say that the Clerk should be recruited according to

the procedures, but to no avail. Things went on like that, the Clerk resigned, it was construed that the cause of his resignation was the Secretary General; they have discovered I am not the fault but they are unwilling to say that the Assembly was wrong with the project in the first place because the Assembly is senior and older than me. The Members are also unwilling to say that along the way, they chased the wrong person.

Mr. Speaker, sir, when I read this Report, it seemed as if there was misinformation that problems of the Assembly were caused by the office of the Secretary General currently occupied by Amanya Mushega, and an attempt was made to bring him to his knees. I received newspaper reporters asking me whether I was interested in building the Community. Others asked me why I am against Kenyans, and even some Members of this House went to Uganda and tried to create some little misunderstanding. But there are friendly forces there, and we sorted it out.

To me, that mission is misguided. I came to the Community on purpose and I remember the interview I gave in Uganda long before I came to Arusha, where I said I regard myself as an African, East African, Ugandan and a Munyankole. If I had been in Kenya, I would have been a Kikuyu or a Somali!

Mr. Speaker, Sir, the Community will be run and be guided by the Treaty, Regulations passed by the relevant organs of the Community and laws passed by this House and assented to by the Summit. On my part, if you want to fight me as an individual, I wish you luck, but I am ready to work with you. I will serve the Community without fear or favour. I will uphold

and implement the Treaty as I swore to do – that is the Treaty as it is, but not the Treaty as we want it to be, or as we think it ought to be. That is my pledge and I thank you - *(Applause)*.

[The House was suspended at 11.30 a.m. and resumed at 12.00 p.m.]

[On resumption_]

[Mr. Speaker in the Chair]

Ms Ovonji-Odida (Uganda): Mr. Speaker, sir, I wish to move a Motion of Adjournment under Rule 31(c). I feel it is not proper for this debate to continue in the absence of a key party to the issue – that is the Secretary General. I therefore beg to move the following Motion:

THAT, this debate be adjourned until such a time the Secretary General is in the House.

This debate actually concerns him as a person. I beg to move.

Mr Mohammed Zubedi (Kenya): Mr. Speaker, sir, I wish to second this Motion due to the fact that the Report is very elaborate, and is about the Secretary General and his office. It is only fair that he is present whenever we want to discuss issues that touch on him. I beg to second.

(Question proposed)

Mr Jared Kangwana: Mr. Speaker, sir, I also stand to support the Motion. I was going to propose a similar Motion but little did I know that Hon. Ovonji-Odida had already made a decision to move the same Motion.

In addition to the reasons given by Hon. Ovonji-Odida, it is clear that honourable members have made very good contributions on the Report. In

many cases the Report contains allegations of fact, law and allegations of evidence. The Secretary General himself has also made allegations of fact, law and allegations of evidence.

Mr. Speaker, sir, members of this House would like to equip themselves appropriately and properly to contribute usefully to this Report and the key to that is that honourable members should be enabled and armed through information being given to them, which can either support or not support these allegations of fact, law and evidence.

My understanding of this Report from the mover and the Secretary General is that the key to equipping honourable members appropriately is to for the honourable members to look at documents, which have been referred to. Those documents, I understand, are under lock and key and the stewardship of Hon. Waruhiu. But I have to alert her to the fact the Secretary General said he already has access to those documents and has photocopied them. He must have duplicate keys to the safe or he is a magician!

Every Member of this House should be availed those documents, so that we can go through them page by page, so that we can compare the Report against the documents that we will have, to see what fact is supported by the evidence, what law is supported by evidence and, thereafter, we would be in a position, in the presence of the Secretary General, to contribute more usefully.

Mr. Speaker, sir, I would like to go on record as saying that the comments made by the Secretary General to the effect that we are prosecutors, judges, convectors and prison wardens is an

abuse of the privilege of the House and members of the House.

The House has power under the Treaty to call officers to account! What this House was trying to do by appointing the Select Committee was to call the Secretariat to account on matters relating to the resignation of Mr. Werunga, and on related matters as set out in the terms of reference.

There is no abuse of the powers of this House and, therefore, the Secretary General should be well advised to realise that this House is doing an important function in ensuring that we are laying a framework, not only of policy but also of administration that will engender the growth of this Community. It is wrong on his part to use the privilege of being a Member of this House to abuse the House. With those remarks, I support the Motion.

Prof. Kamar (Kenya): Mr. Speaker, sir, I am really getting concerned about what transpired in this House. After listening to the contributions of honourable members, I think I do not want to be a Member of a Select Committee in this House.

Mr. Speaker, sir, I wish to associate myself with the views expressed by Hon. Lydia Wanyoto. It is the House, which selected the members of the Select Committee, and before we ridicule this document, it is good sometimes to listen to what the document is saying. I would like to contribute when the honourable Secretary General is here.

I think we gave him a premature time to dilute the Report before we even digested it. If that is what is going to happen, would it be in order for us to ask him to give us the written rejoinder he talked about on the Floor of the

House? He has called us everything including prison wardens! I do not know whether we have a right to cross-examine him. I thought this Select Committee was a honourable dignified group of three members of this House, and they have given us their findings! I thought they were the fairest group because they have given us a very flat report, so that we are able to make our own judgement!

Mr. Speaker, sir, I also wanted to make a correction on one of the statements, which Hon. Kawamara Mishambi mentioned about the Kenyan National Assembly. In the same Report, we have been informed that no Kenyan applied for the post of the Clerk up to the point of the last deadline. They are waiting for the outcome of this Report. I think it is only honourable for this House to give the Kenyan National Assembly an opportunity to listen to what our findings are.

What it means here is that this issue is beyond what we are discussing here. The Hon. Speaker of this House mentioned to us here that the Hon. Speaker of the Kenyan National Assembly told him that he was disappointed with the way in which the Clerk, who was seconded to this House, was treated. I am bringing this correction because the resignation of the former Clerk has discouraged others from applying for the same job.

We are the representatives of the people, and we must give them an answer and we must make everybody comfortable. In fact, I was inclined to agree with the Secretary General when he said that he feels we are not qualified to interrogate him. We can have a group of eminent committee to interrogate the position of the Secretary General in relation to the other bodies in this Community.

Mr. Speaker, sir, yesterday I jokingly said that Kenya should be refunded the salary, which Mr. Werunga was supposed to earn. They do not have to remit salaries if their own person is not here. But all I am saying is that, the foundation of this Community is on mutual trust and respect of everybody.

I submit that the Secretary General should avail to us his written rejoinder so that we can interrogate him on the same.

Mr Calist Mwatela (Kenya): Mr. Speaker, sir, I think we are making precedents here. I thought I should put it on record that it is not a must that a report, which mentions somebody, must always be disposed of when the person is in the House. So, we should qualify this thing that the issues therein are so weighty that the Secretary General must be present when the report is being discussed. But this should not form a permanent precedence. I support the Motion.

Mr Med Kaggwa (Uganda): Mr. Speaker, sir, I think it is in the interest of this Assembly to uphold the rule of the law of natural justice. It is only fair and fitting that even if it is another person of the calibre of the Secretary General, or any other member of staff of that category, or indeed a Member of this House, it is only fair and fitting that such a person is always present. So, we are not setting any precedents. We are just following the rules of natural justice. I think Hon. Ovonji-Odida must have had this at the back of her mind. On top of that, there is even a rejoinder on the way!

Ms Rose Waruhiu (Kenya): Mr. Speaker, sir, I support the motion on the Floor. I want to repeat my appeal, which I made this morning, that we have got a lot of sensitive documents

in our possession, and we do not know what to do with them. If we are postponing this debate and going by our calendar, we shall not be here for another two months. It is only proper that we discuss this issue.

I explained that there are repercussions on staff that are in their offices and would like this matter discussed. Alternatively, we would refer these documents to the House Business Committee. But some of those documents contain personal matters, and I am wondering who is going to classify them.

Secondly, I support the idea that we discuss this report when the Secretary General is in the House.

What we have not shared with the Assembly is our own experience during the writing of this report. I am not normally given to crying wolf or wailing. The circumstances under which we worked should be discussed on the Floor of this House. We have alluded to them without laying too much emphasis. If we looked at the difficulties, we would not have done this work.

Last Friday, I called the Secretary General from Nairobi to confirm with him whether he had a written document for me. When we met here in March, he spoke to the Select Committee for seven and half hours continuously. If we are going to go into the nitty-gritties, it is going to be a very exhausting affair. That is why, in reading our report, it is evident that we are biased in building towards the future. We are looking for the way forward.

I am not saying the Clerk cannot give us documents, but I am aware of the level of pressure that is there, and the

number of people whom I have encountered in the corridors of our offices trying to get access to the documents. I feel that some of those documents need to be protected.

Finally, I would like to say that most of our evidence was oral. We sat, listened and wrote. At one point we thought we would get a tape recorder. As our memories wane, we are not disclaiming what we have written. I can assure you that what we have written is a soft way of saying what people were not prepared to put on paper, but were prepared to tell us. But it is important that even if we are postponing the debate, we create time in the future so that all these matters can be cleared. Thank you.

Mr Daniel Ogalo (Uganda): Mr. Speaker, sir, in our Rules of Procedure, it is provided that: -

“The Speaker may direct any matter, which in his or her opinion, is of a confidential nature; that it be excluded from the journals of the House and from the verbatim report of the proceedings of the House, and to be subject of a separate verbatim report, which shall be kept in the custody of the Clerk and made available only to the Members.”

So, those documents referred to by Hon. Waruhiu should be kept in custody and be made available only to the Members.

(Question on the adjournment of the Motion put and agreed to)

The Speaker: Honourable members, I have been informed by Hon. Lydia Wanyoto that Hon. Sarah Bagalaaliwo lost her mother this morning, and she is requesting anyone wishing to send

condolences in whatever form to channel it through Hon. Wanyoto.

Honourable members, we may be called upon by the Council to go and pass the Budget and we may therefore convene anywhere in Kenya; be it Machakos or Kisumu. We are hosted to hold that sitting in Kisumu with full hospitality by Hon. Ochieng-Mbeo or Garissa by Hon. Abdi with half hospitality.

ADJOURNMENT

The Speaker: Honourable members, that brings us to the end of our business today, and the House stands adjourned until Thursday, July 17, 2003 at 9.00 a.m. in Dar es Salaam.

The House rose at 12.20 p.m. and adjourned to Thursday, 17 July 2003)