



EAST AFRICAN COMMUNITY

Official Report of the Proceedings of the East African Legislative Assembly

30TH SITTING -FIRST ASSEMBLY: FOURTH MEETING - SECOND SESSION

Wednesday, 23 July 2003

The East African Legislative Assembly met at 2.00 p.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.

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable members, I wish to inform you that I received a number of invitations from various institutions asking us to play football matches with them. This is a welcome idea, and I, therefore, call upon hon. members to seriously think of establishing an East African Legislative Assembly football team.

Not only do football teams exist in our sister Parliaments in the three Partner States, but hon. members should remember that sports is good for their health. To this end, I have appointed hon. Abdi Haither Abdirahim to mobilise hon. members and staff who wish to play football, to register with him.

Members should note that football nowadays is played by both genders. The Speaker's office will, in the meantime, look for facilities to enable the team to start off training as soon as possible. Thank you.

MOTION

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

(Debate continued from Tuesday, 22 July 2003)

Mr. Maxwell Shamala (Kenya): Thank you very much, Mr. Speaker, sir, for according me the opportunity to contribute to the Motion on the Report of the Select Committee on the

resignation of Mr. Werunga as the Clerk of this Assembly.

Mr. Speaker, sir, I have looked at this Report and the Resolution of the Assembly seeking to appoint a Select Committee; I have also looked at the terms of reference of the Select Committee as understood by the Select Committee. I have also looked at the constraints, which the Committee faced in doing its work.

I have also looked at the methodology used in doing the work, findings, observations, challenges and recommendations. In my humble opinion, the Select Committee did its work diligently and addressed itself to the issues that this House expected it to do. My mean score for them on this job is a distinction. I think future select committees will have a hard time to do a job to beat this one. In that regard, I wish to thank hon. Waruhiu, hon. Amb. Sepetu and Sarah Bagalaaliwo for a job well done.

Mr. Speaker, sir, I have looked at the narrative 5(1), on the relationship between the Assembly and the Secretariat, by the Committee and I absolutely agree with that narrative. If you look at the narrative in item 5(2) on the communication between the Secretariat and the Assembly, it is so accurate that I find hardly anything to add.

I notice that the Secretary General had an opportunity to respond to the issues raised in narratives 5.1 and 5.2, but he chose to say nothing about these narratives. I take it that he accepted them in their entirety. If he had anything to say, he had the opportunity to do so *-(Applause)*.

Mr. Speaker, sir, on the recruitment of Mr. Werunga, I wish to concur with the views of the Select Committee on the recruitment of Mr. Werunga as the Clerk of this Assembly. The Committee captured the mood of the House very clearly in 5.3, Paragraph 3, which states as follows:

“The Assembly was required to make a substantive appointment for the post of Clerk, which by some understanding had to be filled by a Kenyan. Impressed by his hard work and knowledge of the job, the members of the Assembly wanted to confirm him in the position immediately.”

I think that was the mood of the House then.

On the question of a Kenyan filling the position, I wish to say that there is no taxation without representation. We have had appointments here shared out equally among the three Partner States. It was understood that Mr. Werunga who had been seconded here by the Government of Kenya to assist in setting up the Assembly was qualified enough to take up that position. However, the Secretary General in his quest to frustrate the House engaged in strange manoeuvres to outwit the House. Paragraph 4 of 5.3 states as follows:

“However, on the advice of the Secretary General, the House Business Committee decided to follow the established procedure of advertisement, short-listing, interview and selection in accordance with existing Staff Rules and Regulations. It was also agreed

that three Members of the House Business Committee would be involved in the recruitment process. However, the three Members of the House Business Committee were denied participation in the process, and so were not involved.”

Paragraphs 6 and 7 the Select Committee observed as follows:

“During the interviews, members of the panel were surprised by the arrangement made by the Secretary-General, who was the chairperson of that Committee, to interview one applicant who had applied for a lesser post of Principal Clerk. The Clerk of the Kenya National Assembly registered his objection to this and asked for it to be minuted. At the end of the interview, the new applicant was recommended to the House Business Committee, having scored higher points than Mr. Werunga.”

This was a fraudulent act, and the Secretary General should have addressed himself to these matters when he had the chance to contribute to this Motion.

When you look at Page 19 of this Report, it states as follows:

“The Assembly considers that the Secretary General was responsible for the lowly positioning of the Assembly and treatment of Members. On the poor budgetary provisions, there was little to show that the Secretary General was pushing for the Assembly while

sourcing for funds; the failure to implement decisions on the remuneration of Members and to advise the Council of Ministers and the Summit.”

On his failure to attend Assembly Sessions, I would like to give him a reprieve on this one. He could have failed to attend Assembly sittings because of exigencies of work, but on his failure to provide the committees of this House with information and to assign staff to follow the House proceedings, he is guilty.

On his misinterpretation of the Treaty on the role and functions of the Assembly, again I find him guilty, and I will give examples. If you look at Article 49(2) (f) of this Treaty, which empowers this House to recommend the Clerk for appointment to the Council of Ministers, I am delighted that the Select Committee checked the meaning of the word ‘recommend’. I concur with them on the meaning of the word ‘recommend’.

Webster’s New College Dictionary gives the following definition of the word ‘recommend’: “to suggest favourably as suited for some use, function or position.” I also checked the meaning of the word ‘recommend’ in the *New Shorter Oxford English Dictionary, 1993 Edition* and it gives the following definition: “to name or mention a person as suitable for a particular position or employment”.

Mr. Speaker, sir, if you are going to recommend, taking these two meanings into consideration, surely you must be put in a position to assess the individual properly in order to say that so and so is suitable for a particular job! I find it difficult that the Secretary General expected us to sit

here and recommend to the Council for employment every person he brings here. That is madness!

I find the position of the Secretary General on this matter totally unacceptable. How can the Secretariat assign this job to itself when the Treaty says that the Assembly shall recommend all officers of the Assembly to the Council for employment? The Treaty would have said that the Secretariat would recommend to the Council if that were the meaning. I disagree with the Counsel to the Community on his advice to the Secretary General in a statement which is covered somewhere in the body of this report.

Mr. Speaker, sir, there is the question of separation of powers. Article 71(k) of the Treaty gives the functions of the Secretariat as follows:

“Proposing draft agenda for the meetings of the organs of the Community other than the Court and the Assembly.”

There was a reason for that, and that is why the people who drew up the Treaty stated it explicitly. They put it there because they knew that the Assembly and the Court are specialised organs that cannot be treated just like the other organs. The Secretariat is deeply involved in executive matters of the Council and the Summit.

Under Article 71(m), separation of powers is implied. The Secretariat is responsible for the organisation and keeping of records of meetings of the institutions of the Community other than those of the Court and the Assembly. Here, the Secretariat has been kept in its own position.

Under Article 71(o), the Secretary General is instructed to ensure the establishment of practical working relations with the Court and the Assembly. If the Secretary General had established these practical working relations so that he would deal with the Clerk through the Speaker, we would not be having the problems that we have right now with the Secretariat.

Mr. Speaker, sir, it is my contention that the Secretary General refused to establish communication lines so that he could appear to be in charge of the Assembly. I agree that the Secretary General is – administratively – the head of the Community, but the day to day running of the Assembly is vested in the Speaker and the Clerk, as the case is with the President of the Court and the Registrar of the Court. To that extent, the Clerk of this House is equivalent in rank to the Registrar of the Court. But the way the Secretary General treated the Clerk before some junior officers leaves a lot to be desired.

Mr. Speaker, sir, I agree with the conclusions of the Select Committee on Article 71(h) of the Treaty, which reads as follows: The Secretary General is “in charge of the general administration and financial management of the Community”, but equally, he does not have to sign cheques or be in every office to supervise the writing of vouchers and so on. This Assembly can handle its financial arrangements so that we do not have to go the Secretary General on a day-to-day basis. He can monitor the activities of this Assembly on a monthly basis. If he knows the expenditure of the Assembly for every month, then when there is an over expenditure, then he will have to seek an explanation from the Clerk. If the

Secretary General had wanted this Assembly to function smoothly, he would have done so.

The Treaty spells out clearly that the Court shall hire its own staff. By implication, this Assembly, too, is supposed to hire its own officers. Since the Treaty prohibits the Secretary General from drafting agenda for the Assembly and the Court, that means we can act on our own, and that should be the case. Separation of powers must be seen along that line. If the Secretary General were acting in good faith, then we would not be having any problems.

There are weaknesses in the Treaty, but they will be corrected in the course of time. But we cannot have a perfect Treaty or a perfect constitution for all cases.

Mr. Speaker, sir, I would like to turn to the recommendations of the Select Committee. Under Item 8.2(d), the Select Committee recommends as follows:

“The absence of ministers creates gaps in consultation and political leadership necessary to facilitate a functional working of the Community. Resident ministers or ministers with specific Community portfolio would enhance the presence of the Executive and its capacity to make decisions and follow through. The number of the meetings of the Council (and the Summit) should be increased.”

Mr. Speaker, sir, I totally agree with the Select Committee in this recommendation, and I have nothing more to add to it. If we had the Council of Ministers here, sitting with us on a

day to day basis, maybe some people would not get out of hand in exerting their authority. In the absence of the Council of Ministers, the Community is not moving at the pace it should be moving.

I am afraid that at the end of our term here, we might only say that it was only the Customs Union, which was signed during our tenure. The Protocol establishing the Common Market might be signed. We should have achieved the free movement of persons right now, but the Secretariat is not helping us much in that direction, as far as I am concerned.

These are the areas where we should be involved, but we are involved in acrimony with the Secretariat throughout. This is not helping the Community at all.

It is my humble submission that this Report should be adopted as it is. It may not be perfect but it is a very good attempt to straighten things for us to get the bearing that will lead us to the political federation, which we all yearn for. I wish to commend this Report to the House for adoption so that it can be used in future to help us guide the proceedings of the House, and to hire our people as we desire. With those remarks, I beg to support the Motion.

Mrs Kate Kamba (Tanzania): Mr. Speaker, Sir, I wish to commend the Select Committee for this very inspiring Report. It is a job well done.

Mr. Speaker, sir, many hon. members were hesitant to appear before the Select Committee after we heard that Mr. Werunga resigned on his own accord, and that there was a big party held in his honour, and Hon. Mbeo

happened to have attended that party –
(*Interjection*).

Mr. Ochieng-Mbeo (Kenya): Mr. Speaker, sir, is the honourable member in order to insinuate improper motives on me that I attended that party willingly when the Speaker was the one who was invited, and I happened to have been passing by here?

Mrs Kamba (Tanzania): Mr. Speaker, sir, fortunately, I have a photograph here which depicts hon. Mbeo, the Secretary General and Mr. Werunga in a very jovial mood. We were told that the Clerk resigned on his own volition, and that can be seen in the photograph. It is absurd that he had not even completed his probation period, and I think that is the reason why the hon. Mbeo, much as he participated in that big party, asked this House to probe into the circumstances that led to the resignation of Mr. Werunga.

We cannot appoint people of that stature and then they resign without completing their probation period. We cannot allow that kind of behaviour in this Assembly. We need a Clerk who will actually carry us through the five-year period. If we keep on changing Clerks every year, we shall never perform. As the saying goes, a rolling stone gathers no moss. If we keep on rolling, we shall never gather moss, and that is why we agreed to set up the Select Committee in order to find out what happened.

It is very unfortunate that what came out of the Report is a vivid indication that there was no harmony between the Assembly and the Secretary General. Our main aim here is to build the East African Community, but not to engage in personality wars.

Mr. Speaker, sir, we are here for a purpose, and the purpose is to integrate East Africans. If this Assembly does not see to it that this is happening at the headquarters, how do we expect our people in the Partner States to integrate? Integration should begin from the headquarters of the East African Community if we expect it to filter down to the common man.

Mr. Speaker, sir, from this Report we can see that some personalities have overtaken the objectives of our mission as East Africans. We had two personalities in the names of Mr. Werunga and hon. Amanywa Mushega. There was a tendency of arrogance and vengefulness. I have been in politics since 1980, and I have seen a lot of things happening. What one should really avoid is to be vengeful. It is a fact that small matters can easily be complicated by certain unforeseen circumstances.

It is really absurd that these two personalities could not work together. Unfortunately, the Secretary General never liked Mr. Werunga. This Community is made up of different personalities and we should learn to accommodate each other. Some are hypocrites while others are straightforward. So, we have to cope with all those differences.

The crux of the matter is that there were personality conflicts, and that is reflected in the Report from pages 11 to 14. It is clear that these people could not work together. In fact, the differences between the two personalities were manifested during the recruitment process. Mr. Werunga was given low marks because somebody wanted him to fail the interview, and somebody who had applied for a very junior position got

higher marks. But the Assembly in its own wisdom recommended Mr. Werunga for the post.

It is true that the Secretary General was not going to take this lying down. He made sure that he dug into the weaknesses of Mr. Werunga until he had to resign. He wanted to prove that he was a misfit for the post. We should try as much as possible to look at the positive side of an individual.

It is very unfortunate that the Secretary General and Mr. Werunga could deceive this Assembly through hypocrisy. If you look at that photograph, it is total hypocrisy! Mr. Werunga could have stated clearly his reasons for resigning and the Secretary General, while acknowledging Mr. Werunga's resignation, should have stated the terms under which he agreed to the resignation of Mr. Werunga. That would have helped us a lot. But the hypocrisy, which the Secretary General and Mr. Werunga demonstrated, is unforgivable.

We have to be straight and call a spade a spade! Sometimes we look funny! Why are we talking like this and yet Mr. Werunga resigned, and there was a big farewell party for him. We should not gloss over problems. If Mr. Werunga was not good, the Secretary General should have written to the Kenyan Parliament, detailing the shortcomings of the man.

Mr. Speaker, sir, the offices of the Secretary General and the Clerk are very critical to this Community. If the holders of the two offices are going to be hypocritical in their relationship, then we are going to be in big trouble. I implore the Secretary General not to mince words when it comes to certain issues. He should expose officers who

are not working according to the rules. In fact there is a Swahili saying which states as follows: "*Mficha maradhi kifo kitamfichua.*" So, let us not hide things.

Mr. Speaker, sir, we should applaud the recommendations of the Select Committee on the need for separation of powers for the organs of the Community. The Court and the Assembly should be de-linked from the Secretariat. The Court and Assembly should each have their own Staff Rules and Regulations, and we should promote the rule of law and good governance in that aspect. Short of that, we would be wasting our time.

It is evident that there is an element of fear and lack of trust between the organs of the Community due to hypocrisy. Each of the organs of the Community has their own roles spelt out by the Treaty, but the fear that has been instilled in the minds of the staff will never harness the talents of each individual. We all know our mandate, and we should mobilise our energies towards realising the objectives of the Community.

The question we should be asking ourselves right now is: what has the East African Community achieved so far? We should be working very hard towards the integration of the East African Countries. But that integration should start right from the headquarters of the Community. There should be freedom within the Community. The staff of the Community should not fear Members of the Assembly. They should be free to talk to us without having to look over their shoulders. If everything is going on well, why should they fear us? They are there to assist us so that we can perform our duties well.

Mr. Speaker, sir, the Secretary General has a duty to harmonise relations within the East African Community as the head of the Secretariat, and we need to spend more time on matters related to the Community. Look at the amount of time we have spent discussing this report. Had these things been corrected immediately, we would not be here. But glossing over matters, we are where we are right now. We can really displace the goal of the organisation if we behave in such a manner. Differences will always be there, but we should not allow such differences to blur our objectives.

With those remarks, I commend the Select Committee for a job well done. Thank you.

Lt. Gen. Abullahi Adan (Kenya): Thank you very much, Mr. Speaker, sir, for giving me the opportunity to contribute to this Motion.

Let me commend the Select Committee for a well-done job. The Report of the Select Committee is comprehensive as it covered all matters related to the resignation of the former Clerk of this Assembly, Mr. Werunga. The Report has detailed the historical background and the relevant incidents, which have a bearing on the events that led to the resignation of the former Clerk.

Mr. Speaker, sir, I would like to address one or two issues here. The first issue is the conflict over the recruitment process of the former Clerk. The process of employment is clearly stipulated in the Treaty. For instance, Article 48(4) of the Treaty stipulates that the Council shall appoint the Clerk and other officers of the Assembly, while Article 49(2)(f) of the

Treaty stipulates that the Assembly shall recommend to the Council the appointment of certain persons in the service of the Assembly. I believe that this is where the actual problem lies.

Mr. Speaker, sir, although it appeared as if Mr. Werunga's resignation looked proper in every aspect, it is clear that it did not follow the proper channels, and that is why honourable members were unhappy with the process that was adopted. Many Members feel that his resignation should not have been considered over the telephone. There should have been a body with the competence and authority to look into his request for resignation. It would have been proper if there were such a body to approve that resignation. We should look into the aspect of the recruitment of the Clerk of the Assembly thoroughly so that we do not fall into the same trap in future.

Mr. Speaker, sir, the other fact, which arose out of this matter, is that Mr. Werunga was seconded to this Assembly, and so he had the right to choose whether to remain here or go back to his former employment. The House expressed it clearly that they were unhappy with that sort of arrangement. The House will be much happier if the Clerk is recruited under the terms and conditions that are set out for this Assembly. We do not want people who come here when it suits them and walk out when it does not suit them. These are the situations, which should be dealt with.

Mr. Speaker, sir, the other issue, which I would like to address, is the working relationship between the organs of the Community. I know that every Member has experienced this problem, whether in the committee or in the Assembly. The demand on the

technical staff to brief a committee on a particular matter or provide particular information as demanded by the Assembly was not satisfactorily met. Is there a problem in the way the programme is made? Does it mean that our programmes are not harmonised? When the technical officers are supposed to brief committees of this Assembly, they are tasked to go for a meeting elsewhere. I believe that whoever is responsible for formulating the programme is also responsible for adjusting it.

We have been wondering why officers of the Community were not free to talk to us until they came to tell us that they were not allowed to talk to the members of the Assembly. I believe that members of this Assembly are merely interested in advancing the cause of the Community, and there is nothing outside that the members are interested in.

The briefings, which we require from the technical officers, are really to enhance the capacity of members in understanding certain issues. Unfortunately, in most cases the members of staff do not appear and do not inform the Committee that they will be available. There is something amiss in the way the priorities are set, and in the way programmes are managed. We do not have close management of our programmes, and passage of information between one body and another one is not sufficient, to say the least. I think there is reason to believe that information is always withheld from members of the Assembly. We need to look at how our programmes are managed.

Mr. Speaker, sir, the staff of the Secretariat stated that they needed permission to provide information or to

be present in a committee meeting. I believe the requests by the committees of this House to the Secretary General that he avails staff during committee meetings are official.

Mr. Speaker, sir, Article 132(5) of the Treaty states as follows:

“The resources of the Community shall be utilised to finance activities of the Community as shall be determined by the Assembly, on the recommendation of the Council.”

So, it is quite clear that any resources of the Community shall be used as directed by this Assembly, and not otherwise. Article 134 of the Treaty states as follows:

“It shall be the duty of the Audit Commission to verify that any contributions received or revenue collected by the Community has been allocated and distributed in accordance with the Treaty, and it will include a certificate to that effect in its report”.

The provisions of the Treaty are quite clear but they are not put into good use. My committee has been struggling for the past year to get the budget proposals to come to the Assembly, but that has not been forthcoming. So, there seems to be lack of flow of information, and it seems there is a break in the co-ordination of the programme that is creating tension. I hope that as a result of the investigations on the resignation of Mr. Werunga, the cause of the tension and what is eating away at the co-operation could be looked at much more in detail. With those few remarks, I support the Report.

Mrs Beatrice Shellukindo (Tanzania): Thank you very much Mr. Speaker, sir, for giving me the opportunity to contribute to this debate, which has been going on for quite some time. I would like to join hands with the other members to commend the Select Committee chaired by Hon. Rose Waruhiu, for a well-done job.

Mr. Speaker, sir, I was one of those who did not appear before the Select Committee because of reasons which are best known to myself, but I did not want to be biased either for Mr. Werunga or the Secretary General.

I would also like to commend other members who have spoken because they have mentioned all the key areas that needed attention, and I will address my self to two things.

Mr. Speaker, sir, I find it very difficult at this premature time of the Assembly to be devoting all our valuable time in discussing issues of this nature. Given the limited time at our disposal, we should be discussing issues of very great importance. When I was in Dodoma recently, one Member asked me whether we were serious in discussing such trivial matters. I would like to repeat that question to this House. Are we really serious in our work? Why are we discussing such a minor issue when there are more serious issues for us to deal with?

Although this issue looks minor, it is important in other aspects. Without working harmoniously as the three organs of the Community, we cannot even work for those things at our fingertips. In all our dealings, we have to involve the Secretariat. We need the technical officers to give us vital

information. At times we might need even staff of the Court of Justice.

Mr. Speaker, sir, I was very close to Mr. Werunga, because we worked together. At times I would find him in his office breaking up, as a man, and shedding tears over issues of the Assembly. But as much as that was true, I also agree with some of the honourable members who said Mr. Werunga was not that perfect; that he also had his shortcomings. Therefore, we should forget our differences and work. The only difference here is that Mr. Werunga could not hold the situation and therefore had to go away. That has really depressed me personally. I am sure all of you are missing him.

Mr. Speaker, sir, I think we need to ensure that there is total separation of powers in this Community. Right now we are working in an ad hoc manner. There is no harmony in the organs of the Community. I had not thought of contributing to this debate until last night. I kept asking myself whether we are not wasting time by discussing this report. What will be the outcome of this report? It is depressing for those of us who have joined politics for the first time. We have now spent many months discussing this report!

I was dismayed yesterday to hear a member of this House, who is from the executive arm of the Community, refer to the contribution from a honourable member as rubbish. I do not know whether the member who was on the Floor was rubbish or what he was saying amounted to rubbish; or it meant that all the members of the Assembly were rubbish. That language was un-parliamentary language and it should not be left to go like that. But are we coming to an end in these

matters if senior officers of this Community still refer to what members say on the Floor of this Assembly as rubbish? Is it over-confidence of some of these officers or what?

Mr. Speaker, sir, we are politicians and not diplomats. I vowed to be a politician but a diplomat because I know the roles of the two. Our national Assemblies elected us, and they can summon us at any time to ask anything. So, nobody should undermine our role, what we are saying and what we are doing. Over 295 Members of Parliament elected me, and I feel that I have the competence to be here. Whatever I say, whatever what it might sound like to somebody else, they must respect it.

Mr. Speaker, sir, as head of delegation to the Nordic countries, I would like to use this opportunity to thank you, on behalf of the members, for having given us the opportunity to visit those countries. Our report is going to be out soon.

While we were in Norway, we were flabbergasted when one of our hosts asked us: "How is the conflict between the Secretariat and the Assembly going on?" We were just confused and lost for words. I had to stand as head of the delegation and say that that was a minor thing, which had been sorted out. But it was very embarrassing. We were trying to hide that matter but when they come here, they are able to see what is happening. This thing is more than what it is. It could have a very bad impact if it is not addressed in time.

Mr. Speaker, sir, yesterday one honourable member stated that most of the problems lie within the Treaty, and I quite agree. The Legal Counsel to the

Community has done nothing to initiate amendments to the Treaty, or even to advise the Secretary General with regard to the provisions of the Treaty. He should see to it that those provisions of the Treaty that are causing commotion within the Community are rectified. In the process of this commotion, some honourable members have been victims of circumstances, and this has created enmity among us, not only within the Assembly, but also within the Assembly and the Secretariat.

When I was campaigning, I complained that I was beginning to have so many enemies, and one eminent politician told me: "A politician without enemies is not a politician. If you are a politician and you do not have enemies, look for them." I am not advocating for enmity, but it is one of the games of politics. We did not come here to like each other. We are here to accommodate each other and work for the best of the East African Community. In that matter, we should forget about our behaviours, attitudes, likes and dislikes. We should accommodate each other's weaknesses and just look at what the East Africans are demanding from us.

Mr. Speaker, sir, I would like to talk about the recruitment process. I feel this House was taken for a ride, and that is why I think the Counsel to the Community should advise the Secretary General accordingly.

During the recruitment of the Clerk, we were given somebody who had applied for a lower post of a Principal Clerk, instead of the one who actually passed the interview. One could not compare the two officers at all! But it is as if the Secretariat wondered what

we would do after all. That is where our problem lies. We do not mind who the candidate is.

Right now you can see that the Chairman of the Summit, the Chairman of the Council, the Secretary General, Counsel to the Community and the Acting Clerk are all from Uganda. We do not mind because they are performing! We do not mind who is holding what office. Let us have the competent staff. I cannot imagine myself coming here to do short listing as a Member of Parliament, but we want the right people for the right work. That is all we need!

Mr. Speaker, sir, on the observations that were raised about the fear of the members of staff, I would like to confirm that it is real. Whenever the members of staff of the Secretariat see us along the corridors, they dash into their offices quickly because they do not want to be seen with us. I find it very difficult to work in such a situation. I have worked as a civil servant for 21 years, but I have never seen anything like it. There is some fear going on around here.

I used to have a boss who did not tolerate anyone talking whenever he was around. His style of administration was that of fear; that whenever he passed around, everybody would tremble. But in this kind of organisation, it is very difficult. When one talks of "my staff" - nobody has "his staff" here. They are staff of the Community, and the members of this Assembly are also working for this Community. Sometimes you have a genuine issue but you will find that the members of staff are unwilling. You can always tell when the top executives are not there. You will see the staff walking along the corridors

with a cup of tea from one office to the other. But when the top executives are here, it is nothing short of terror.

Mr. Speaker, sir, this issue should come to an end and we get down to work. We have been all over East Africa and we know the issues that need urgent attention. We are neither civil servants nor diplomats. We will have to account to our electorate because some of us are young enough to serve another term here. So, we would like to have something to account for rather than wasting time on issues of this nature.

With those remarks, I support the Motion.

Capt. Richard Ddudu (Uganda): Thank you very much Mr. Speaker, sir, for giving me the opportunity to contribute to this Motion. I believe that being the last to say something about this quagmire, I will not say much, apart from giving general observations. My colleagues have already said most of what I wanted to say.

Mr. Speaker, sir, whenever there is such a problem, it will only mean one thing, that all the players within that sphere in one way or the other contribute to the problem. If the problem is well defined and identified, then that becomes half the solution. I therefore thank all the contributors and the members who worked to produce this report. It may not be perfect but it is something worth commending.

Mr. Speaker, sir, we have indulged so much in rumour mongering, up to an extent where somebody will easily mistake us for a rogue's village. We jump into issues and twist them in a funny way. We have all the characteristics of cheap popularity. You go to somebody and since you

need to get something very quickly, you start talking about others. This in turn leads to cliques, where some people will talk to the Speaker or the Secretary-General and so on. I consider that to be cowardice. If you think you have an issue to raise with me, why do you not raise it with me? Why do you pass behind the scenes to go and seek favours?

We make mistakes and we must admit them. The only people who do not make mistakes are those like the Pope. I hear he does not make mistakes. So, if we make mistakes, we expect others to talk about it and the one who talks about it to you is the one who intends to correct you. The person who does not talk to you about your mistake is the one who would like to make it worse. That amounts to cheap popularity and 'cliqueism' and rumour mongering, which lead to intrigue.

This is a clear example of intrigue between the two people. We do not know the exact thing that has brought this issue to the Floor of this House. I have not seen it yet. It is very clear that they have been intriguing each other. Did the Clerk expect to be the Secretary General or was the Secretary General thinking about becoming the Clerk? What is the issue here?

Mr. Speaker, sir, people have been indulging in analysing issues that are devoid of truth. There are no facts to support all that we have been doing. It is all hearsay. There is no tangible thing to talk about. As leaders we should avoid being overzealous. Some of the things we are discussing here may be cover-up for lack of performance. I can see indications of that in this report. Unless we pin down something concrete, we will have indulged in a waste of time.

I want to sound a general warning here: If you come to me and talk to me about somebody else, what I will do is to ask that person in your presence. We must expose some of these things! If you heard that I wanted the Speaker's seat and it came back to me, I will ask you in the presence of the Speaker. Maybe that will help us.

Mr. Speaker, sir, I believe that respect only comes from oneself. If you respect yourself, then you will find it easier to respect others. We came to this House on merit and, therefore, you should respect the others that they also came on merit. There is nobody here who can be taken slightly. This is what I used to tell my students when I was a teacher some years back. We also need that here. If you do not respect yourself, do not expect others to respect you.

To come out with such a document, it takes two. It takes the Secretary General and the Clerk. They did a few things about each other and the result is this document. Have you ever thought about what such an outcome can do to your reputation now or in the future? Is it just a small matter? Have you ever thought that you could actually be held responsible for having caused such a document?

What would you want to do with somebody when producing such a document? Do you want to tarnish his reputation so that he does not make a move forward? Why do you believe in yourself so much such that you cannot even tolerate the mistakes of others? Why do you say things about others and you do not expect them to say anything about you? Do you expect to live in this world alone?

So, this attitude which causes terror - if you are the head of a family, you arrive

at home and everybody is hiding toys under the chair and running around to check whether things are in order, how would you feel? This is terrorism of some sort!

Mr. Speaker, sir, it may sound as if I am preaching but I can assure you that I am not a preacher. But I am saying this because we have missed some of these points. We take each other so lightly that these issues had to come up in this manner. So, let us leave them behind for a change and forge forward as a team. If you have been in the habit of peddling rumours, just change and repent!

With these remarks, I support this attempt to solve problems that stand in the way of our progress.

The Speaker: I wanted to call upon the members of the Select Committee to reply to this Motion, but I can see the Secretary General raising his hand. The Secretary General has already contributed to this debate, but he has requested that he be allowed to speak but Rule 38(7) of the Rules of Procedure state as follows:

“No Member shall speak more than once to a question except in a Committee of the Whole House. But a Member who has spoken to a question may again be heard to offer explanation of some material part of his or her speech, which has been misunderstood, but he or she must not introduce new matter.”

I do not know what the Secretary General wants to say, but I would like to leave it to the House to decide if he should be allowed to speak for the second time. I do not want to allow

him because the Rules do not grant him a second opportunity to contribute to the same Motion.

The Secretary-General (Mr Amanywa Mushega) (Ex-Officio): I can do it under Rule 41.

The Speaker: Rule 41 states as follows:

“By the indulgence of the House, a Member may explain matters of a personal nature although there is no question before the House, but such matter may not be debated.”

I do not know whether that Rules guarantee him the right to speak once again on this matter.

Mr Maxwell Shamala (Kenya): Mr. Speaker, sir, in the Hansard Report of May 22, 2003, Page 24, the Secretary General is quoted as saying: “But to cut the long story short, I will be providing a written rejoinder to this Report.” We should now go for that.

Ms Kawamara Mishambi (Uganda): Mr. Speaker, sir, I wanted clarification from the Chair on the Rule you quoted, where a Member may again be heard if he wishes to offer an explanation. If the Secretary General wishes to offer an explanation, then this Rule grants him an opportunity to do so.

Mr Calist Mwatela (Kenya): Mr. Speaker, sir, if we go by the suggestion made by hon. Shamala to allow for a rejoinder to be tabled, I do not know whether the rejoinder will be subjected to debate or it would just be laying of papers on the Table, in which case we may opt to read or not to read. But if it is going to introduce new subjects to the issue, then I beg to go by the ruling

of the Chair that hon. Amanyam Mushega has had his opportunity and we move on.

The Speaker: Let me make it clear. This will not be a rejoinder because there was a Select Committee established by the House. The Committee provided its report to the House, and no other documents will be attached to that report. So, if there will be any document, it will be for the interest of members of this House; it will be a response to issues raised but it will not be a rejoinder since it will not be related to the Report of the Select Committee. The House is going to vote on this report and will exclude what has been written by anyone else.

Mrs Alley Mahfoudha (Tanzania): Mr. Speaker, sir, many honourable members had suggested that we should look for the way forward. If by giving one more chance to the Hon. Secretary General to clarify certain issues, will it assist in the way forward or it will just be going forwards and backwards?

The Speaker: Honourable members, taking into account the provisions of Rule 38(7), should we allow the Secretary General to speak once again?

Hon. Members: We should not allow!

The Speaker: So, if the Secretary General has any written documents, he should put them in the pigeonholes for distribution to honourable members.

Mr Amanyam Mushega: Mr. Speaker, sir, I would like to seek clarification from the Chair. When I spoke on that occasion, it was on the understanding that I was in a rush and that I was going to come and make concluding remarks later on. Secondly, this report dwells largely on the conduct and

office of the Secretary General. So, if we want to look for the way forward to work as a team, then to be shy to listen to an explanation from the person and office under debate is not the best way forward. But I do not mind. My response is written, it will not be circulated to the members of this House. I will circulate it to the Council of Ministers. Thank you.

Amb. Isaac Abraham Sepetu (Tanzania): Thank you Mr. Speaker, sir, for giving me the Floor to respond to some of the issues raised by honourable members. I am aware that 18 members have already contributed to this Motion and they have done a wonderful job, and to a certain extent, made clarifications on issues raised so far. The members who have contributed to this Motion are two thirds, if we exclude the ex-officio members.

Mr. Speaker, sir, this Assembly has been heard on this crucial issue which relates to the East African Community. I am happy that there were no dissenting voices with regard to the adoption of this report. I therefore appeal to honourable members to adopt this report without amendments.

Mr. Speaker, sir, I wish to thank all the honourable members who contributed to this Motion, and those who did not have the opportunity to speak. I wish to thank the House for accepting our appointment to serve as Members of the Select Committee, and the encouragement they gave us in the course of our work.

Mr. Speaker, sir, there were limitations during the course of our work, but we were able to overcome them with ease because of the leadership of our Chairperson. She performed superbly,

and that is why we were able to produce this report. She was able to circumvent the apparent constraints and make the Committee perform. Despite the difficulties we faced, we were able to conduct interviews in the Partner States. Whenever funds were not forthcoming, each one of us was mandated to conduct interviews in his or her home country.

We could not conduct interviews in Uganda because of that constraint. When we discovered that secretarial services were not adequate, Hon. Sarah Bagalaaliwo volunteered to fill the gap. She had to devote her free time to typing and proofreading the report and this made our work easier. It is very encouraging for us to hear the praises being heaped on us by the honourable members.

Mr. Speaker, sir, every member of this House was free to approach the Committee and render support in any form that would improve and complete this report. In fact, our Chairperson, before we begun our work, did circulate a letter inviting honourable members to appear before the Committee. I have a copy of that letter with me here, and I beg to lay it on the Table.

(Hon. Sepetu laid the document on the Table)

That letter contained contacts of all the Members of the Select Committee, so that we could be available to the honourable members. It is gratifying that when we were in Kenya our Kenyan colleagues made good use of the opportunity and met the Select Committee collectively and individually. The Committee highly appreciated this gesture.

We approached individual members of this House to come and make presentations to the Select Committee, but most of them gave the impression that they were willing but could not show up. But that should not be an issue, since most of the honourable members made their contributions while debating the report in this House, and *Hansard* is there to prove their involvement.

Mr. Speaker, sir, on the issue of dates, I must admit that there was a mix up of dates in the printing process, but the fact remains that the Hon. Secretary General did write a three page letter of appointment to Mr. Werunga dated 24 September, 2002 where terms and conditions of service were spelt out. I would like to refer to some of the paragraphs for the House to be appraised.

The opening paragraph of that letter reads as follows:

“Following the interview sat on 30 May 2002, and upon recommendation by the East African Legislative Assembly on 6 June 2002, I have the pleasure, on behalf of the Council of Ministers of the East African Community, to offer you appointment as Clerk to the East African Legislative Assembly on the following principal terms and conditions, with effect from 13 September, 2002:

- (c) You will be on probation for a period of one year
- (d) On satisfactory completion of your probationary period, you will be confirmed in the post. If the period of probationary service is unsatisfactory, you will not be confirmed and your appointment will be terminated

- (e) You may resign your appointment by giving three months written notice of your intention to do so. In the event of your departure before the expiry of the period of notice, and without the agreement of the Secretary General, you shall pay the Community an amount equivalent to your salary in lieu of the remaining time of your notice.
- (f) The Council may, at any time during your contractual service, terminate your appointment by giving you notice, or compensate you with one month's salary in lieu of notice in accordance with the provisions of Article 62 of the Staff Rules and Regulations."

I am making these references so that you can see the way things evolved with regard to the appointment and resignation of the Clerk.

Mr. Werunga filled his form of acceptance of the appointment and signed it on 2 October 2002, the day he tendered it to the Secretary General. However, it must be observed that from the correspondence we received, Mr. Werunga had received three warning letters on 30th September from the Secretary General, with the same reference numbers and folio numbers. The Personal Secretary to the Secretary General, without a delivery book, handed over those letters to him. He received a fourth letter on 1 October 2002 – the letter of appointment with the same reference number as the other warning letters.

Mr. Speaker, sir, one honourable member was uneasy with the title of

the report, but she did not come up with constructive suggestions for a better title. The Committee felt it was prudent to stick to the theme of the Motion and the terms of reference thereof, the result being the title, which appears in this report.

Mr. Speaker, sir, honourable members will realise that we decided to be broad enough in our terms of reference instead of limiting ourselves to the resignation of Mr. Murumba Werunga, which is now history. There were comments to the effect that the Clerk did not state the reasons why he resigned. Honourable members will realise that the report, on Page 17 Paragraph 2, states as follows:

"The resignation letter by Mr. Werunga, and the reply by the Secretary General did not make any reference to the outstanding conflicts, although both the Secretary General and Mr. Werunga alluded to these incidences during their respective interviews. The correspondence is otherwise couched in niceties and commendations, which are misleading."

Honourable members have made reference to the farewell party for Mr. Werunga, which coincided with the departure for a Kenyan Defence Liaison Officer. I also participated in that party. That goes to prove what we have observed in our report that things appeared to be so well and yet there were undercurrents.

Mr. Speaker, sir, I would like to highly commend the distinguished personalities we had the opportunity to interview, for their highly valued contributions, suggestions and

proposals on the way forward. I would like to single out the hon. Speaker of this Assembly, whom we met first, and the honourable members of the Council of Ministers of the East African Community, who are also ex-officio members of this House.

I would also like to commend the hon. Speaker of the National Assembly of Tanzania, the Clerks of Kenya and Tanzanian National Assemblies, former Member of the Council of Ministers from Kenya, Hon. Nicholas Biwott, the former Secretary-General of the East African Community, Amb. Francis Muthaura and others. Their invaluable contributions enriched our recommendations as reflected in our report.

Mr. Speaker, sir, the recommendations show the way forward, and I hope honourable members of this House will underline the need for the way forward as already expressed by those members who took the Floor. I would like to highlight the last three paragraphs, which appear in the conclusion of the Report. They read as follows:

“The Select Committee expects that the Assembly, in discussing this report, will find basis for subsequent resolutions around the findings alluded to or confirmed in this report. We have given our recommendations in the interest of projecting the wider implications and measures that will ensure smooth operations within the Community.

Finally, the Select Committee has made recommendations on areas that require attention. They are suggestions that require both short-term and long-term considerations.

The Select Committee must commend the foresightedness of the Motion, which, although sought to address a few matters of concern, has brought forth challenges that the Assembly seriously needs to address in our delivery of service to the people of East Africa.”

Having said that, allow me once again to thank all the members of this Assembly for the confidence they showered on us, and for the unfailing support and encouragement they showered on us. I therefore urge them to adopt our report without amendments so that we are vindicated, and this Community moves in the right direction. Thank you.

Mrs Sarah Bagalaaliwo (Uganda):

Mr. Speaker, sir, I wish to register my personal and more sincere appreciation for the trust bestowed upon us, in appointing us as members of the first Select Committee of this august House. I also wish to thank the honourable members for their support of the report, and the constructive contributions they have made. It is indeed gratifying to note the complementarities of the contributions we have received.

The work of any Select Committee of the House, as ably expounded yesterday by hon. Ogalo, is to act as agents of the House and reflect the views of the House on whatever subject they are called to examine, analyse, and make recommendations in a manner befitting of the esteem, prestige and dignity of the House.

It is my humble submission that this Select Committee, right from its inception addressed the methodology

to execute its mandate with the above in view. It proceeded to discharge its duty in cognisance of the fact the this Assembly stands to be judged, not only on our ability to legislate, but as leaders on how we deal with controversy, conflict, failure or other challenging issues that would come in our way; and at all times upholding the fundamental objectives of the Treaty establishing the East African Community, and the spirit of co-operation towards building permanent regional institutions.

Mr. Speaker, sir, allow me to commend the Chairperson of the Select Committee, hon. Rose Waruhiu, for her meticulous examination of issues, and my colleague, the hon. Amb. Sepetu, for his impeccable tolerance, and to both for their objectivity and commitment.

Mr. Speaker, sir, I wish to respond to some issues raised in the course of debate, which could have had some legalistic bearing. I wish to thank the Counsel to the Community for his appreciation of the elements of a learning process, the shortcomings of the Treaty and the need to nurture and implement the principal of separation of powers. I am grateful for the elaborate analysis by hon. Ogalo of the dilemma created by the provisions of the Treaty and the likely effects of this state of affairs if it is allowed to continue without review.

These views have gone further to support the recommendation for the review of the Treaty, and we are grateful that the Standing Committee on Legal, Rules and Privileges has embarked on this exercise. I know that sentiments have been made in this House cautioning early review of the Treaty, and as all members may note -

and I stand to be corrected - no national Parliament debated the Treaty. I also recollect that I personally raised the need for the review of the Treaty in my maiden speech to this House.

Mr. Speaker, sir, we are the regional Parliament, and this Treaty is our Constitution. Having come into place, we are duty bound to appraise this basic law, lest it renders us ineffective or the realisation of regional integration unattainable. There is no way that this House can propel the engine of regional integration if the base is dysfunctional. Without belabouring the problems of any state dealing with a poor constitution, we can only be called visionaries if we subscribe to a living document that will stand the test of time.

Mr. Speaker, sir, hon. Dr. Mwakyembe does agree with the recommendations for the House to establish its own Staff Rules, while hon. Kaggwa and hon. Ogalo support this proposition. This is a decision to be made by this House in its recommendations. I wish to add that while I am sure that we would all wish to be guided by a uniform set of rules, we realise that it has taken over three years and the Secretariat has not moved out of the transitional period, which allowed the operation of the old Rules until such a time when new ones would be in place.

With due respect, our observations in respect of the prevailing rules are made on pages 24-28 of the report. There is no problem in adhering to the same rules but the question is, when will such common rules be in place? It may therefore be prudent for the Legislative Assembly to lead in the formulation of its Staff Rules and Regulations and let the Secretariat follow at its own pace.

I wish to note the evaluation made by hon. Dr. Mwakyembe in emphasising the guaranteeing of the independence of the House in the selection of its officers. I think various other honourable members have belaboured this issue, and I do not wish to belabour it any further. Hon. Ogalo ably responded to the issue of membership to the House Business Committee, and I concur with his submission.

Hon. Ogalo has emphatically expounded on the contention as to the interpretation of the Treaty and the dilemma of inconsistencies in the legal provisions, as Hon. Ovonji-Odida raised it. Any correction of this can only be achieved by a review, which has already been recommended. All our references to the Treaty or other Staff Rules and Regulations have been explicitly mentioned, and what we deemed most important, we highlighted. We shall be obliged to receive specific mention of any omissions that we had not received.

Mr. Speaker, sir, I share the observation made by hon. Wanyoto that the Select Committee is not a court of law. Its findings and recommendations are debated, rejected, amended or approved by the House. We also did, in our humble submission, recommend the utilisation of our Court of Appeal for any interpretation of contentious issues.

Mr. Speaker, sir, allow me also to acknowledge the contribution of hon. Kaggwa towards the need to amend the Treaty in emphasis of the need for separation of powers and the provision of checks and balances, the urgent need to establish clear rules that give security of tenure and grading of the

office of the Clerk to that of Deputy Secretaries General.

Hon. Marando alluded to the need to strengthen this Assembly by the establishment of a Parliamentary Commission, which is also contained in our recommendations. There is need, however, to take note of the technical obstacles presented by the inconsistencies in the division of power by the Treaty as laboriously examined in the report, and by honourable members on the Floor of this House.

Mr. Speaker, sir, hon. Mbeo questioned the method of recruitment of the next Clerk. Our observations in this respect were duly made on pages 23-27 of the report. Our recommendations on the same are under "Staff Matters" on Page 40 of the report. I would like to thank hon. Shamala for his impressive elucidation of the Articles of the Treaty in respect of the relationship between the Secretariat and the Assembly.

In conclusion, noting the difficulties some honourable members might have had in contributing to this exercise due to the fact that some of the issues were deemed already done, I wish to request the House to reflect on the recently established Committee of Lord Hutton after the death of Mr. Kelly, the British expert on weapons of mass destruction. In view of the complexity, Lord Hutton stated that he was going to determine his mandate.

Our Select Committee on the other hand had its terms of reference clearly stipulated by the House. Aware, that Mr. Werunga had resigned, we knew that our duty went beyond personalities, and that it was a paramount request to enable this House

examine its role and its effectiveness, enforce its procedures, improve its relationship with the Secretariat and generally identify parameters that would promote the process of regional integration and establish strong progressive institutions of the Community.

Mr. Speaker, sir, I do hope that our Committee has, with your able guidance, endeavoured to live up to the expectations of this august House. Once again, I thank all the honourable members for their support and constructive contributions, and I hope that the recommendations that this House makes will reflect our desire to enhance the objectives of the Treaty, the spirit of co-operation and the aspirations of the people's of East Africa. I support the Report and beg the House to adopt it. Thank you.

Mrs Rose Waruhiu (Kenya): Mr. Speaker, sir, this brings us to the end of a long road. I feel encouraged by the praises poured on us by the honourable members of this House.

I want to thank the honourable members of the Select Committee because we worked as a team, and we had to teach ourselves how to type, how to write and how to construct sentences. We had in our Committee a lawyer and a former diplomat who claims to think in German but writes in English and speak in Kiswahili. I also tend to think in English and Kikuyu and write in English. This was a wonderful team.

I am a bit concerned about how I am going to respond at the end of this debate. I also do not think it is necessary for me to respond to all that has been said. What my two colleagues, hon. Sarah Bagalaaliwo

and hon. Amb. Isaac Sepetu said is what our common view is. Ours was a task which we undertook without having realised the magnitude of the expectations of this Assembly, but which we completed and were happy with the output. I think the outcome will depend on this House.

I would like to thank all the honourable members who have contribute to this debate. If we had come up with a report and there was no debate on it, it would certainly have been a very empty feeling. It has been edifying to listen to the honourable members contribute to this Motion.

Mr. Speaker, sir, the report was tabled two months ago and we have been away in our home countries, engaged in other matters, but it was possible, two months later, for honourable members to re-direct their thinking to this Report. So, I do want to thank all the members who have contributed to this report.

In the same vein, I want to thank the House for undertaking this task. Some honourable members felt that we could have been wasting time in producing a Report of this nature, or in discussing matters that are not pleasant, especially when what you are discussing does not have a solution in sight, or does not offer you a good feeling. Many honourable members may have felt that we are wasting time, but that is why we spent some time in writing our Report on challenges.

“Challenges” is another word that you use to show unresolved issues that remain for you to deal with, and they are particularly directed to the management of the Community. I plead with my brother, the Secretary General, to keep his cool. I recall that when he took the Floor, he was in a

rush to go somewhere else to attend an important meeting.

Mr. Speaker, sir, the issues that we decided to address ourselves to be based on what we experienced. In other words, there are many other issues out there other than the resignation of Mr. Werunga that fall within the realm the relationship between the Assembly and the Secretariat, or the institutions of the East African Community.

I was going to restrict my comments to a few issues that need clarification for the record, but as my colleagues have said, this report belongs to the House. The Select Committee has finished its work and the report now is the property of this House and it is up to the House to decide whether to adopt it or reject it. We are not here to defend what people told us. If somebody told us that they had been treated badly, our work as Members to the Select Committee was to record what that person said. We are not putting anyone on trial here. Therefore, as a Select Committee, we have done the work we were assigned by the House and it is now for the House to either adopt or reject the report.

As I persuaded you when I first presented this report, I would like you to bear regard to the way we have presented the recommendations under paragraph 8, which starts at page 40. If it is possible, I shall get into the recommendations. If the Report is adopted, then we need to subject these recommendations to a summary as to whom they are directed to. But let me clarify a few issues before I move on to the recommendations.

Mr. Speaker, sir, the issue of the recruitment and resignation of the

Clerk has been dealt with ably by hon. Sepetu, and I want to thank him for doing that. We spent quite some time discussing the title of our report. You will appreciate that not all of us are writers. We first wrote the report and then we had to look for a title that reflected the content. But we did not feel we were free to change the title although the contents were broader than the resignation of the Clerk. We stuck to the title as in the Motion, and according to our terms of reference. In any case, our response has been that the resignation sparked off the concern.

While the resignation may have been the tip of an iceberg, it demonstrated the beacon around which this House reacted. Although so much else was going on, it was not until this resignation that investigation was agreed on by the House. In fact, one honourable member wondered whether the Clerk was put in a position to defend the House without the right procedures or lines of authority in place. You will find that we have dealt with this issue on pages 10 to 11 of the report. That is the position in which Mr. Werunga defined his duties in relation to his past experience as a Clerk and what he thought was within his authority or within his span of control as a Clerk. And that is how the collision started.

Mr. Speaker, sir, I would like to turn to the issue of Staff Rules and Regulations. It is clear from the contributions on the Floor of the House that we did not find consensus on this matter, but I would like to clarify that since the days of the Tripartite Commission of East Africa, the Staff Rules and Regulations have been amended at least six times, including a study carried out by Peat Marwick,

which is an international firm of consultants, to revise the Staff Rules and Regulations. There have been arguments that amendment of the Rules should be an overhaul job.

We have recommended that these Staff Rules and Regulations should go to the Council of Ministers. There is no reason for delay. Although we may be concerned more about the staff of the Assembly, having spent so much time being informed about these other issues, we feel it is our duty to mention the fact that the Staff Rules and Regulations for the Community should concern us as the Rules for our own Assembly.

Mr. Speaker, sir, as hon. Bagalaaliwo has said, in the meantime, the concern of the Assembly is to ensure that any staff rules will protect the privileges that relate to parliamentary work. If we are very sure that we want to work together, then do we really need two sets of rules or do we need to see who can move fast to ensure that staff feel safeguarded and fairly treated?

So, our view is that the Assembly should move forward and come up with its own Staff Rules and Regulations since it does not have control over the Secretary General. But I am sure that by the time we end this debate, we may have agreed that we can work together and make sure that all the staff that work for the Community enjoy Staff Rules and Regulations that are democratic and which can protect their rights. There is no reason for delay. The information we have is that an international firm of consultants worked these rules, so the reason why they have not been approved is beyond comprehension.

Mr. Speaker, sir, in our recommendations we have referred to the formation of a Parliamentary Commission. This begs the question, within the arrangements of the Community, which organ should be looking into the future in how we can have a Commission, which is responsible for the entire East African Community? This came up because we wanted to make recommendations that are realistic and can be adopted. As much as we talk about a Parliamentary Commission, we also hope that in future, there will be a Commission to look into matters of the entire Community.

Mr. Speaker, sir, with regard to the Treaty, we have only talked about those issues that are relevant to this Report. One of the main issues that we raised with regard to the Treaty is the doctrine of separation of powers. It is evident that there was an assumption that there should be separation of powers. Therefore those organs that were in place right from the beginning – mainly, the Secretariat was expected to take the responsibility to set up the other institutions.

It is very important to detach our personalities from our responsibilities, but at the same time, it is people who make things happen. We believe in building institutions but we know that behind the desk in any institution is a person and the buck stops there. You cannot address an institution in a vacuum. You address the person. So, what we are talking about is devolution of power, and that amounts to sharing out power that somebody has been having, and that is not easy.

The Secretariat has worked alone for six years, and the other organs came in. It is therefore very easy to understand

why this conflict is there. It is very easy to understand, and our report says so. It is expected because it is a transitional problem.

But what we are saying is that this power has to devolve horizontally. It is those people who have been in place who have had the privilege and time to kick-start what is happening. It is their duty to do so. Whether we talk about the Secretary General or the Secretariat, the responsibility remains there.

Mr. Speaker, sir, we also belong to other regional bodies like COMESA, SADC and the African Union. Those organs do not have an Assembly. So we should appreciate that this Community is different. To answer the question as to why this Assembly was set up and yet we do not have one in IGAD or any of the other bodies, the responsibility is what we could share and co-operate in in discussing, and we will deal with that when I go through the recommendations. But this conflict has come out of the transitional struggle. In the Report we have said that such conflicts are always expected in such organisations, but the management of it has not been handled well.

Mr. Speaker, sir, on matters of staff, I was amazed that in three days of debate, there was no challenge to our suggestion that the issue of Murumba Werunga be closed. Maybe with time, it will be closed automatically. But I would like to say that it is very urgent that we do have a resolution on the exercise of recruiting a Clerk. There was a suggestion from hon. Mbeo that the exercise, which is on going, should be nullified – (*Interjection*).

Mr Amany-Mushega: Mr. Speaker, sir, it appears as if an impression is being created that the Secretariat acts unilaterally. I received an official request from the Office of the Speaker of the Assembly to advertise the post of the Clerk of the Assembly. We have no ambition on our part to do things that do not belong to us. We are not anxious to recruit anybody for the post of Clerk of the Assembly.

Mrs Waruhiu: Mr. Speaker, sir, there is actually no contradiction. I just challenge the House that since the title of our work is the “Resignation of Mr. Werunga” I was looking forward, within the last two days, to asking why we have closed Mr. Werunga’s chapter.

I want to bring it to the attention of the House that we do need to make a decision on the recruitment of the Clerk. In this regard, we are assuming that if this report is adopted, our understanding of the word ‘recommend’ will have taken a different meaning. Since the debate is over, I do not think this is an issue, which I can deal with now. I am just saying that either the House Business Committee or the office of the Speaker, should take up this matter subsequent to the adoption of this report because our terms of reference were to ensure that lessons we learnt from the last recruitment do not recur.

Mr. Speaker, sir, we have also recommended that we should have ministers with specific responsibilities for the Community. This is because there are other management issues that should be shared with the Council of Ministers in the interest of finding solutions and the way forward as an outcome of this report. Members moved a step forward yesterday in

trying to find the way forward, but we did not allude in our report to punishing anybody. As we have said, ours is not a court. That was not the purpose of the Select Committee. But there are challenges on what we see as critical functions of the Secretary General, or the Secretariat as I referred to earlier. There should be a very clear vision, which is shared with others and we hope that there will be opportunities in future where we will jointly get to understand the vision that the leadership of the Community has.

Mr. Speaker, sir, I would like to ask the Assembly and the Secretariat to work together to set priorities. We may have charged the performance of the Secretariat in the context of the interaction with the Assembly. In other words we look at the Secretariat in relation to the Assembly because we are not aware of these other roles. We hear about them but we are not working jointly in terms of programmes, and programmes, as we have said in our report, that are organised through the Secretariat do not include the Assembly. So, there is room for improvement in communication.

Mr. Speaker, sir, the question of the Secretary General and meetings of the Assembly raises the problem of conflict in the dates for meetings. This is the question of absences that the Secretary General explained ably on the Floor of the House that his office is too busy, and many times he is called upon to attend to many things at the same time he is required to be in the Assembly. These are issues that we can discuss jointly and then chart the way forward, but the core responsibility which cannot be shared, even with the devolution of power which I have talked about, and which remains within

the Secretariat which is the executive arm of this Community is to provide governance environment and leadership that will support and encourage other programmes.

When Hon. Ogalo talked about governance and accountability, it occurred to me that we should be asking ourselves who the Secretary General is accountable to. This is a rhetorical question, and I do not need an answer. If the Secretary General is the executive officer of this Community, then who is he accountable to? Members of this Assembly are accountable to 80 million of East Africa.

From our interviews, the Secretary General is accountable to the Council of Ministers. That is where the separation of powers and the relationship between the organs of the Community becomes a very important question. Do we need an expanded Secretariat? Do we need to borrow another model where these functions relate more directly to the responsibilities of Partner States or within officers stationed in Arusha and appointed by Partner States, or do we continue to have teams of ministry staff at different levels coming to Arusha to discuss the Community and go home with information? These are questions for the future. So, if we started with a nucleus, which has been overburdened by responsibilities, then it is time we examined this and we should do it together.

Mr. Speaker, sir, there was a comment by one honourable member that we dwelt in many allegations. I was going to avoid answering this because it is a very serious charge. We said in our report that Members were keen to have Mr. Murumba Werunga appointed as

Clerk. Honourable members confirmed that in their contributions, and I do not have to belabour the point.

On the meeting in Zanzibar to increase understanding among member countries, the Secretary General in his submission concurred that this meeting took place. Mr. Speaker, sir, this House will still pursue the outcome of this debate, but I would like to say that two issues are very urgent. One is the appointment of a new Clerk. Secondly, whether proven or not - and it is supported by documents which we had with us and also evidence from staff - is the matter of complaints from staff. It is urgent that the complaints from the staff are attended to.

As I explained, the documents containing this information are in the Clerk's office. The only request I made then was that those documents that referred to private matters regarding the health of individuals should be treated with confidentiality. I am sure that with your approval, the office of the Clerk would be able to distinguish which material should remain confidential.

Mr. Speaker, sir, I would be failing if I did not comment on the reaction of the Secretary General about writing a rejoinder to this report. Before we started our work, I had three long conversations with the Secretary General, and the week before I presented my report, we had one long telephone conversation and we continued to talk.

My attitude to public life is that these matters are not personal. They are not hinged on whether we are friends or can talk to each other. We have a duty to build institutions and tolerance is one thing, which you must learn as a

leader. You must learn to work with your colleagues if you know that you are being objective. I look forward to a future because what has happened has already happened, and we cannot do much about it. Things have turned out this way; this report has appeared to be very critical and should not be seen as a personal matter. So, let me turn to the recommendation on Page 40.

Our work will be incomplete if we do not go through the recommendations in terms of agreeing on whom it is that they are directed to. If we do that, and you accept our suggestions, we will have made the adoption of the report easier and provided suggestions for the offices of the Clerk and the Speaker on what to do with these recommendations after the adoption of the report.

Our recommendations as listed in Page 40 of the Report are as follows:

(a) The resignation of the Clerk came about as a personal decision on the part of Mr. Werunga. He is presently redeployed in Kenya National Assembly. Although both the resignation and acceptance letters were silent on the underlying reasons, including their actions, it was common knowledge within the Community that the two personalities could not relate to one another. It was therefore a matter of time before the two could part. Therefore, the Select Committee considers that this issue should be closed.

This is therefore a matter for the Assembly to consider.

(b) The Select Committee recommends that the independence of the Assembly should be manifest in the recruitment process of its staff, and a

possibility of recurrence of the fore mistakes should be avoided. This would imply that there is urgent need for the Assembly to determine its staff rules in the recruitment exercise. In view of the urgency of this problem, the House sitting in this session should come out with a resolution that will govern the oncoming exercise of recruiting a new Clerk.

This recommendation is directed to the Assembly, and I am mentioning it for the third time to underline its importance. The other problems the Assembly has in terms of staff are listed on page 32.

(c) Our observations are that the Assembly needs staff of its own to make the work of the Assembly possible. This raises debate on the suggestion that secondment of staff from the National Assemblies may not be the answer. However, the component of staff of the Assembly is very small, and every individual on board has to carry a substantial load of work directly as opposed to working in a large establishment and learning on the job. It is realistic, therefore, that a Clerk has to be recruited from persons with relevant experience and suitable standing to operate at the level expected.

Following the debate from the Floor of the House, we have realized that the only way the Assembly is going to get the right caliber of people is to upgrade the post of the Clerk. This recommendation is directed to the Council of Ministers.

(d) The rules that govern the transition period were made in 1996. As they do not cater for the new developments highlighted in the Treaty, they should be updated and

harmonized without any further delay. This recommendation is directed to the Council of Ministers.

8.2 The Treaty

(a) The Treaty has been acknowledged by all persons interviewed to have substantial shortcomings and is not comprehensive enough. There is need for the Assembly and all stakeholders to study the Treaty in detail. Any necessary recommendations for amendment of the Treaty should be made to the Council and the Partner States.

Although we are saying that recommendations for amendment should go to the Council of Ministers, the Assembly should take the initiative if we expect the Council and the Partner States to pick it up.

(b) The setting up of the Assembly was rushed through, as it was important to have it in place, but without adequate discussion on the implications on resources and management and the transitional arrangements towards its political role. This matter should receive consideration from the Council of Ministers and the Summit.

This recommendation is directed to the Council and the Summit.

(c) The appointments of the Secretary-General and the Deputy Secretaries-General give prominence to rotation between partner states rather than job specifications. The designation to the positions of Secretary General and Deputy Secretaries General should be based on criteria of responsibilities they are to

assume in cognizance of the duties of each office.

This recommendation is directed to the Council of Ministers.

(d) The absence of Ministers creates gaps in consultation and political leadership necessary to facilitate the functional working of the Community. Resident ministers or ministers with specific Community portfolio would enhance the presence of the Executive and its capacity to make decisions and follow through. The number of meetings of the Council (and the Summit) should be increased.

This recommendation is directed to the Summit as Heads of State in their own countries, but it obviously that would require the support of the current ministers.

(e) The resolutions of the Council contain policy decisions and must be tabled in the House or communicated to the Assembly formally.

This recommendation is directed to the Secretary General and within the Treaty, there is provision for annual reports, and this is the opportunity that should be used to share policy decisions. But we are also talking about integrating members in on-going programmes that the Community is working on.

(f) The Counsel to the Community should be implored to perform his role independently and objectively.

8.3 The Assembly

(a) The EALA, while seen as the top political body in the three organs of government, is yet to entrench itself

adequately to push for integration as would be expected. An independent Service Commission similar to the parliamentary service commissions in the Partner States is the ultimate goal that will entrench the independence of the legislature as one of the organs of the East African Community. In order to build foundation for this commission, nuclei for this structure should be instituted under the chairmanship of the Speaker.

This recommendation is addressed to the office of the Speaker and the Assembly.

(b) The Assembly must regulate its business and work. This should commence with the setting up of a pre-budget function for the Assembly, which would be integrated in the budget cycle of the East African community. The Assembly should prepare and publish its working calendar.

This recommendation is directed to the Assembly.

(c) Members must embark upon a Strategic Plan for the EALA. This will speed up decisions on key areas where the Assembly can influence the process of co-operation vis-à-vis the Partner States, the council of Ministers and the Summit. The performance of the strategic plan should be monitored and reviewed regularly.

This recommendation is directed to the Assembly. While we have been blaming others for failing us, we should do what is possible within the capacity we have to speed up the integration process.

(d) The principle of separation of powers should be manifest in the

operations of the various organs of the community. Hence the Court and the Assembly should be given the control over the preparation of their budgets and supervision of their finances under the President of the Court and the Speaker of the House, respectively. They should get the staff they need to be self-accounting.

This recommendation is directed to the Secretary General.

(e) The Assembly itself has not made enough effort to draw its own Plan of Action for its activities, which omission will affect delivery. It should address itself to the Treaty, its shortcomings and the likely effect on the progress of the work of the Assembly.

(f) The Assembly should debate the draft protocols before they are signed. The Assembly in the process may set up working groups or use the Committees to discuss the protocols. The protocols will eventually come for legislation after debate has been allowed before the Partner States sign them.

This recommendation is directed to the Assembly.

8.4 The Relationship between the Secretariat and the Assembly

(a) The delay in the implementation of plans and decisions in the Plans and Protocols has compounded the unease between the two organs. There is need for clear management and direction to achieve the objectives of the Treaty. This recommendation is directed at the Secretary General.

(b) The professional staff should be available to brief the Members of the Assembly in Standing Committee

Meetings. This role should be reflected in the job specifications. This recommendation is also directed at the Secretary General.

(c) For the avoidance of doubt, any contentious issues should be brought before the attention of the Court of Justice for interpretation – *(Interjection)*.

Prof. Margaret Kamar (Kenya): Mr. Speaker, sir, the honourable member touched on the draft Protocols and what we intended to do in Kisumu. The intention in Kisumu was to discuss the Protocol, which had been brought to the Standing Committee on Tourism and Natural Resources. The officer who came was different from the one who was supposed to come and table the Protocol.

We were informed that the Counsel to the Committee is the only person who is mandated to handle such matters. But he was not able to turn up, although the Kenyan Parliament had agreed to sponsor his trip. But nonetheless, it is possible to get the draft Protocols in our own countries. We saw them in Kenya when we were getting briefs from our Permanent Secretary.

It very important that when we are thinking about legislation, we should have the right officers to present to us such documents, but maybe that the Counsel to the Community should now work independently and freely without fear or favour will help him in future responses.

Mr Amanyua Mushega: Mr. Speaker, sir, the contribution that I wanted to make before this House today was on the way forward. Some of the issues we are raising here would have been considered in contribution, but since

we want to listen to ourselves only, we will continue that way until I am given an opportunity to give our own proposal on how we can move forward with the limited resources in manpower and money.

Mrs. Waruhiu: Mr. Speaker, sir, I got information yesterday that I should expect a rejoinder to this report today. It was not possible for a rejoinder to be done on a Select Committee report, but for the sake of clarity and fairness, I should repeat what I shared with the House on 22nd May this year.

The Select Committee had to wait for one week before we could get an appointment to meet the Secretary General, but when we met him, we spent seven and a-half hours with him. Those who think that we have pre-occupied ourselves with what looks like personal issues should get this information that we took the greatest time and care possible, and we posed every question - which is repeated on pages 38 to 39 - to try and get any direct response from the Secretary General to our questions.

Both Deputy Secretaries General and the Counsel to the Community accompanied him that day, so we had the four of them with us for a whole day. If we could not learn more that day, we felt that we had invested enough time for that occasion. There may have been a change of heart later, but we took the first two hours before we could even get to agree.

The Secretary General had felt all along that Parliament was nothing and a non-existent problem, so for us to agree on the purpose of our mission and why this Select Committee was working and why it was important, it

fell on us to have to persuade him, which to me was very difficult.

It is not that we are not sympathetic, but the time has passed for us to listen to the Secretary General. There will have to be another exercise, which allows him to tell us what he wants to say. In other words, his attitude was that we had to write to him formally before he could respond to us in writing, and there was no possibility for us to operate like that.

I thought this was important for the records so that he does not feel that we have not given him the opportunity. We gave him all the time we could. Fortunately, it was possible for his deputies to come and sit with us the next day. So we spent one and half days listening to the office of the Secretary General.

Mr. Speaker, sir, I have already explained that we were ready up to the end to receive any written communication, and I find it sad that I have to proffer this explanation. But this is meant to clear the air for those who feel that things may have looked personal. To us, nothing was personalized, and sometimes we had to separate the man Amanywa Mushega from Amanywa Mushega the Secretary General, as he mentioned it during his contribution. I hope he said it with a light touch.

Mr. Speaker, sir, our report looks forward to a stronger Community. We would not have spent our time writing issues that were not clear if our concern was not whole and complete. This has been a very moving experience for me, and it was worthwhile. I have learnt that when people tell you not to take them seriously, you have to start by taking

yourself seriously. If you take yourself seriously, it is even more important than how other people take you. You may take yourself a bit too seriously, but I do not think it does any harm. Certainly, hard work never did anybody any harm. Thank you very much - *(Applause)*.

(Question that the Report be adopted put and agreed to)

ADJOURNMENT

The Speaker: Honourable members that marks the end of our business today. The House is therefore adjourned until tomorrow at 2.00 p.m.

(The House rose at 5.30 p.m. and adjourned until Thursday, 24 July 2003, at 2.30 p.m.)