

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 16th July, 2024

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Kingi) in the Chair]

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?
Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Clerk, do we have quorum now?

(The Clerk-at-the Table consulted with the Speaker)

You may now stop the Bell.
Clerk, proceed to call the first Order, please.

PAPER LAID

The Speaker (Hon. Kingi): Senate Majority Leader, proceed.

ANNUAL REPORT OF THE PARLIAMENTARY SERVICE COMMISSION FOR FY 2022/2023

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 16th July, 2024-

The Annual Report of the Parliamentary Service Commission for the Financial Year 2022/2023.

(Sen. Cheruiyot laid the document on the Table)

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The Speaker (Hon. Kingi): Next Order, Clerk.

QUESTIONS AND STATEMENTS

STATEMENTS

STATE OF THE HEALTH SECTOR IN NYANDARUA COUNTY

The Speaker (Hon. Kingi): Sen. Methu, is not here.
That Statement is dropped.

(Statement Dropped)

Next Order.

(The Clerk-at-the Table consulted with the Speaker)

Order No.8 is deferred.

MOTION

THE CURRENT STATE OF THE NATION

RECOGNIZING the State of the nation at this moment; the ongoing protests following the passing of the Finance Bill (National Assembly Bills No. 30 of 2024) on 25th June, 2024 by the National Assembly; the loss of lives, maiming and loss of property that has been occasioned following these protests.

COGNIZANT THAT pursuant to Article 115(1)(b) of the Constitution His Excellency the President of the Republic of Kenya declined to assent to the Bill and referred it back to the National Assembly with recommendations to delete all clauses of the Bill.

ACKNOWLEDGING THAT the conversation on the Finance Bill has triggered the broader important public conversation on the question of the high cost of living juxtaposed against the wasteful expenditure in all public institutions including Parliament.

FURTHER ACKNOWLEDGING the issues raised by the youth and other members of the public to do with corruption, impunity, incompetence within state and public appointments, opulent lifestyles of public officers, unemployment and high cost of living amongst other issues bedeviling the economy.

NOW THEREFORE, the Senate-

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1. calls upon;
 - i) the National Assembly to expeditiously consider the presidential memorandum pursuant to Article 115(2)(a);
 - ii) all government ministries, departments and agencies, and constitutional commissions, including Parliament, to put in place austerity measures in undertaking their respective functions;
 - iii) the Ethics and Anti-Corruption Commission (EACC) and other government multi sector agencies in the governance, justice, law and order sector to upscale and make concerted efforts to fight corruption;
 - iv) the National Police Service to cease abductions, unlawful arrests, extra judicial killings and exercise restraint in dealing with peaceful and unarmed demonstrators;
 - v) release of all persons arrested for planning and participating in peaceful demonstrations relating to the enactment of the Finance Bill;
 - vi) the government to waive hospital bills for persons who have been injured and defray funeral expenses for those who lost their lives, during the demonstrations; and
 - vii) the Judiciary to prioritize and expedite all court cases relating to the enactment of the Finance Bill and the resultant demonstrations.
2. considers all the challenges facing the country and makes necessary recommendations to address them.

(Sen. Cheruiyot on 3.7.2024)

(Resumption of debate interrupted on 11.7.2024)

(Motion deferred)

Next Order.

MOTION

ADOPTION OF REPORT ON CONSIDERATION OF THE SOCIAL HEALTH INSURANCE (GENERAL) REGULATION, 2024 AND THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE) RULES, 2024

THAT, the Senate adopts the Report of the Select Committee on Delegated Legislation on its consideration of the Social Health Insurance (General) Regulations, 2024 and the Social Health Insurance (Tribunal Procedure) Rules, 2024, laid on the Table of the Senate on Tuesday, 2nd July, 2024; and that pursuant to Section 18 of the Statutory Instruments Act, the Senate resolves to annul-

- (i) the Social Health Insurance (General) Regulations, 2024 (Legal Notice No. 49 of 2024); and,

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(ii) the Social Health Insurance (Tribunal Procedure) Rules, 2024, (Legal Notice No. 48 of 2024).

The Speaker (Hon. Kingi): We will defer this Order and proceed to the next Order.

(Sen. Gataya Mo Fire on 10.7.2024)

(Resumption of debate interrupted on 10.7.2024)

(Motion deferred)

BILLS

Second Reading

THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL
(NATIONAL ASSEMBLY BILLS NO.44 OF 2023)

The Speaker (Hon. Kingi): That Order is deferred.

(Bill deferred)

Next Order.

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL
(SENATE BILLS NO.40 OF 2023)

The Speaker (Hon. Kingi): That Order is deferred.

(Bill deferred)

Next Order.

Second Reading

THE STREET VENDORS (PROTECTION OF LIVELIHOOD)
BILL (SENATE BILLS NO.41 OF 2023)

The Speaker (Hon. Kingi): That Order is deferred.

(Bill deferred)

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Next Order.

(The Clerk-at-the Table consulted the Speaker)

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT)
(NO.2) BILL (SENATE BILLS NO.52 OF 2023)

Hon. Senators, we are now handling the Constitution of Kenya (Amendment) (No.2) Bill (Senate Bills No.52 of 2023). The Floor is open. Since there is no Senator willing to contribute, and the Mover is not present, that Order is deferred.

(Bill deferred)

Next Order.

Second Reading

THE HERITAGE AND MUSEUMS BILL
(SENATE BILLS NO.8 OF 2023)

The Speaker (Hon. Kingi): Proceed, Chairperson Standing Committee on Labour and Social Welfare.

Sen. Murgor: Mr. Speaker, Sir, I am not ready yet.

The Speaker (Hon. Kingi): What do you by mean you are not ready yet?

Sen. Murgor: I just got the paper.

The Speaker (Hon. Kingi): It is your Order. You submitted it to Senate Business Committee (SBC), and the SBC has listed it for prosecution. Do you want to defer your business?

Sen. Murgor: Yes.

The Speaker (Hon. Kingi): That Order is deferred.

(Bill deferred)

Let us move to the next Order.

Second Reading

THE AGRICULTURE AND FOOD AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO.13 OF 2023)

The Speaker (Hon. Kingi): Sen. (Dr.) Murango is not here.
That Order is deferred.

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(Bill deferred)

Next Order.

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO.18 OF 2023)

The Speaker (Hon. Kingi): Sen. Miraj is not here.
That Order is deferred.

(Bill deferred)

Next Order, Clerk.

Second Reading

THE RICE BILL (SENATE BILLS NO.19 OF 2023)

The Speaker (Hon. Kingi): Sen. (Dr.) Murango is not here.
That Order is deferred.

(Bill deferred)

Next Order.
Sen. Veronica Maina.

Second Reading

THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO.20 OF 2023)

Sen. Veronica Maina: Thank you, Mr. Speaker, Sir, for this opportunity to debate the amendments that I have proposed to the Law of Succession (Amendment) Bill (Senate Bills No.20 of 2023). At the onset, these amendments---

The Speaker (Hon. Kingi): You need to Move the Bill first, Senator.

Sen. Veronica Maina: Mr. Speaker, Sir, I beg to Move that The Law of Succession (Amendment) Bill (Senate Bills No.20 of 2023) be now read a Second Time.

At the onset, the purpose of this Bill is to amend the current provisions under The Law of Succession Act to align it with the current Marriage and the Matrimonial Property Act. The Bill also proposes to safeguard gender equality in the succession matter, so that widows and widowers have equal rights upon the demise of a spouse.

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Mr. Speaker, Sir, we need to take note of the fact that the current laws of succession have not been in tandem with the marriage and matrimonial properties' laws. If you look at the legislative jurisprudence in Kenya, under the Marriage Act, you will find that we have a monogamous system of marriage that is prevailing. This monogamous system defines who a wife is and who a husband is. It also defines a monogamous marriage as that of one man and one woman.

However, when it comes to current practice, even in situations where a man is married under the monogamous laws, you may find there is another wife under the traditional or polygamous system and there are children that may emanate from such relationships. The worst scenario would be a man who is married to one wife under monogamous laws of marriage, but also has mistresses who have children or he has had children out of wedlock.

What happens then is a sort of chaotic platform on how the determination of rights under the succession law happens. If that man departs from this world, even those children born out of wedlock cannot become inheritors of his estate. You will find the very famous scenario of the little boy child in a black suit and bowtie showing up at a funeral, and for the first time, the family of this man experiences other children who are claiming or purporting that the deceased was their father.

In many instances, you discover that those children could belong, and their paternity can be traced to the man who has departed. The purpose of this law, first, is to determine what should happen to children who are born out of wedlock and, secondly, whether the women who have given birth to these children are entitled to the estate of the deceased man.

On the other hand, The Law of Succession Act recognizes monogamy, polygamy, children who are born out of wedlock and other beneficiaries who may have been dependents of the deceased.

We have had a clash between monogamous laws and the succession laws. The purpose of this amendment is to align some of those areas. It will also look at the Children Act and what the Constitution provides for children. It will clarify whether those born from a certain lineage or paternity are entitled as those who are defined as children under the monogamous law.

In Section 3 of the Law of Succession Act, - that is the principal Act - we are proposing an amendment to redefine who a child is. A child should include an adopted child, one who is conceived during the lifetime of a deceased person and is subsequently born, even if they are born after the death of the deceased person.

This means that if a man was to pass away when the wife or a woman is pregnant, and if the child was conceived by the deceased person, the definition of a child will now include anybody who carries his DNA. A child who carries the DNA will be defined in the Constitution as belonging to that person or man and will be entitled to be an inheritor of that estate, notwithstanding that his father passed on. So, we will be seeking to be more inclusive. We are also looking at an adopted child.

An adopted child is a child for whom the parents have assumed legal responsibility through a court order. That child is now defined to have adoptive parents who are then recognized through a full adoption process in court. They become

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equivalent to the children who are born by the couple, born by the man who has adopted them, born by the man and the woman, or where the parental responsibility is assumed by the man and the woman, or a couple who have adopted that child.

Mr. Speaker, Sir, this definition now is expanded. Even though the law had not expanded this definition, many lawsuits have been taken to court to define who a child is. The law will now clarify that an adopted child should be treated as a child of that couple and should have equivalent rights to the biological child of that couple.

In the principal Act now, there is the term ‘intermeddling’, which is introduced and defined. The intermeddling is in relation to the properties of the deceased. Our courts are replete with of a lot of data from cases that have been brought before them on the instance of offenders who are intermeddling with the estate of the deceased, and we know them.

Even where cases have not been proffered or disputes have not been recorded, we know of many family *barazas* where relatives who perceive themselves to be stronger than the widow and will meddle with the estate of the deceased.

I think every single Senator in this House has come across such cases, where the property of the deceased person is interfered with, possession taken, and the properties being disposed of. Somebody else is trying to forge a title, change the property, collect the rents, or any benefits that are emanating from such properties.

The concept of intermeddling has been redefined better in these amendments. They have been redefined to mean taking possession of, disposing of, charging, receiving, distributing, leasing or using property of a deceased without authority under this Act or any other applicable law or even ejecting a surviving spouse or a child from their matrimonial homes.

Mr. Speaker, Sir, from the stakeholders engagement we have received from different actors in this field, they have even proposed that this definition should even be expanded further to include any act or any action of ejecting a surviving spouse or a child from matrimonial homes or matrimonial properties, and any other action that may be deemed to become unlawful as it concerns dealing with the deceased person's estate.

Therefore, that means it will no longer be business as usual once this amendment is enacted. If somebody intermeddles with the estate of the deceased, then it means there will be criminal culpability. It means there will be penal sanction, so that those big brothers - I apologize for using the “big brothers” - because they are the ones maybe or male relatives who have really oppressed widows who are vulnerable and who are busy mourning their husbands - can then now take a backseat and consider whether they can take the criminal sanction that will emanate from such behavior.

That would as well mean that, after these amendments are introduced, accepted and adopted as part of our laws and enacted as such, it will then mean that those widows who have cried for many days, who have been thrown out of their estates, whose children could have been thrown into the streets by other relatives, that will become a thing of the past.

We have seen on many occasions that widows will not only be thrown out of the properties, but you will even find that some very treacherous relatives or distant relatives have walked in, carted away a vehicle, even carted away movable property, furniture, or

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even started commotion and very heavy fights, which are even evident in burial ceremonies.

Therefore, after this becomes law, it means that if somebody intermeddles with the estate of the deceased, it will not be acceptable. They can be prosecuted for that. Many lawsuits have been taken to courts and not many people have been punished enough to send a message to the ones who are intermeddling with the estates that this should not happen.

There are some estates in the Republic of Kenya, which are notorious, especially when you find an estate has many assets - I do not want to name them because of data protection - but Kenyans would understand the number of estates that have become notorious for making headlines because of relatives intermeddling or taking shares that do not belong to them. Once this Bill becomes law, then it is going to be much better, and this area will be settled.

When this Bill was read the First Time, a number of people called me to congratulate and compliment the fact that the Senate is thinking about amending these sections of the law because of the pain they have had to go through as they watched people who are not related to the man, the holder of the property, or the deceased spouse, who just come to claim things that do not even belong to them. They did not even know the deceased very well, but suddenly, they come in to intermeddle.

Intermeddling will also mean that any person who is entrusted with being an administrator of an estate of a deceased person will also have to be more accountable on how they manage the estate of the deceased. Therefore, this will debar any ambitious criminals and any person who would wish to take advantage of the fact that the man in that home is already demised and take advantage of vulnerable children.

You have seen estates, some of which have only minors; the minors are left, children who are under 18 years--- Even before these children understand what their father owned, we have seen on many occasions by the time those children grow up, the estates cannot even support their education.

Those children who are being provided for, going to an ordinary school maybe, living in a good estate or living in a sensible estate, we find all of a sudden the demise of their father or demise of their parent means that they can no longer enjoy the basic maintenance that they were being given by their parents. Therefore, it will throw a lot of cushion and a lot of protection to such vulnerable members of the family.

Section 35 to be amended to enable that the interest of a surviving spouse to be determined upon remarriage. If you look at the current Law of Succession Act, that interest only determines on the side of the woman. When a widow remarries, the interest in the estate is determined upon her remarriage. The current provisions do not provide for that determination to be on the widower; it only determines on the woman's side. That means it is biased and not equitable to both genders.

Therefore, the proposed amendment is such that the interest of the estate shall determine for both upon remarriage. For instance, if a widow has remarried, because the interest would remain with the children of the couple before the man passed on, then it means even for a widower who gets married, that interest is determined.

Therefore, it gives equality in law, treating the man and the woman the same way. However, in the current laws of succession, it has not been treating the man and the women equally, that is, the widow and the widower. Therefore, the introduction is for both; the determination is upon remarriage.

Mr. Speaker, Sir, there is also another amendment, where the surviving child is not a child of the surviving spouse. Where the surviving child is not a child of the surviving spouse, the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely, and a life interest in one half of the whole residue of the net estate, and the surviving child shall also be entitled to half; one half of the whole residue of the net estate, which shall be held in accordance with Section 41, and if there be more than one child, they shall share equally. Meaning, if for instance, you have four children or two children, those children would share equally. If they are four, they take a quarter each.

A further introduction is -

Where the surviving child is not a child of the surviving spouse –

- (i) the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely and a life interest in one-half of the whole residue of the net intestate estate; and
 - (ii) the surviving child shall be entitled to one-half of the whole residue of the net intestate estate, which shall be held in accordance with Section 41, and if there be more than one child, they shall share equally.
- (b) where the surviving children include a child who is not a child of the surviving spouse:

Mr. Speaker, a further amendment is that:

- (i) The surviving spouse shall be entitled to the personal and household effects of the deceased absolutely;
- (ii) the net intestate estate shall, in the first instance, be divided equally amongst the surviving spouse and all the surviving children;
- (iii) the surviving spouse shall have a life interest in his or her share and that of his or her children under subsection (1B) (b)(ii); and,
- (iv) the share of the surviving child who is not a child of the surviving spouse under subsection (1B) (b)(ii) shall be held in accordance with Section 41, and if there is more than one child they shall share equally.

Mr. Speaker, Sir, you will notice that the amendments are introducing an equality clause and treating all children the same way.

There is also another amendment under Section 36 of the Principle Act. In this Section 36, many case laws have determined that even after a spouse has passed on, the surviving spouse will hold the estate of that spouse until the date when that surviving spouse remarries, but in a scenario where both the spouses are not there, what happens to the estate?

Now, in the current Law of Succession Act, that estate first goes to the father of the spouse who has passed on. What the amendments are seeking to introduce now is that such an interest will be shared between the father and the mother in equal measures, or if either is dead, then the surviving parent.

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In instances where it was the father to take the net estate of the spouse who has passed on, in this amendment, it will now be the father and the mother to have that estate in equal shares.

If either of them is dead, then the surviving parent can have the share of the spouse, the daughter or the son who has passed on. In the instance that there are no surviving parents, then the brothers and sisters. Before, it had a patriarchal tendency towards who holds the residue of that estate.

Mr. Speaker, Sir, what this amendment has now done is to put the brothers and sisters in equal measure, and any child or children of deceased brothers and sisters in equal shares. This is important because, sometimes, you will find that the estates being distributed are actually not estates of the immediate parents of the people who are inheriting those estates.

Sometimes, you find even grandchildren inheriting estates of their grandparents when there is no other surviving relative. If it is half-brothers, it is both half-brothers and half-sisters, any child or children of deceased half-brothers and half-sisters, or the relatives who are the nearest degree of consanguinity up to and including the sixth degree in equal shares.

This is so that when you have one generation which has all died, then, it moves to the next generation maybe of the grandchildren, which is then next step of generation. This is the one that is referred to as the relatives who are in the nearest degree of consanguinity up to and including the sixth degree in equal measure.

What this amendment has done is to put on the same level, brothers and sisters; sons and daughters. Just to assure you that these are the right amendments, if you look at the case law that has been generated from the courts, they have been more progressive than the legislation itself because the courts have now upheld that the definition of a child is not just the boy child; it is a boy child and a girl child. This is so that if I have one boy and one girl, the law will treat them equally as my children and none will have priority over the other.

It is a very good amendment especially when you look at the population demography because we have 50-50 or slightly more women than men. That means, in any home you will now find sons and daughters. They are now being treated equally, which is a fact that has been happening in court anyway.

Mr. Speaker, Sir, what we are doing with this amendment is to ensure that what the legal precedents have taken, can be captured as correct legal principles applicable and making it easier in distribution of the estates of deceased persons.

The next amendment is under Section 40 of the Principle Act. It has a new subsection, that is, subsection 3, which states that-

“Notwithstanding subsection (1), where any of the surviving children is not a child of any of the wives of the deceased, that child shall—

(a) be considered as an additional unit in determining the share of dependents in the net intestate estate under subsection (1); and,

(b) the share of such child shall be held in accordance with Section 41, and if there be more than one child they shall share equally”.

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The assurance that I need to throw at this point is that it is the children who are sharing in the estate of the deceased. There was a bit of concern from women when they saw these amendments. For instance, women who happen to be like myself, one wife, in a monogamous marriage, you do not anticipate another woman officially; they were in a shock when they saw the amendments.

(Laughter)

I have seen how my brothers have laughed here and they look like serious defenders of these amendments. They look a bit guilty, but I will interrogate each one of them on their personal laws, belief system and the company they are keeping around them. This is because, when then a wife does not anticipate another woman coming to compete for the husband's attention or estate, they were very concerned about these amendments.

One of the concerns was: Are you now introducing strangers to our homes? The women will feel these are strangers. They may as well be strangers to the women, but not strangers to the men in those homes. I had to quickly assure them that it is not the woman who is coming in for the estate of the deceased; it is the child who has been fathered through the paternity of that man.

What does that mean? When a man now decides to keep an affair out there, they must understand the full consequences of that affair. That, if you decide to father another child, you will bear the weight of that responsibility, not just now, but even to the next level.

Sen. (Dr.) Khalwale is very vocal about this subject, and I will not disclose the number of wives he has.

What this amendment is also doing is the fact that, as it stands now, we all know how busy the Children's Court is. This is because, once a man fails to provide for any child who he has fathered, they usually have a redress under the Children's Act. That is already happening and maintenance is being done openly or secretly for those children who have been fathered by different potential defendants, maybe even in this House.

So, what the Law of Succession is now doing is taking away the confusion that we have seen in burial ceremonies and in funerals. When a person has passed on, there is another one who runs to court to stop the burial until issues are determined. It may as well be that when these amendments are effected, you will have less lawsuits of stopping burials.

Like we have always said, there may be no assets in a dead body, but since many people may not understand that, they normally first run to stop the burial, saying that all the issues must be resolved. Part of the issues they will seek a resolution on will be how the rights of a child will be catered for because the man lying in this casket is the father of this child.

What these amendments will do will be to pause anybody who is running to stop a burial and make them know that there is legal protection for the child, not for the wife. This is because the Law of Succession has defined who is recognized as a wife. If you are

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not defined as a wife, it is not possible for one then to push for a portion of inheritance from the estate of the deceased.

However, for the child, the law will now treat that child differently and in a fair manner, such that if the DNA of that child belongs to the man who is demised, then it means provision has to be done. However, is that child treated better than the other children who are in the officially recognized home? No, those children will be treated equally. If it is education, they are provided for. That is provided for under the Children's Act.

I have heard of this concept of a gentleman talking about *nyumba ndogo na nyumba kubwa*. *Nyumba kubwa* is the formal one that is known by the public; the one which the wife is taken to weddings, church or shopping. Then, there is usually this concept of *nyumba ndogo*; the one that is secret, unknown by everybody. This culture could as well be very notorious in Kenya.

These amendments will ensure that we do not have children who are not being taken care of when their fathers are walking free and may be happy.

Mr. Speaker, Sir, as a society, we should not be creating despondency in these children. Therefore, it is important that every child is taken care of and every person who has fathered a child takes care of that child. They should not expect another person in another home to take care of their own Deoxyribonucleic Acid (DNA). It is putting the chips where they should fall; that if you have sired a child, then take care of the child.

We are proposing this amendment and hope that the backlog of the cases we have seen in the Family Law Division will be sorted courtesy of better laws. Further, the case laws that are there inspired these amendments. The courts have already been holding judgments and following precedents that are aligned to this amendment.

These amendments have been supported by many stakeholders. The Widows Association, Federation of Women Lawyers (FIDA) Kenya, among other different associations, have supported these amendments. This is because they are going to levelize the protection of rights of the children.

Therefore, a wife who is not a wife, will not manage to claim anything under these new amendments. We will also eliminate discrimination against widows. Sections 35 and 36 of the current Law of Succession Act have been found unconstitutional for discrimination on the basis of gender.

The Bill also seeks to ensure that the widow and the widower have their life interest in their estate and is determined upon their remarriage. This is a very sensible amendment because, for instance, if a woman Senator passes on and she had a mortgage and bought a home, she will leave that home to the husband. However, if this interest does not determine when he remarries, there could be a possibility that even that home will no longer be used for the children. This law will ensure that such a home will not be left with the interest of the widower, but in trust for the children of the woman who has passed on.

That means it will bring justice and equity. I know there is one question that pends about matrimonial property. Supposing a property was defined as a matrimonial and a man passes on and the widow remarries in that matrimonial property, and in line with the judicial precedent that was held by the Court of Appeal the woman has

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contributed, 30 per cent, what you determine at the point when this man remarries is the portion in that matrimonial property that belonged to the woman.

The portion that belonged to the man who is now a widower will still be retained by the man. For instance, if the woman would have demonstrated to the court that 30 per cent of that property was contributed to and she was entitled to an apportionment of it, it will then be determined in favour of the children of the woman or man who has passed on.

This law does not seek to bring inequality but equality. I also wish to note that the court had previously found Section 39 to be unconstitutional insofar as it gives the fathers the priority when it comes to inheriting the property of their deceased children. It now means that the father and the mother of the deceased child will be able to inherit.

Mr. Speaker, Sir, notably, there is a Clause in this Bill that has excluded community land from the ambit of succession. There are some counties where community land has been excluded from the family law in succession. For instance, in pastoralists communities like West Pokot County or parts of Kajiado where there is community land for grazing, it cannot be subject to the provisions of Law of Succession Act. This means that the amendment is not breaching the rights under community land. The community land continues to be protected beyond the ambit of these amendments.

Mr. Speaker, Sir, I pray and hope that my colleagues, Senators in the House today, would find the sense in the proposed amendments and support them. This is so that surviving spouses and children will no longer be ejected from their matrimonial homes. Instead, we will see more compassion from the society, relatives who have, in other instances, taken advantage of such vulnerable families.

If the definition is opened, ejection would mean, for instance, somebody who had access to accounts of a deceased person and interferes with it. For some reason, when there are disputes within a family, you would find spouses entrusting outsiders with their resources. They make them attorneys to sign bank accounts because they cannot entrust their spouses with it.

The intermeddling will mean that if a person who has access to sign accounts for that man or woman who is now deceased and decides to clear that account, this Act will reach out and punish such actions. There has been a debate on what should be the penalty of a person who intermeddles with the property of the deceased.

I am sure when we come to the Committee of the Whole, we shall look into the appropriateness of that account. This is because fining Kshs10,000 is not good enough. I am aware that the Committee on Justice, Legal Affairs and Human Rights should have presented a report, which is still coming. I was duly advised that the report can come now or during the Second Reading because it will inform the debate.

I am sure the Chairperson of the Committee on Justice, Legal Affairs and Human Rights will put his comments on these amendments. So, by and large, these are good amendments and it is my hope and prayer that Senators will support them. The Bill clarifies the issues that have been bringing a lot of pain unabated for very many years, so that we can then have more sense into the distribution of estate, protection of children's rights, protection of women, gender equality in terms of succession and treating mothers

and fathers of deceased children the same way. I know we will be able to make progress in the area of family law and succession.

With that, I beg to move these amendments and request Sen. Sigei to second this Bill.

Sen. Wakili Sigei: I congratulate Sen. Veronica Maina for this important amendment to the Law of Succession Act. There are seven proposed amendments to the Law of Succession Act.

As has been ably put forward by the Mover of the amendments, these proposed amendments will make the Act comply with the various court pronouncements made in the process of litigation. Kenyans have had challenges with the succession, matrimonial property, and intestacy because many of them do not leave behind the wills of their estate.

To be very particular, the amendment seeks to align the Law of Succession Act with the Children Act by defining who a child is. The definition of a child in the Succession Act is to ensure that adopted children can fit into the estate of a deceased person, whether father or mother and benefit.

Similarly, intermeddling of the estate in this proposal has been broadly defined to mean taking possession of, disposing of, charging, receiving, distributing, leasing, or using a property of a deceased without authority under this Act or any other applicable law.

In many cases after the demise of an individual, the estate is abused by either the surviving spouse or any other person who has an interest. In some situations, the estate could be unknown or has not been disclosed to the family. By broadening this definition of intermeddling, we ensure that the family can protect the estate whether it was disclosed or not.

It has also expanded the definition of intermeddling to mean ejecting a surviving spouse or child from the matrimonial home or any other unlawful dealing with the deceased person's estate.

This is a very important amendment because, without the protection of the estate of a deceased person, the beneficiaries including the children, the surviving spouse, parents, or any other dependent will be left with nothing to survive or to inherit. The proposal by Sen. Veronica to expand that is highly welcome to make sure that we protect these estates.

The proposal to amend by deletion of Section 32 in the Principal Act is very critical. Section 32 in the Principal Act provides for the exclusion of immovable property and land in certain counties such as Kajiado, Wajir, Marsabit, and Tana River. As such, the amendments seek to ensure that Sections 32 and 33 do not exclude those counties in matrimonial property and succession on agricultural land as well as immovable property of a deceased person.

This ensures that anyone who is living within the territory of Kenya applies this particular law for purposes of uniformity. It will also ensure that we do not abuse the existence and the application of the local laws, regulations or even traditional beliefs as to who is entitled to participate in sharing or benefiting from the property of the deceased.

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The repealing of Sections 32 and 33 of the Law of Succession Act, therefore, has ensured that there is uniformity in the application of law across the country.

Further, the amendment to Section 35 of the Principal Act as elaborately put by the Mover ensures that if a deceased person has left intestate, the spouse who is surviving or without children is equally protected. The spouse should not lose on the entitlement merely because the law does not specifically provide for who in order of consanguinity is to benefit before the other.

Similarly, the amendment to Section 36 of the Principal Act supports and ensures that the surviving spouse as well as children, and any other person who is to benefit from that estate, is not denied that entitlement merely because the law does not list who is to benefit first before the other.

Mr. Speaker, Sir, under the proposed amendment to Section 39 of the Principal Act, the current law has listed the father before the mother. The proposed amendment herein seeks to ensure that either the father or mother of a deceased are equal in terms of their benefits to the estate.

Therefore, once there is a deceased and they do not have a surviving spouse, it is the mother or the father in equal share who are supposed to benefit. In the absence of either, then the rest of the list of the beneficiaries will apply.

I appreciate the proposed amendments by Sen. Veronica. As it has been stated, the Standing Committee on Justice, Legal Affairs and Human Rights Committee (JLAHRC) received various proposals and concerns from stakeholders within their various areas of interest. The JLAHRC Committee report has already been concluded. It is awaiting adoption and we will table it at an appropriate time. Should there be any additional amendments, it will still be done within the time that the laws and the Standing Orders of this House allow.

I appreciate and thank Sen. Veronica for ensuring that we amend the law to align it with the developments within the law of succession sector as well as the several pronouncements and decisions that various courts have made in the course of the litigation processes in this country.

I second.

(Question proposed)

The Speaker (Hon. Kingi): The Floor is open.

Sen. Maanzo?

Sen. Manzo: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very important law and amendment. The Law of Succession is the most controversial in many parts of Africa. It keeps on being dependent on the circumstances of each case. That is why the judgments that have come out are sometimes tailored to suit a certain issue presented in courts.

A lot of times, the courts are encouraged to get all the interested dependents and then they can agree on a settlement. I want to look at the scenario which has been presented here.

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First, the definition of a child is correct. However, sometimes people who are above 18 years old and are no longer children become dependants or are entitled to the property of a deceased person.

In the event of death of a son, it used to be the father, but now, it is going to be the father and the mother. Supposing that son has a family, then which way? It becomes very complicated.

Many matters that are taken to court are very strenuous and take many years. A whole family is entitled to personally appear in court and state their position. It is one of the extremely complicated matters.

Some people die but there is nothing to inherit because they have no property in their name at all. Sometimes it is a matrimonial property and each spouse has a contribution. When it is a man who is deceased and his share is little, all his children besides those of his wife are also entitled. Again, it raises another complication.

Sometimes, it is difficult because people leave wills when they die, but those wills are still found not to be fair. Such a matter ends up being treated as of interest, then it goes back to square zero and raises a lot of issues.

There have been many debates as to whether one should make a will to ensure that their property helps their children the moment they are no more. This has always been on a case-to-case or circumstance-to-circumstance basis.

There is a scenario I was given by a friend of mine, who is now deceased. He told me that when his father, who was a politician died, he expected a lot of trouble at the funeral because his father was wealthy. At the funeral, there were people who looked like him. He knew that when his sons are called, there would be quite a number.

To his surprise, those people just attended the funeral and left quietly because his father had sorted them out before he died. They knew that on the funeral day, there was nothing to be shared, but just attend. He was pleased because he expected many succession battles. I think this matter should be determined on a case-to-case or family-to-family basis.

Muslims have Islamic laws and personal laws that apply to them. We also have people who the Law of Succession Act may not fall to support. That means they are under Customary Law. If you are married under Customary Law, which potentially allows polygamy, do you fit squarely under the Law of Succession Act?

The Law of Succession Act has been left loose for many years with many loopholes. An attempt by Sen. Veronica Maina – a renowned lawyer and Senator whom we have a lot of respect for – to sort out a few loopholes sounds like a case tailored to a certain class of people, which may or may not apply. It is a good time for us to ponder. When it comes to the Committee Stage, we need to sit with the Committee on Justice, Legal Affairs and Human Rights and her, and think further according to the precedents being generated by the courts every other day.

Some people have attempted to leave their properties under trustees. Trustees have become more complicated than the succession process. Strangers are now possessing properties. It gives them an opportunity to share the wealth after abandoning all the children. You will find such matters dragging in court. Anybody resembling the deceased may come forth and claim to be a child of the deceased.

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Recently, we had a Kenyan from Ukambani who passed on in the United States of America (USA). Although he never got married, a “son” claimed his estate. After some time, it was discovered that he was a fake son. Nonetheless, he had already gone through the court process and attempted to secure a massive estate of the deceased in the USA. Therefore, it has to be on a case-to-case basis and depending on how the owner of a property handled the matter.

Nowadays, many men prefer to be cremated when they die, so that there is no body to be fought for or no one to stop any funeral. People have even attempted to stop cremations. Even after cremation, it does not sort the problem. Issues still arise, especially if the person had anything to be inherited.

We also have situations where it is difficult to realize the net worth because of debts, bankruptcy of companies and debts owed to an estate, such that there is nothing to share or distribute.

As much as we are talking about a child, the more practical thing in courts are children who are not under 18 and are still entitled to the estate. In this particular proposal, we are talking of a child. That means one who is under 18 and they are probably going through schooling. What do you do with people who are adults and probably have children, meaning the deceased has grandchildren, and all those people are claiming to have been children of the deceased?

Succession is a very tricky issue, even where there has been a divorce and there are still issues being determined as to what the lady or the man contributed to the empire they have. There are still uncharted areas by the courts and every day, jurisprudence of these cases are still being developed.

Unfortunately, we lost a judge who was very good at developing jurisprudence in any area he worked on. He would first work on the jurisprudence and the laws that could apply. That was Hon. Justice Majanja, whom we lost recently. I am told his funeral service is tomorrow. I would like to attend because I knew him from college and I appeared before him quite a number of times. He was very good at developing jurisprudence.

In a case-to-case scenario, a jurisprudence has to be established or developed because there are so many incidental issues, such that you may not be able to frame and narrow them to an Act of Parliament. They keep on generating and moving in different directions on a case-to-case basis.

There are people who have lived together for seven years and they are regarded as husband and wife. The law says there is a presumption of marriage in that case. Somebody may have just cohabited with another for seven years. They may go to court so that it is established that they were presumed married. Therefore, the succession issue ensues and there may be people entitled to an estate.

Going back to the Bible, when Abraham had another child and eventually Isaac was born, when the lady was being sent away after a dispute, she was given a lot of property. She was given an entitlement together with her son. They never left empty-handed. That could be a basis of a jurisprudence on what may happen in scenarios like that.

There is also the issue of when a woman passes away and she is the owner of everything. The man could have sired other children elsewhere. It means that even when the man goes away, his properties should be left with the widower.

Mr. Speaker, Sir, then it also means there are others who will come and claim, those who were not part of it. So, how do you determine how the children of the lady who passes away benefit? Suppose the lady passes away and before even succession issues are sorted, the man passes away and then other children arise. Each case has to be dealt with on its own merits, circumstances and it will be in my own opinion, very difficult to fix strictly all the succession and marriage issues to one place.

There is the issue of community land. We now have law relating to community land and this means no particular person has a title or is fully entitled to that land. How does succession interplay with this and within that community? Suppose some of the children sired out of marriage or within marriage do not belong to that community. Then there is the issue of a father or a mother. A son passes on and the property, if he had any, is given to the father while the mother is alive.

I believe that introduction could help, so that the two of you benefit. I do not even know what was the wisdom of leaving it to a father alone because, it could be a son or a daughter who passes on; a child, or as somebody has said. A lot of these scenarios play in the courts where a daughter passes away and she was not married, she had no children and had property. Whether she was married or not, other people make claims on that and then, probably whatever would be the net estate then could come to their family where she was born.

Mr. Speaker, Sir, these are very interesting matters which are mind-boggling to judges when they are trying to determine them. This is an area of law that is very debatable. The proposals are a good attempt.

There is this scenario when a widow remarries. Somebody passes away, leaves a widow with a lot of property, then within a year or so, she is now married to a new man. What would be the entitlement? Will this property go back to the parents, or will it now move to the new man? This is because she is likely to lose all of it to the new man.

There are so many questions which you cannot get answers to unless you deal case by case. I would like to support my senior and friend, Sen. Veronica Maina, but we need to look at this law more, add further details during the Committee Stage, so that we can come up with all the scenarios applicable.

In Africa, the applicable culture is amazing. Community to community, there are different cultures which come to play. It is clear what must happen when it comes to the Islamic Religion. However, when it comes to succession and the African culture, there are many other issues that come up. As long as that culture is not repugnant to justice, it probably will be applicable.

Therefore, Mr. Speaker, Sir, I beg to support because it is my friend, Veronica Maina, and she is likely to persuade me. However, we really need to think and even employ experts, and probably hear a lot of other opinions. I do not know what happened on the public participation. Probably, succession courts would have given a very big input into this, depending on the cases they have gone through and how wisely they have gone around them.

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Many judges are encouraging and calling upon everybody interested to come to court and then they agree on a way forward there, as a family, and then, they go and do as they have agreed.

I thank you, Mr. Speaker, Sir. I support.

The Speaker (Hon. Kingi): Sen. Cheruiyot Aaron.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I will try to be very brief. This is not something you want to say a lot of things about, because it is dodged with many risky corners as you contribute. You can be asked later to declare your interest in some of these provisions.

Therefore, for the record, it is important to say that this is purely legislative work and there is no personal interest in it, but it is very thought-provoking, listening to Sen. Veronica Maina, a very distinguished legislator. I love the work that she is doing in the Senate; the many Bills that she has proposed, this just being one of them. Therefore, I would wish to indulge her in a few thoughts.

Mr. Speaker, Sir, even before going into the very details of the various sections of the law that she is seeking to amend and the justification she gave, there is something Sen. Maanzo said in passing, but he did not realize the gravity of the debate he was handling at that particular point. One of the greatest challenges of the laws of succession, listening to it and even having just a cursory look into the issues that are before various courts of law and even in the public arena; because it is not only in our courts of law that succession is practiced, but even in the villages, ordinary citizens who cannot access the courts of justice sit down and try to agree on some of these issues. There are rules and there are challenges there.

The Senator for Makueni, my good friend, Sen. Maanzo, did mention the conflicting application of this law in line with customary practices in our various communities. This varies from one community to the other. It is unfortunate, and I wish Sen. Veronica had taken time to reflect on this as well, on how we marry the law with these various customary practices.

I know for a fact that Senator Maanzo comes from the Akamba Community, and one customary practice my people share with them, is where back in the olden days, women used to marry other women. It is not in the way that we are accustomed to now and the stories that we hear about all these other things, but it was that when a woman is married and if for whatever reason, she was not able to bear children, she was allowed to actually, bring in an aide or an assistant. It is a practice that is established even in the biblical practice, because if you are a reader of the Bible, you know what happened between Sarah and Hagar. Is that her actual name?

(An hon. Senator spoke off record)

Thank you, Senator Beth. I did not know you read the Bible that deeply.

Mr. Speaker, Sir, it is what happened between Sarah and Hagar. So, it is a practice steeped deep even into the biblical mythology and yet, there are communities that practice that.

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Upon the demise, say, of the patriarch of that family, and this I have seen in practice in many places, even among the people that are representing this House, challenges usually arise. People are asked and you find members of the legitimate or what would be considered the family was formally married take to battle with the rest of the members of the family.

This includes the woman who has been co-opted into the family and had children of her own previously before coming into that family. That is an area of challenge in so many other scenarios, and customary practices among the different people that are represented and form the society that is Kenya.

Mr. Speaker, Sir, I have seen that struggle. First of all, many communities consider it taboo to go and resolve, say, land matters, through a court process. Many of them would rather have the village elders and members. It should first start with the clan members of a particular family where you are called and try and adjudicate.

If you are unable to reach an amicable solution, you invite the village. If the village does not agree, then, eventually, people seek court interpretation. It was the High Court sitting in Kericho that made a very significant finding on the laws of succession with respect to land.

Mr. Speaker, Sir, about six or seven years ago, that high court in Kericho ruled that women could as well inherit their fathers' land, even when married, if they laid a claim to it. That remains, to the best of my knowledge, unchallenged up to date. There have been many families that have gotten into challenges with the application of that particular law.

Therefore, for Sen. Veronica Maina to attempt to provide the legal basis and clean up of the various sections of the law with regard to succession, is quite commendable. I appreciate the industry that has gone into this Bill. I believe that it is in line with her practise as a lawyer that she has been able to point out many of these inconsistencies or functions of poor drafting of the law that has led to difficult interpretation and challenges with application of the law.

[The Speaker (Hon. Kingi) left the Chair]

[The Temporary Speaker (Sen. Abdul Haji) in the Chair]

Mr. Temporary Speaker, Sir, it, therefore, goes without much forbearance that that is the reason the Bill begins by very basic issues such as definition of a simple matter such as matrimonial home. She has provided elaborate clarification that a matrimonial home will mean any property that is owned or leased by one or both of the spouses and is occupied or utilised by the spouses as their family home and includes any other attached property. It is important to give that clarity because I believe that, that was not the case. This is because there are others who believe that so long as it is a property held elsewhere, many did not want that to be the broader definition of what a matrimonial property is. However, once this Bill becomes an Act of Parliament, that will be in operation.

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As we debate this, it is important for the men to know that this involves any other attached property. I will be keen to hear what Sen. Omogeni will say about this given that there are other details of his family, which I do not want to reveal.

(Laughter)

Some of us can get away with the interpretation of the law, but he does not have that luxury. Therefore, as we pass this legislation, think clearly as a man. As Sen. Veronica Maina warned us earlier, it is not the situation as it prevails presently, but what it portends for the future. You never know what can happen to you as a man. When I say that, Sen. Okiya Omtatah really looked keenly at me. I do not know what plans he has.

Clause 5 of the Bill is an amendment of the Principal Act, cleaning up the various legislations that I said. The first one is on the issue of a surviving child who is not a child of the surviving spouse. Many colleagues have spoken very well on this matter on what happens in funerals. We have heard all these stories and how it turns up being a difficult journey.

Mr. Temporary Speaker, Sir, you know that us that are in this trade of politics, many a times when our tour of duty on this earth comes to an end, sometimes families have to resort to very crude means of keeping products of our industry elsewhere away from attending funerals. I have seen even goons and vigilantes being hired. We have all watched and have ideas that come to mind. It is perhaps because people were avoiding the recognition that comes with being present during the day of being laid to rest.

With this clarity that is now being provided by law, the way Sen. Veronica Maina is proposing, even a child who is not formally recognised in a family need not go and fight and endanger their life if they know that they are not properly appreciated in a family. By law, you are being provided good cover. That is part of the clarification that this proposed Bill is giving.

Clause 1(b) states that-

- “Notwithstanding subsection (1),
- (a) Where the surviving child is not a child of the surviving spouse—
- (i) the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely and a life interest in one half of the whole residue of the net intestate; and
- (ii) the surviving child shall be entitled to one half of one half of the whole residue of the net intestate which shall be held in accordance with section 41, and if there be more than one child they shall share equally.”

There is the division that comes between these two treating each as separate and distinct entities, which was not the case. What happens in the case where, for example, you have two or three sons, and you have an estate, and suddenly a child who is not part of the family of the spouse that is alive shows up. This provides coverage to them. Many families sometimes agree to share, but this makes it even more difficult because a plain reading--- Sen. Veronica Maina may need to clarify to us later on as she responds to this

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Bill whether that child will be counted among the other three or it is a complete separate home, given the fact that this is dividing the intestate into two; between the surviving spouse and this other child.

Sen. Veronica Maina, that means two different things, and you may want to provide clarity to that. If for arguments sake, a deceased person had three sons, and their intestate is being divided among them, a simple calculation is that, if another son was to show up, by dint of practise of a law as you are proposing it, then the division will now be in two. The mother and her sons and this other son that has showed up being treated as another family, as opposed to being put together with the other three sons. You need to provide clarity, unless I have not read quite properly. It is something that I need to understand. I repeat for emphasis sake that this is in public interest. I have no other interest in this.

Clause 1(b) is speaking of where there are surviving children, which includes a child who is not a child of the surviving spouse. What are their entitlements? It States that-

“Where the surviving children include a child who is not a child of the surviving spouse –

- (i) the surviving spouse shall be entitled to the personal household effects, that is absolute as described there previously;
- (ii) the net interstate estate shall, in the first instance, be divided equally among the surviving spouse and all the surviving children.”
- (iii) the surviving spouse shall have a life interest in his or her share and that of his or her children under subsection (1B) (b) (ii)
- (v) the share of the surviving child who is not a child of the surviving spouse under subsection (1B) (b) (ii) shall be held in accordance with section 41, and if there be more than one child they shall share equally.”

Part II is the part that I said needs to be brought quite clearly for everybody to appreciate and know that, that is not the case. However, for me, what will pass as a fair law is that if it is known that these are the children of a deceased person, it does not matter from which of the spouses, so long as it has been clearly established that it is a child of the deceased, then let them be treated as one equal family and the property or intestate be shared equally among them. Sen. Veronica Maina will clarify that.

In fact, it gives me more doubt and need for clarification on Part IV, where it is described that the share of the surviving child who is not a child of the spouse under subclause (1)(b) (ii) shall be held in accordance with Section 41, and if there is more than one child, they shall share equally.

Sen. Veronica Maina, keep this in your notes. What happens if those extra children are more than one from different mothers as well, assuming that the deceased person is a man? The same can happen to women as well because society is evolving. Previously, when legislating and thinking about these issues, many of the time the laws were written with men in mind. However, it is increasingly becoming clear that even women sometimes have intestates that need to be shared, and there might be kids from

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spouses other than the one that they were married to. It is good that as we keep changing, the law keeps on evolving.

Clause 6 is a clean-up of these laws as has been brought out. As I complete my contributions to this Bill, my interest is on Clause 8, which states that-

“Section 40 of the principal Act be amended by inserting the following new subsection immediately after Subsection (2) –

(3) Notwithstanding subsection (1), where any of the surviving children is not a child of any of the wives of the deceased, that child shall –

(a) be considered as an additional unit in determining the share of dependants in the intestate under subsection (1);

(b) the share of such child shall be held in accordance with section 41, and if there be more than one child, they shall share equally.”

This is something that we may need to discuss and think critically about.

I know the Clerk-at-the-Table now used to be a legal drafter back in the earlier days of his career. He still is, but he did it formally then. I know now he is a big man and he does not do this kind of job anymore.

Mr. Temporary Speaker, Sir, when we make amendments to mother Acts, many are times we quote them in the Bill, but do not refer, such that making comments or even a plain reading of the Bill is difficult because unless you are carrying the mother Bill on one hand to keep on referring to, you can sometimes lose track of the arguments that you are making.

For example, as I have pointed out in this Bill, Clause 8, is an amendment to Section 40 of the mother Act. New Cause 3 is being introduced and you are told it is being added immediately after Subsections 1 and 2, which is not part of the Bill in reading. I find that perhaps legislators will end up missing the flow of what is being described. You may not necessarily have to capture it on the Bill, but maybe it can be somewhere in the annexures. There has to be a better way of drafting these Bills, as opposed to what is being said.

Back to the main point, the New Clause 3 that is being included reads:

“Notwithstanding subsection (1) - which is not here - where any of the surviving children is not a child of any of the wives of the deceased, that child shall”

I do not know why they have used the term “wives.” Previously, in all the clauses that we have read on the Bill, they have kept it gender neutral, which is “spouse.” We are in the days of gender equity. I have observed that what passes for ‘men’ nowadays could also be ‘husband,’ unless maybe there is a specific reason. Sen. Veronica Maina, you will explain to us.

“(a) be considered as an additional unit in determining the share of dependents in the net interstate estate under subsection (1), and;

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- (b) the share of such child shall be held in accordance with Section 41 and if there be more than one child, they shall share equally”.

On the last point I mentioned before I concluded on this particular matter, there is need to take into consideration cultural sensitivities. I pointed out that a particular challenge exists between the Akamba People. I do not know if Sen. Wambua would know, but, at least, I know Sen. Beth Syengo would because of her longstanding amongst the Akamba People. Sen. Wambua left his people early enough to go to school and do other things. So, I am not sure whether he knows these things. Of course, Sen. Kavindu Muthama will know this as well.

Sen. Wambua pointed out the cultural practice where women used to bring additional women into the home. Such women would come with their kids from other marriages. What is the place or standing of those children? That was just an example. There are many other cultural sensitivities and practices that you cannot capture in this particular law in the manner that is being proposed here.

What is the place of such children together with so many other challenges that may arise from that? Sen. Veronica Maina, perhaps, Part C will make sense during the Committee of the Whole. I do not know which committee will handle this Bill, so that Part C can take into consideration such sensitivities of children who biologically may not belong to either of the spouses, but are still considered to be children of that particular family and how that needs to be treated in light of the division of shares that are taking place because these are live matters.

Mr. Temporary Speaker, Sir, I appreciate Sen. Veronica Maina for this very thought-provoking Bill. I hope that we shall have a fair and sober debate that the men will speak openly about because these are issues that affect us and women as well. It will be good to hear their thoughts on this, so that we can have a law that ensures that no child is disinherited, either by acts of omission or commission on the law side.

With those very many remarks--- I am used to Moving the Bill, I thought I was--- I beg to contribute and agree to the proposals being made.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. Omogeni, proceed.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I also rise to make my contribution to this Bill. I was mentioned adversely by Sen. Cheruiyot. He touched on my family, and he may create an impression that other than my dear wife, Jacqueline, I have another family.

(Laughter)

I want to declare that I am a loving husband to one wife, Jacqueline. Sen. Cheruiyot, I have no other wife. I wish Sen. Veronica Maina was here to listen to me. This Bill was before the Standing Committee on Justice Legal Affairs and Human Rights (JLAHR) in the last Parliament, where I was the Chairman before I was succeeded by my

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good friend, Sen. Wakili Sigei. The provisions that are here were almost lifted from what was in that law and were very interesting. We conducted public participation and we thought some of these provisions would get the support of the women.

This was during COVID-19. We put stakeholders together to collect views from the public. You will be surprised that even on an issue like a definition of who a child is, it was very heated. We had the National Gender and Equality Commission (NGEC) and FIDA-Kenya in the meeting. We had many women organisations. However, it is not easy to convince all women across the board to accept the child.

Very interesting proposals came to the table. I hope that Sen. Veronica Maina can benefit from what is in archives on the views that we received from the public. What was interesting was what I heard from women who felt that we were trying to legislate for their husbands, who may be keeping other women out there.

Despite their contribution, which I appreciated in the protection of children born out of wedlock, they were very clear that we cannot throw those children into the wilderness. However, they were also clear that a proposal to include these other children should clearly state that what goes to those born outside should be a percentage.

That was just a proposal. I am not saying that is what was on the Bill. Somebody gave an example that if you have five children or six children born in a monogamous marriage--- This was coming from women, and they were of the view that if they have contributed with their husband in acquiring some property, then their children should get a higher share than the other ones. They said they did not want those children to miss out, but we needed to be careful on how we shared property. Sen. Veronica Maina, I do not doubt that you will receive very interesting views.

We were unable to even finalise the Bill, so it died during the last Session. I remember somebody said that there are women who can be woodpeckers. They said there is an animal that is used for wood pecking.

Mr. Temporary Speaker, Sir, Sen. Cheruiyot is in public limelight. He is the Senate Majority Leader and occasionally has flown in a chopper to Kericho County, and there could be some ladies admiring him somewhere. The proposal was that some of these beautiful ladies might be looking for Sen. Cheruiyot, not because they want to be married to him, but because, according to them, they felt that we were bringing in place a law that would entice women to go after some men who, in quotes, “are perceived to be well off in society.” Therefore, they are saying they will go to Sen. Cheruiyot, not because they want to be the second wife, but because they are feeling that the law that has come into place makes it very easy for them and their children to inherit.

Therefore, this Bill will get very interesting views when it goes to public participation. So, Sen. Veronica Maina, please, be prepared to receive that number---

The Speaker (Sen. Abdul Haji): Sen. John Kinyua, what is your point of order?

Sen. Kinyua: Mr. Temporary Speaker, Sir, the Senior Counsel has a very good debate, but I did not get the part of the woodpecker. Is Sen. Cheruiyot the woodpecker or the beautiful ladies?

Sen. Omogeni: Mr. Temporary Speaker, Sir, from the views we received, the woodpecker is the woman who will be coming looking for Sen. Cheruiyot to be the father of her children.

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It was very interesting. I hope when this public participation begins, many of you can---

The Temporary Speaker (Sen. Abdul Haji): Sen. Crystal Asige, do you have a point of order?

Sen. Cristal Asige: Thank you very much, Mr. Temporary Speaker, Sir. My good Senator for Nyamira County was doing so well until he implied that woodpeckers are usually women.

(Laughter)

Mr. Speaker, there are several women in this Senate, as an example, and we have property. We have a lot of investment that we have also made and there can be men who might come to wood-peck, and they do. They are called “Ben 10s” or *Papas*

So, kindly, if---

They come for one reason, and one reason only. I would like the Senator in his submission to kindly clarify that, that can be both men and women, not just women alone.

I thank you.

Sen. Omogeni: You can see, Mr. Temporary Speaker, Sir. That is why I told you that the views that you receive from the public would be very interesting. Now, this is even another one, that it is not only the ladies, but there are also men who are waiting for the passage of this Bill, and then they say, now, if I get a child with that good Senator, then my children will be assured of inheriting something. That is the perception that came from the public.

Many views will come and I think it is a good debate. It is good to have a law that is certain, so that as temptations come your way, you know beforehand that, that is the position in law.

I have no answers to you, Sen. Veronica Maina, but I hope that once you take this Bill through a very intense public participation, you will come up with a Bill that is acceptable to both the men and the women. As you have heard, it cuts both ways. There are men who may benefit, and women who may also benefit.

The other point that I found very attractive is the clause that talks about intermeddling. If you have heard stories on widows especially, I do not know about widowers, but I know stories of widows who go through horrendous experiences. You lose your spouse in Nairobi or in Mombasa, and members of the family of your spouse arrive, and they want to start sharing property, household items and the likes. Therefore, it is very good that this Bill is trying to make it very clear that anybody who tries to intermeddle in the property of a deceased person risks facing criminal prosecution.

When a person has lost a dear one and they are in that state of mourning, the best that we should do to such a spouse is to be sensitive, to be kind to them, to be understanding, not to take the laws as an opportunity for us to share the properties of a diseased person.

Therefore, this is a good proposal; this one, I think, was not very contentious. It was bringing clarity to the law, and it is good to make it clear that if your spouse dies, the

personal effects are left to you as a spouse. There is no need of third parties coming in to try to take over properties that have been left behind by a diseased person.

On the issue of adopted children, the Children Act addresses this very heavily. It is good to know that once a child has been adopted, he or she becomes a child. The word “adopted” is just used for a legal process. The moment a child is adopted through a legal process, by all intents and purposes, you become a child of that parent who has adopted you. It is good that the law of succession properly recognizes them as children.

The other issue that Sen. Veronica Maina will be interested to know is this idea of trying to amend Section 35 and try to make the rights of a widower and the widow to be applied equally.

Mr. Temporary Speaker, Sir, somebody gave an example of the culture in the Maasai community, and they said, if I lose - and these are not my views - I am just---

(Sen. Maanzo consulted Sen. Kavindu Muthama loudly)

The Temporary Speaker (Sen. Abdul Haji): Senator for Makueni and Sen. Kavindu Muthama, please, we want to hear the Senator in silence.

Sen. Omogeni: Thank you, Mr. Temporary Speaker Sir. I am saying this just to understand how culture can really collide. Somebody gave us a view on cows within the Maasai Community, and we could not understand what this law was trying to propose when it said that if you are a widower, you had one wife and you lose her, that if you marry, you lose your cows. The Maasai could not understand.

It was like, even if I was to marry another wife after the death of my spouse, the cows belong to me, so there is no way you can tell me that I will lose my cows. So, I do not know how Sen. Veronica Maina, when you appear before the Standing Committee on Justice, Legal Affairs and Human Rights, you will clarify some of these cultural issues that may have a clash with the proposals in the law.

However, I know where you are coming from. This is an era where the boy-child and the girl-child want to be treated equally. Therefore, the intention is good. You want the benefits that accrue to the widower to accrue also to the widow. If there are properties that will pass over after a process happens---

Mr. Temporary Speaker, Sir, the law is simply telling us that if a widow remarries and the life interest ceases and passes over to the children, the same should be applicable to the widower. Literally speaking, what happens to a wife who becomes a widow, gets another man and marries? The same should happen to a man who becomes a widower, but gets another woman and remarries. The law is just trying to bring equality to the spouses in a marriage. Again, I do not know what answers you will get, but that was a very interesting and emotive discussion about how you deal with the properties of a surviving spouse.

I do not have a lot to say on Clause 6 because it is simply trying to give us how to distribute the property of a deceased person in the event that there are no children left behind, and automatically, such a property should go to the father and mother.

What I heard women telling us that time - I do not know whether that is what has been happening - they were saying that there has been this tendency of Mzee saying, “If

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my daughter or child has died, then I should be the one taking the property.” The agitation was that both the father and the mother of the deceased child should inherit the property. I hope I am getting it correct, Sen. Veronica Maina, and I think that is a fair one in this era.

In this era, both the mother and father should enjoy the fruits of their labour. If you lose your child, who does not have anybody succeeding them, that property should be shared equally between the mother and the father. I do not think that is controversial. It also gives a chronology of the people who should benefit, so that we do not have disputes.

Mr. Temporary Speaker, Sir, finally, it is also good to tell Kenyans that they can take advantage and write a will. This law is addressing people who die interstate but if you take advantage and write a will, then you avoid some of the disputes that could arise through succession.

I must pass my condolences to the late Justice Majanja. Though a fairly youthful Judge who had not even hit 50, but at the time he passed on, an untimely death, at a very productive age, his will was with a lawyer. He was a Judge and had already written his will. The lawyer came out and said, “here is the will of the Judge.” His wish was that he be cremated within 24 hours or the shortest time possible. It is a good thing.

Alternatively, you can also have a process of registering your property in a manner that if one of you passes on, there is no controversy or going through the harrowing experience of doing succession.

Succession can be a bit complicated at times. You are told to go to the chief to write for you a letter giving the name of your spouse and the children. You also have to get searches of all the properties. It is tedious. However, if you have a joint registration; if Sen. Veronica and Mr. Maina have a joint property registered jointly, if one of them passes on, God forbid, the property automatically reverts to the surviving spouse. It is one way of avoiding all these problems of dealing with succession.

So, it is good also to ask Kenyans to take advantage of the land laws that are in existence. You can have a joint registration, where the property will automatically revert to the surviving spouse.

I look forward to engaging with this Committee. I think I will also create time to appear before the Committee chaired by Sen. Sigei to give my views and proposals on this Bill. I hope you will complete the task that we were not able to complete as a Committee in the last Parliament, so that we can have clarity on this law of succession.

Make sure that you invite both the male and female to appear before you and give their views.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator.

Sen. Enoch Wambua, proceed.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I want to thank Sen. Veronica for taking up this Bill. I just have a few comments, beginning with a reaction to a comment that she made when she was moving the Bill, that she does not expect that there will be another person in the name of a wife in her home. That is a good wish but you never know. I mean, you only know when it happens.

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Let us face it. The institution of marriage in this country has really come under intense attack, especially on the matter of inheritance. The intention of this Bill is noble, to deal with matters that arise in the event of the necessity to share property.

I also want to caution all of us, and our spouses, that there is more to marriage than just the sharing of property. We have really commercialized marriage to the extent that now I am hearing people are marrying for the convenience of property and wealth.

Going to the Bill, there is a bit of confusion. I hope when Sen. Veronica appears before the Committee to defend this Bill and maybe take us through public participation, some of these things will be clarified. For instance, we are concentrating on the child. This Bill speaks so much about the child. I am asking myself, are we talking about a child also referring to a dependant? Are we talking about a person who is entitled or are we talking about a child as defined by the law?

If we are talking about a child as defined by the law, then the question arises, if you are over 18 years, are you still a child and are you entitled to the provisions of this Bill because this Bill is talking about a child?

We all know that we had a very interesting case - and I do not want to mention names - of a 52-year-old child who came up and said, I also want a share of my father's property. So, is that also a child by the definition of this Bill or what exactly are we talking about?

Now, on the matter of intermeddling, I am happy that the Bill, sponsored by Sen. Veronica, is trying to challenge some existing cultural norms and practices that really maybe should not have any place in today's institution of marriage. I am talking about the issue of people invading the households of deceased persons and carting away property.

It will be remembered that in some areas, it is not just even carting away property, they even appropriate the surviving spouse. So, it is good to provide clarity on the matter of intermeddling in the event of a spouse passing on.

Now, Sen. Veronica, there is a small challenge. This Bill speaks about passing on property and wealth in the event of death. However, you should also be alive to the fact that - and I know this because you also subscribe to the same faith as I do - the institution of marriage is complete at the tying of the knot. Once a man is married to a woman, that becomes a family.

Now, this Bill is a bit too prescriptive because it says when one spouse dies and the surviving spouse remarries, then they lose ownership of the property that was acquired from the first marriage. The question that you should be asking yourself is if death occurred before a child came and the surviving spouse remarries, where does that property go to? The reason for remarrying should make a difference in determining the sharing of the property.

Sen. Cheruiyot brought up, in passing, a very important conversation. I do not know how Sen. Veronica will handle it. I heard him say he does not know whether I am accustomed to that. It is happening even now. It is not something that has stopped. There are situations where a wife would bring another woman into her matrimonial home.

In most cases, the woman came with children from other fathers. When they come, they become part of that family, but there is no biological connection between them or any member of that family apart from their mother. How will you treat such

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children in the event of the passing on of their mother? Are they also children in the definition of this Bill that we want to push into law or will they be treated differently?

Lastly, is a matter that has been mentioned by Sen. Omogeni. The law recognizes legally binding wills. A will written by a spouse, especially, on how they want their property to be shared upon demise.

Sen. Veronica, what do you do in a situation where a spouse who has passed on leaves behind a legally binding will, whose provisions go contrary to the provisions of this Act? If it says I am sharing my property among my wife, my son, my daughter and other daughter, yet this Bill is prescriptive, it says that half of the property will go to the surviving spouse and the other half will be shared equally among the children. What happens if the legally binding will, speaks otherwise?

Those are some issues that will need a conversation. I am very sure it will happen in public participation. Let me summarize and say that it is okay to debate this Bill and push it into law. However, I hope that this will not be the reason that people will want to enter into the institution of marriage, where the property becomes the guiding principle. For example, this man or this woman has so much money. If I get married to them, I am likely to benefit from their wealth upon their death.

(Sen. Mandago consulted Sen. Veronica Maina)

Sen. Mandago is disturbing the Mover of the Bill, yet she is taking very important notes.

Mr. Temporary Speaker, Sir, protect me from Sen. Mandago.

The Temporary Speaker (Sen. Abdul Haji): Very well, you can continue.

Sen. Wambua: Mr. Temporary Speaker, Sir, thank you for protecting me.

What happens in that eventuality? We live in this country and have heard of spouses who get into the institution and fast-track the departure of their spouses from earth, so that they can inherit the property.

As we discuss this Bill, let it not be an avenue that people would want to use to get into the institution for the purposes of inheriting property. Otherwise, it will be a very interesting discussion, especially in public participation. I hope you will invite us, so that we can also listen in and make whatever contribution we can.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator.

Proceed, Sen. Muthama Agnes Kavindu.

Sen. Kavindu Muthama: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to The Law of Succession (Amendment) Bill. I will be very brief because many of the points that I had have already been spoken to by the other Senators who have spoken before me.

(Sen. Maanzo consulted Sen. Veronica Maina)

Mr. Temporary Speaker, Sir, kindly protect me from Sen. Maanzo.

The customary law that you have heard Sen. Cheruiyot and Sen. Wambua speak about is very true. It is a reality that is ongoing in Ukambani. There is a saying in

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Ukambani that states that whoever marries your mother is your father. That means some husbands marry wives with children from other families. Once those children come to that family, they are owned and become part and parcel of that family. On death, they inherit your property, just like the biological children of that family.

This amendment Bill is very timely. During the public participation on the 1998 Bomb Blast, we called stakeholders to come and share their experiences with us. Some women told us that after their husbands died during the bomb blast, their in-laws chased them from their homes. To date, they have had nowhere to stay. This Bill will protect such women and their children.

I take this opportunity to congratulate my friend, Sen. Veronica Maina, for coming up with this amendment Bill.

Mr. Temporary Speaker, Sir, two days ago, I was called from Kivaa, Masinga Sub-county in Machakos County. I was told that there is a Person with Disability (PWD) – a husband - who married a second wife after the death of the first wife. He married the second wife, but something happened. He sent her home with the assistance of his relatives.

What saddened me is that the second wife went to court and got a court order to exhume the body of a son of that man from the land she claimed belonged to her and her ex-husband. I asked myself: “Which judge could give such an order for exhumation of a body of a son from his father’s land?”

The claim is that this land should be sold and the money shared between the husband and wife. However, in that marriage, there are three wives. If we strictly follow the law, that land should be divided into three parcels and whoever wants to sell hers be allowed to do so without any hindrance. Therefore, there is no point of exhuming the body of a child so that they can sell the land.

These amendments will protect vulnerable children and poor people who cannot go to court to seek justice. I think for a judge to give an order to exhume a body of a child on his father’s land is corruption at the highest level.

Many hon. Senators have contributed to this amendment. I ask Sen. Veronica Maina to propose amendments to the Matrimonial Property Act because many housewives suffer a lot when it comes to divorce. In such cases, they are required to show evidence of ownership or their tangible contribution towards matrimonial property, yet in that home, they do donkeywork. They give birth, take care of their children and husbands. This is their contribution towards matrimonial property.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator.

Sen. Mandago: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this matter. However, before I contribute to these amendments to this Bill, I do not know whether a definition of work for a spouse would include giving birth to children. That is a debate for another day.

Unfortunately, Sen. Aaron Cheruiyot and Sen. Wambua have already left the Chamber. When I heard their contributions, Sen. Aaron seemed to have been worried about the impact of this past on the future. Listening to his contribution, I thought he was

reminiscing about his days at Moi University. You know, university students engage in so many activities.

Mr. Temporary Speaker, Sir, I want to thank Sen. Veronica Maina for bringing this subject matter, which touches on daily living in all our communities in this country. The matter of succession has been very emotive. Most importantly is the process of succession that sometimes takes so long.

As I speak today, a lot of assets and resources for families are held in abeyance. They cannot be accessed or used. They run to billions of money that would have positively contributed to the economy of this country and to the individual lives of those families that are involved.

Unfortunately, because of succession matters, disputes and so forth, you find their would-be beneficiaries suffer for even more than 10, 15 or 20 years. By the time the matters are resolved, all those are meaningless because some would have died in the process and complicate even the matter further.

Especially on death, the issue of disposal of assets, the rush to grab, and so forth, has been witnessed on many occasions in several families. However, what worries me, and I want to thank Sen. Veronica Maina for bringing this up, is that we have so many young widows in this country who probably have just been married and have a child or two.

I do not know what is happening to our beliefs as communities, because we, Africans and Africa is our business, have our African cultures of addressing the matters. In the community I come from, once a woman is married, whether she has a child or many children, she has some entitlements.

Mr. Temporary Speaker, Sir, what we have witnessed in the recent past is quite unfortunate. Very young widows with one or two children, probably they have not even gone to school, being ejected from that family with nothing. They are sent away with the children to take care of, yet the husband had assets and resources that would have been used to bring them up.

This debate is timely. I would want to encourage Sen. Veronica Maina, particularly during public participation, to give adequate time and publicity. These amendments could help this country now unlock the many resources families are not able to access because of the disputes that have come.

On the issues of surviving children vis-à-vis children, I think we need to define. Sometimes I hear people say children born out of wedlock. For me, I think children are children. I would want to later engage Sen. Veronica Maina to see how these amendments can also be linked to the rights of children even in the determination of land matters.

I know the In Vitro Fertilization (IVF) technology and others just came in recently. However, we know the issue of single mothers has been with us for quite some time. I hope part of these amendments will encourage men to take responsibility for their children. Yes, a lady can be single and unmarried, but let those children know their father.

This is how also it will help, you know, when it comes to succession in solving some of the matters. This is opposed to a situation like what the Senator for Makueni was

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saying, that you arrive at a funeral, then you look across the tents, and you find a brigade of people who resemble one another and have never met. You do not know what would happen next.

We should encourage openness and responsibility. All children should be allowed to know their identity. Women should be encouraged not to hide the identity of the fathers of their children, which would contribute to resolving some of these matters.

There is a situation where one of the parents dies, or one spouse dies, and the other decides to remarry. I encourage Sen. Veronica Maina that it is an area that needs critical thought about how the resources that were left behind will either be shared or used to bring up the children that have been left behind.

We have seen on several occasions a situation where when a mother with children dies, the man is left. After one year or so, he gets married. What follows is that the children whose mother died are mistreated. Some are battered. We have witnessed situations where children have been beaten using hot iron to put marks on their backs. Finally, those children lead very distressful lives.

I think even as we consider this Bill and amendments proposed by Sen. Veronica Maina, we also have to put into consideration such situations. If one is to remarry, we should consider that as a fresh marriage. We can see how then, at that point, the resources that were available for that family and those children would be used to make sure that their welfare is well taken care of.

Mr. Temporary Speaker, Sir, we are also living in interesting times. Particularly for those of us who have led an urban life, probably for quite a longer period and for one reason or another. We have either decided to do away with our cultural beliefs and norms or forgotten all about them.

Mr. Temporary Speaker, Sir, with regard to disputes of succession, let me use myself as an example. If I have sisters who are married, during discussions on succession, sons-in-law could be part of it. That makes it extremely difficult to resolve some of the family disputes that may arise out of succession matters. It complicates matters further.

I encourage Sen. Veronica Maina to also consider who can be engaged, so that it is not an open field for everyone. For instance, you are just a neighbor, but you want to be part of the process of a succession. We need to look into this deeply. Sen. Veronica Maina said earlier on that public participation on these amendments should be given a considerable amount of time, so that we can have an opportunity to engage and reach out to various communities.

Other than the law that we will come up with, we have norms, cultures and customs of communities in this country. Some of them are very rich and have helped to resolve most of the issues, particularly when we talk about Alternative Dispute Resolution (ADR) mechanisms. Most of the time, it involves a sitting of elders to consider matters as per their culture and cultural norms. We have witnessed very fair decisions when our cultures and our norms are applied.

We do not have many communities. In this country, we have less than 50 communities. We have councils of elders, which I would encourage Sen. Veronica Maina

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to try and engage, so that we balance the views of various communities in the amendments that we will put in place.

I would also like to talk about having a will. We have seen and witnessed so many disputes or people disputing a will that was written by a deceased person, resulting into many long legal battles. I would like Sen. Veronica Maina to also think about this. I will do some research before I appear before the Committee on Justice, Legal Affairs and Human Rights on this matter of wills.

Going forward, so that resources are not locked for a long period of time because of disputes or disputing a will, if we have the Registrar of Births and Deaths, why do we not have Registrar of Wills, so that everybody can have a will and you are asked to review after every five years? Your will should be kept at the Registrar of Wills, who upon confirmation of your death and registration of your death, releases your will certificate and it becomes final.

Courts can use that to make decisions to reduce the time it takes to decide on succession matters that leave particularly polygamous families vulnerable for longer periods of time. Most polygamous families have challenges because some are not properly formalized either culturally or legally.

We have seen situations where some spouses in polygamous families are chased away, denying their children a right to go to school. We need to resolve that. We need to look into amendments that will make sure that none of the desirable beneficiaries miss the opportunity to benefit.

Coming back to the issue of wills and distribution of wealth, I encourage the Kenyan population to take it seriously and positively, so that in any eventuality, there is minimal room for disputes to arise. I will be following this up under the Law of Succession Act, to make sure that children do not start asking for inheritance from me as a parent when I am still alive.

We should make it clear that as soon as a child turns 18 years, he should know that he is an independent Kenyan, who is supposed to be on his own by working for his wealth, unless it is wealth that was inherited from your grandfather and so forth.

What I worked for should be left to me to decide how I want to give it. Let us not enact laws that will encourage children to send us to the grave early because there is an opportunity to distribute wealth as soon as we leave, and because the law says they can automatically inherit regardless of what happens. We have to make sure that the law takes care of that, so that we have a society that does not use it negatively.

As I said, I want to emphasize to Sen. Veronica Maina. In a situation where one remarries, issues of assets that were acquired in the previous marriage should be looked into, so that the children, spouse or parents who probably are dependants of the deceased are not disadvantaged.

Mr. Temporary Speaker, Sir, before I end, I would like to encourage Sen. Veronica Maina to give it a thought in terms of giving it sufficient time for public participation on these amendments because they are critical and answer on many challenges that we are currently going through as a nation.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Proceed, Sen. Mungatana.

Sen. Mungatana, MGH: Mr. Temporary Speaker, Sir, I would like to start by thanking Sen. Veronica Maina for bringing these amendments on the Law of Succession Act.

Many of us who are practitioners of the law have grappled with these difficulties. I know Sen. Veronica Maina is also a practitioner of the law. I am happy to see that she has used her experience of many years to try and resolve issues that we face all the time in succession courts.

When unfortunate things like death of both parents in a road accident or a plane crash occur and they have children who are expecting them to go back home in the evening, but all of a sudden, they do not have parents. They wake up in the morning with both parents, but they become orphans in the evening.

These are real issues that I have personally dealt with in my law firm. How do you protect those children? In the morning, the children were under the protection of both parents. In the evening, there is a plane crash and they are waiting for their parents, but nobody is going home.

There is intermeddling that we are talking about, which has been introduced here. Children find themselves completely exposed. Unfortunately, some of the relatives who may not have a lot of goodwill for these children come and remove them from their property. Many times, they tell them, 'you come and live with auntie or with uncle.' However, the intention is to work their way through to get the property that was entitled to those children.

I know of a case of a very successful couple that lost their lives together and we have had to really look after those children until now. Now, they are grown children and have come into their parents' property. However, assuming that their parents had not planned for eventualities like those, and just like most ordinary Kenyans, they live believing that they will attain the age of 80 or 75, and then something like that happens, the children become extremely exposed.

Mr. Temporary Speaker, Sir, I am standing not only to support this Bill, but to use the Floor of this House to speak to those Kenyans who are listening to me. The time has come, and in these modern times, we must do two things. We must learn to file our Kenya Revenue Authority (KRA) returns every year. At the same time, we must learn to list what we have for that year and update the will that we have. You and your wife must keep thinking about these kinds of eventualities.

Mr. Temporary Speaker, Sir, it is very much un-African to think that you are going to die or to talk about death. In some of our communities, it is actually a taboo to discuss your own death or plan your own death. That is why it always makes news when someone says, 'when I die, this is the grave that I am digging for myself, this is the casket that you are going to use and this is the way I want to be buried.'

Ordinarily, this is not very African. However, I am standing on this Floor of this House to tell Kenyans that the time has come and as you file your returns, also look at what you have. Sit down; have a business meeting with your wife, or your partner or

partners, whatever the case, and think about it. If something should happen and you or your wife is not there, what would be the best case scenario?

Mr. Temporary Speaker, Sir, an example has been given here of the hon. Justice Majanja, who said in his will that he was going to be cremated, and that was done within a very short time or hours. I remember one of the other very famous bishops, Archbishop Manasses Kuria, also said that he wanted to be cremated and not buried.

It was a shock to us, but these prominent Kenyans are communicating one thing. Let us plan as we live and also plan when we die. Let us do like they did. The most recent example is that of hon. Justice Majanja, who I proudly say is a product of the great Alliance High School, like myself. Plan and plan, so that in case this eventuality happens, what are we supposed to do? Who are the lawyers that we should go to? What are they supposed to do?

Mr. Temporary Speaker, Sir, if we go that way, you will see that even these amendments that Sen. Veronica Maina is talking about here become things that we can deal with. This is because if you have properly planned how your matrimonial home should be treated upon your exiting from the earth, then we would not have the problems we have here. We would not even need to have this amendment as far as intermeddling is concerned.

I thank Sen. Veronica Maina because she has thought about these amendments. She has brought them before this House. I want to emphasize the fact that we should plan. As we plan for being alive, let us also plan for when we have departed from this earth.

If you look at the memorandum and objects of the Bill, this Bill is also discussing about court decisions that have been made by the High Court. The Constitutional Court has declared sections of the Law of Succession Act as being discriminatory on the basis of gender. The life interest upon remarriage was not lost for widowers. However, for widows, it was lost.

Mr. Temporary Speaker, Sir, I know arguments have been made here for and against the African customary law as far as interpretation of this amendment is concerned. However, when we look at this carefully when you are alive and your spouse is alive, you say you have worked very hard, you have bought a property that you have given for rental purposes. However, it would be very unfair that if the husband were to pass away and the wife stayed three, four or five years and remarried, her life interest in that property gets lost. If the wife passed on, the life interest of the husband remains.

Mr. Temporary Speaker, Sir, this is discriminatory and I thank the hon. Senator because it has come at a time when it is curing this discrimination. We are going towards an era where we need to recognize that our partners are part and parcel of ourselves. The law now must move in that direction and recognize the position of our women.

Just two weeks ago, we were in the Pan-African Parliament. One of the things that was being debated at the Continental Parliament was the question of gender discrimination in leadership, property ownership, appointments and even in the financial sector. This Bill is one of those that is trying to bring that equity that we have been talking about for a long time.

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Mr. Temporary Speaker, Sir, I know it will take time before we actualize the realities of the equity that is required. However, the more we talk about these things and debate them, the more they become acceptable that the other gender, the women and ourselves have equal responsibilities. There is no basis for discrimination, irrespective of our customs. Some of our customs are very good. Some of our customs need to go with the times.

I know other people have argued that customs should take precedence in some of these matters. However, I believe that customs should also move with the times. It will be good for us to pass this law and support it, so that the offensive Sections 35 and 36 of the Law of Succession Act can be removed as the court had ordered in its judgment.

Mr. Temporary Speaker, Sir, I want to emphasize another thing that if we can sit down and discuss these matters while we are alive, we can agree on even the properties. Just like in the bank accounts, if you have joint bank accounts and you pass away, there is no rigmarole of going through the law of succession just to access the funds to keep the children or the family moving.

It is time for us to consider having joint accounts. I know many of us would argue that, "Oh, you know, there could be a divorce or there could be many other things or maybe, the issue of trusts exists." Then you do not have to have all the accounts joint. You could have some joint and others independent. Joint accounts between spouses help to resolve some of the issues that go around succession. They make that property in cash easily accessible in the bank.

In addition to that, joint registration of properties help to deal with the rigmarole of succession. In the event that either spouse passes away, the other one who is holding the joint registration continues with the property in full ownership.

This also helps in planning. When one of the spouses passes away, especially if it is the man who was the breadwinner, the wife can access to the bank accounts because some of them were joint accounts. She has access to the property, including the matrimonial property, because you had registered it jointly.

Even as you are go to the other world, you leave in peace knowing that your family is taken care of. The days of trying to register your brother, cousin or whoever as the person who should take over in case anything happens have been passed with time. Some of these innovations are very good for purposes of making sure that we do not have the problems that are associated with death, which are intestate. That is, you have died without a will.

Mr. Temporary Speaker, Sir, if you know you have seven children and you have plots, land, bank accounts and other properties all over this country and maybe outside; what is the problem with you and your wife assigning these properties to the children when you are alive? When you are exiting, everyone is able to clearly see what mum and dad wanted for everyone, instead of leaving things hanging.

So, I am urging people to write their wills. If they do not write their wills, then while alive, let them make a viva voce decision with their spouse. In case you, probably feel that your custom does not allow you to plan for that while you are alive, make those agreements. Be in joint accounts with your spouse, transfer the properties to the children while you are alive, if you do not want to plan for a will. So, there are two options. Let us

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not engage so much. Kenyans listening to me, let us not waste a lot of our money in these succession battles.

Mr. Temporary Speaker, Sir, we have seen this in some of our very notable colleagues. We have read and seen lawyers who have enriched themselves and become very rich from the assets of some of our colleagues, and yet their children and grandchildren are suffering.

Some of the grandchildren are even dying poor. They cannot pay medical bills, and yet, the father worked very hard, did so many things, were very prominent Kenyans and took time to accumulate wealth. However, when they are gone, because they died without organising themselves, these lawyers have gone on to accumulate wealth from the wealth that they left.

I am repeating that we need to plan for our families, plan for death and plan for the succession properly. However, this Bill will help those who will refuse to plan. It will help interpret some of these sections and bring equity between spouses who have lived together or have been married for many years.

Mr. Temporary Speaker, Sir, this is a beautiful Bill. With those very many remarks, I wish to support it.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. There being no other Senators wishing to contribute, I ask the Mover to reply.

Sen. Veronica Maina: Thank you, Mr. Temporary Speaker, Sir. Let me, at the very onset, thank all the hon. Senators for their insightful contributions towards this very important amendment.

I begin by thanking Sen. Wakili Sigei for his remarks and giving the update on how far the Standing Committee on Justice, Legal Affairs and Human Rights is in preparing the report that had considered some of the stakeholders' views that had been sent to them on the stakeholders' engagement. I also thank the Senate Majority Leader for his very wise remarks regarding the import of Sections 40 and 41 of the Law of Succession Act.

Let me state at the very onset that the Law of Succession Act is an Act of Parliament that deals with the distribution of the estate of the deceased persons. It specifically angles on succession matters. It deals with the assets and liabilities of a deceased person at the time when that person is departed. It has two big broad branches in the manner it deals with these matters. There is the estate part that is when a person is deceased and has made a will. It also has the intestate part, which is the larger part.

It has more provisions of the intestate because when a person becomes deceased and they have not written down the will, there are different rules that are engaged. That is why what is being amended right now is in relation to sections that deal with the uncertainties when somebody has died and has not left a will.

The amendments we are discussing today are not because the concentration is more so on the property. However, the branch of law of succession itself deals with succession matters when somebody has already passed on. That is the reality of life. We live some day and depart some day from this life. When we depart, how the estate of the

person who departs is organised is managed under the law of succession. That is why it is called the law of succession.

Thank you, Senate Majority Leader, for raising an important question on how we present Bills to this House, especially when amending sections of law. That when we do the cross reference, it is important that we have the sections that are being cross-referenced. I guess that is for the Secretariat to improve on how we present the Bill, so that it is easier for hon. Senators to be able to debate.

If I may look at one of the questions that the Senate Majority Leader, Sen. Cheruiyot, raised, it is in relation to Section 40. This is a section that deals with the system of law that recognises polygamy and the estate of a deceased person in the event that they die when in a polygamous situation and without a will. It provides for distribution of that estate according to the houses or what you call units. For example, if a deceased had two wives, and wife 'A' has three children, while wife 'B' has four children, wife 'A' with three children will be four units. Wife 'B,' who say has four will be five units plus. Each person is treated as a unit in law. If you have an additional child, then that child will be treated as one unit. They are not going to say that a child who comes out of the first home takes half by herself or himself just because they come from another home. No.

If the child is one, they will be treated as one unit. If the other family has three children, they will be treated as three plus one, the one being the wife. So, they will be treated as four on the first house and one on the second house. That will be five units. Each person gets an equal treatment in law.

How do we deal with the distribution of that estate? If, for instance, you say the estate was worth Kshs2 million and there were 10 units, then it would be divided among the 10 units.

Let me also thank Sen. Omogeni, who has extensively dealt with the issue of this amendment. There was an attempt in the previous Senate to make some amendments to the Law of Succession Act, but it did not succeed. We hope that this will eventually see the light of day. He raises an important question on people who consider writing down their will, so that they can attest to it. When a person writes down their will, the testator puts down how he would intend the estate to be distributed among his dependents or beneficiaries.

It makes it easier for everybody. If such a person dies and they have written a will that is legal and not challengeable in court, it makes it easy for the distribution of the estate. The court would adopt the will and proceed to allow distribution of the estate describing how it should be undertaken. I am happy that the example of our late Hon. Judge Justice Majanja has been used to show that when a man plans his estate, then everything becomes a lighter burden to those who are left surviving.

Sen. Wambua, I thank you also for the contribution and the concern you have raised that a marriage should not just be about properties. Marriage is actually a God-given institution and the concentration should not be on property. However, properties cannot be ignored because for that marriage or family to provide for the children, there are things that must be done for livelihood and subsistence.

This is where this question of succession comes in. However, this law does not by any chance make it easier for people to determine that they will get married because they want to inherit property.

Indeed, property should be the last thing that people should be considering. Marriage and the choice of spouses should be based on love and God's command, not on the urge to acquire property. If someone just wants to acquire property then they would rather look for business ventures, but not tuck and hide behind marriage. I quite agree with you. However, at the onset, I would like to clarify that what we are introducing is an amendment to the Law of Succession Act.

It has been in existence before this amendment and it guides the courts on how the estate is being distributed. I do not see these amendments encouraging people to treacherously look for spouses - either men or women - to marry just because they want to acquire property. However, in the event of a demise, which would be an unfortunate incidence, then there is a guideline in law to show how that property should be distributed.

Sen. Kavindu Muthama raised an important question of how in-laws sometimes can become wild and chase out the family. For that, there is protection being offered by the amendments, which would maybe deal with these issues. We hope that we can clarify the law until we are in a happy state where the implementation is easier.

She also raised the need to amend the Matrimonial Property Act, 2013. That is an important debate because we know there is jurisprudence that has come from the Supreme Court regarding how it determines the contribution of each spouse towards a matrimonial property and the definition of matrimonial property. That is a challenge that we will be taking on.

Sen. Mandago raised an important issue on cultural practices that we need to consider. Are there principles within cultural practices that we need to reduce to help us improve our jurisprudence or even legislation? Definitely, that will be taken up.

Sen. Mungatana, MGH, has also brought up the question of gender equality, which is the trend that the world is taking, including at continental and global level. That we make it level for both genders to be treated equally in order for all to enjoy. This also brings out the need for people to plan and reduce their wishes into a will and includes how to prepare a will and where it will be deposited. In fact, one of the Senators asked whether we should have a registry for wills.

For the time being, once a will is written down, it can be deposited with your lawyers, in the bank or in a safe place where you know that the person holding it has integrity. Even when the family says *ni mama au baba fulani* keeping it in custody, it is credible, believable and will not be treated as a fraud.

I have taken into consideration all these proposals and the need to further refine the amendments. I will be presenting them to the Standing Committee on Justice Legal Affairs and Human Rights (JLAHR), so that at the Committee of the Whole stage, we can effect them.

When the Committee brings the report, they will then be considered wholesome and we can clarify the critical issues such as the issue of children who are not born by the spouse. For instance, if a woman gets married with two children who do not belong to

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that man, are they entitled to inherit? Of course, there is what the jurisprudence by the court has been driving us to see; that unless some of the children were recognised and adopted by the man who has married their mother, then they might have to go back and inherit from their father.

Mr. Temporary Speaker, Sir, those are clarifications that we will put as we look at further amendments as proposed by Senators. That is one of the things we are going to do so that when the report comes back to the House at the Committee of Whole stage, these amendments can proceed to be effected.

I like what the Senators have raised. The different ways of dealing with the planning done in a tested manner and dealing with the wishes of the deceased like the issues of cremation- where in an African community you could not have mentioned the word to some members initially, but it has become something that many Kenyans have now adopted.

All those issues have been raised as a challenge. Even as we amend, we should consider wider amendments in this Bill during the process as I have proposed.

I want to thank all the Senators for those insightful contributions. I am looking forward to further discussions and receiving the contribution from the Senators who have undertaken to attend the JLAHR on stakeholders' engagement so that we discuss some of these concepts further and come back with the relevant amendments.

With those few remarks, I beg to reply. I hope that we will be given a chance later to do the amendments.

Pursuant to Standing Order No.66 (3), I now beg to move that putting of the question be deferred to a later date to allow for these discussions.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. We shall defer putting the question to a later date.

(Putting of the Question on the Bill deferred)

The Temporary Speaker (Sen. Abdul Haji): Let us proceed to the next Order.

Second Reading

THE PUBLIC HOLIDAYS (AMENDMENT) BILL
(SENATE BILLS NO.31 OF 2023)

That Order is deferred.

Next Order.

(Bill deferred)

*Second Reading*THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL
(SENATE BILLS NO.34 OF 2023)

Hon. Senators, that Order is deferred.
Next Order.

(Bill deferred)

*Second Reading*THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL
(SENATE BILLS NO.39 OF 2023)

Again, hon. Senators, that Order is deferred.

(Bill deferred)

Next Order.

*Second Reading*THE ENERGY (AMENDMENT) BILL
(SENATE BILLS NO.42 OF 2023)

That Order is deferred.

(Bill deferred)

Next Order.

MOTIONSADOPTION OF REPORT ON STATUS OF PROJECTS FUNDED BY THE
CONDITIONAL GRANT FOR CONSTRUCTION OF COUNTY HEADQUARTERS

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the status of implementation of projects funded by the Conditional Grant for the construction of County Headquarters laid on the Table of the Senate on Thursday, 28th March, 2024.

The Temporary Speaker (Sen. Abdul Haji): That Order is deferred.

(Motion deferred)

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ADOPTION OF REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL
STATEMENTS OF VARIOUS COUNTY ASSEMBLIES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Report of the Auditor General on the financial statements of West Pokot County Assembly for the Financial Year 2018/2019 and Reports of the Auditor General on the financial statements of Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, West Pokot and Murang'a County Assemblies for the Financial Year 2019/2020, laid on the Table of the Senate on Thursday, 7th March, 2024.

The Temporary Speaker (Sen. Abdul Haji): That Order is deferred.

(Motion deferred)

ADOPTION OF REPORT ON CONSIDERATION OF AUDIT REPORTS
OF VARIOUS WATER SERVICE PROVIDERS

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the year ended, 30th June, 2019, 30th June, 2020 and 30th June, 2021 of the following Water Service Providers-

- (i) Amatsi Water Services Company Limited - Vihiga County;
- (ii) Bomet Water Company Limited – Bomet County;
- (iii) Gusii Water and Sanitation Company Limited - Kisii/Nyamira Counties;
- (iv) Kisumu Water and Sanitation Company Limited - Kisumu County;
- (v) Kwale Water and Sewerage Company Limited - Kwale County; and
- (vi) Nyeri Water and Sanitation Company Limited – Nyeri County.

and the Audit Report of the Wajir Water and Sewerage Company Limited for the year ended 30th June, 2021, laid on the Table of the Senate on Thursday, 23rd November, 2023.

The Temporary Speaker (Sen. Abdul Haji): That Order is deferred.

(Motion deferred)

ADOPTION OF REPORT ON ALLEGED IRREGULARITIES IN
PROCUREMENT OF LONG-LASTING INSECTICIDE TREATED NETS

THAT, the Senate adopts the report of the Standing on Health on the inquiry into alleged irregularities in the procurement of long-lasting insecticide treated nets at the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the Senate on Wednesday, 8th May, 2024.

The Temporary Speaker (Sen. Abdul Haji): That Order is deferred.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, there being no other Business on the Order Paper, the Senate stands adjourned until tomorrow, Wednesday 17th July, 2024, at 9.30 a.m.

The Senate rose at 5.42 p.m.