

THARAKA NITHI COUNTY ASSEMBLY

THE HANSARD

23rd March 2021

*The County Assembly met at the
County Assembly chambers in Kathwana at 9.40 a.m.
[The Deputy Speaker (Hon. John Njagi Mucee) in the Chair]*

PRAYERS

Hon. Deputy Speaker: Honourable members, let's get seated.

COMMUNICATION FROM THE CHAIR

FURTHER COVID-19 CONTAINMENT GUIDELINES

Hon. Deputy Speaker: Good morning honourable members.

Honourable Members, you are all aware that the County Assembly operations are guided by the Standing Orders, rules and procedures and best practices. Further to the guidelines issued by the Speaker on 17th March 2020, 21st April 2020 and 5th May 2020 on the conduct of the business of this House and committee sittings during this Covid-19 pandemic period and in adherence to the Ministry of Health Covid-19 protocols, I therefore issue the following further guidelines on the same:

Visits to the County Assembly Chambers by schools, colleges and other groups shall stand suspended. In addition, the entry of any other visitors into County Assembly offices during this period and the movement of visitors within the precincts of the County Assembly shall be restricted;

All members and staff aged 58 years and above are advised to abide by the Presidential directive dated 25th March 2020 and thus work from home;

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Any immune suppressed member and staff and those with chronic illness such as hypertension, diabetes, cancer and HIV are encouraged to work from home as they are more at risk of contracting COVID-19;

There shall be no members of public allowed physically at the public gallery at any sitting of the Assembly or access the Committee meeting during this COVID-19 period;

There shall be no consultation at the Speaker's Chair or at the Clerks table unless extremely necessary;

The public gallery shall for the purposes of sitting of the Assembly during this COVID -19 period be part of the Chamber. A member seated at the public gallery shall (upon request) be allowed to contribute into the debate by walking into the floor in an orderly manner and walking back into their earmarked seats;

Members are advised to refrain from exchanging seats in the event that a seat becomes vacant;

Members of the County Assembly and the staff will be required to wear their facemasks at all times while within the precincts of the County Assembly;

Given the limited Committee rooms and sitting spaces, members are encouraged to transact as much business as possible remotely so as to reduce the need for physical meetings;

The Assembly will provide adequate hand sanitizers and face masks for use by members and staff as part of preventive measures;

The members and staff shall uphold hygiene measures and maintain a social distance of at least one meter between themselves whenever they are leaving or entering the chamber, committees or other places within the precincts of the Assembly;

The biometric listing of member's attendance to plenary is forthwith suspended and the sergeant-at-arms instructed to manually record members who are in attendance.

The Clerk and Secretary to the Board is also directed to put in place mechanisms and appropriate action to ensure strict adherence to the Covid-19 protocols within the vicinity of the County Assembly.

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Honourable Members, to achieve the oversight role of the County Assembly as stipulated under Article 185(3) of the Constitution of Kenya 2010 the County Assembly committees will be allowed domestic/local travel outside the precincts of the County Assembly but in adherence to the National Emergency Response Committee (NERC) and Ministry of Health (MOH) laid down guidelines; and in every instance where a committee or a member or a staff of the County Assembly has completed a retreat/domestic travel outside the precincts of the County Assembly the member and the staff will be required to have a 14-day self-isolation before attending another physical meeting within or outside the County Assembly precincts.

Honourable Members, pursuant to the provisions of Article 196 (1) (a) and (b) of the Constitution of Kenya and the provisions of Section 87 of the County Government Act, 2012 the County Assembly is required to facilitate public participation and involvement in the legislative and other business of the Assembly. In light of this and taking into account the Covid-19 pandemic and the guidelines issued on public gatherings, I therefore encourage and direct committees to seek the views of the general public by way of written submissions and virtually through electronic platforms.

Finally, honourable Members It is worth noting that the third wave of Covid-19 is fast spreading and numbers are turning into names and people we know and interacted with. On this note, I would wish to encourage honourable members and staff to undertake voluntary Covid-19 tests and vaccinations at our County Referral hospital.

Honourable Members, I urge you and the members of staff to continue observing the Ministry of Health guidelines on social distancing, usage of masks and other hygiene measures since we are in unprecedented times.

Honourable Members, I wish you all the best as you continue to execute your constitutional mandate.

I thank you.

APPOINTMENT OF KATHWANA MUNICIPALITY BOARD MEMBERS

Hon. Deputy Speaker: Honourable Members, as you are aware Tharaka Nithi County Assembly standing orders 64(1) provides that upon receipt of a notification for appointment to an office as is under the Constitution or under any other legislation require to be approved

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by the Assembly, the nominations shall stand committed to the relevant Committee of the Assembly for consideration.

It is notified to all Members of the County Assembly that on Friday 19th March 2021 I received communication from the County Secretary regarding nomination for appointment of three (3) persons to serve as members of Kathwana Municipality Board by H.E the Governor.

In this regard honourable members, and pursuant to provisions of Section 7(1) of the Public Appointment (County Assemblies Approval) Act 2017 and having received notification of nominees under Section 6 (3) vide the letter Ref: TNC/CS/APP/2021/01 dated 17th March 2021, for vetting of the nominee for the position of Kathwana Municipality Board Members, now therefore do report receipt of the notification to the County Assembly and commit the following nominees for vetting to the Assembly Committee on Lands, housing, Physical Planning and urban Development.

The names are:

1. Mrs. Emily Kanana Murungi
2. Dr Fr. Peter Gichunge
3. Mr. Charles Nyaga Chabari

Honourable Members Section 7 (2) of the Public Appointment (County Assemblies) Act no. 5 of 2017 requires that a committee shall consider a nomination and table a report for debate and decision of the house within 14 days from the date of notification and comital to the relevant committee of the Assembly. It is therefore imperative that the committee embark on the vetting exercise for speedy conclusion within the set timelines by immediately notifying the nominees and general public, commence the necessary approval hearings, and table the report in the house on or before 6th April 2021.

I thank you honourable members. Next Order.

PETITIONS

Hon. Deputy Speaker: Honourable members, with me I received a Petition on waiver of Single Business Permits requirements for Kenya Private Schools Association members in Tharaka Nithi County in 2021 by the County Government of Tharaka Nithi.

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We the undersigned,

The officials of the Kenya Private Schools Association (also known as KPSA) Tharaka Nithi County draw the attention of the County Assembly to the following;

This petition concerns the request by the KPSA to be exempted from the requirement to pay for the Single Business Permit for the year 2021.

Whereas the KPSA is a partner to the government in providing quality education to the children of Kenya in accordance with the Constitution and relevant legislation;

The KPSA members recognized their role as corporate citizens and have dutifully paid relevant fees and levies passed by the County Assembly of Tharaka Nithi in various Finance Bills/Acts from time to time.

The president of the Republic of Kenya on March of the year 2020 announced the closure of all schools due to reported case of Covid-19 in the country as part of the containment measures to stem the spread of Covid-19.

That before the closure of schools, most of the KPSA members had applied and paid for the 2020 Single Business Permits. These permits were therefore not ‘utilized’ as the schools were closed.

That during the period of closure, all members suffered loss of income and some members closed their schools completely as they were unable to pay rent and other recurrent expenditure.

That whereas other social sectors of the economy were afforded Covid-19 relief packages, the Government of Kenya promised KPSA Private Schools a relief package which at the moment is still work in progress.

That when the schools finally reopened, the members were forced to expand facilities so as to adhere to the Ministry of Health Protocols on Covid-19.

That some counties have provided support to private schools such as: The County Government of Nakuru who created an emergency kitty for teachers in private schools.

In consideration of the aforementioned challenges the KPSA Tharaka Nithi notes:

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1. The Tharaka Nithi County Government has the power to waive the requirement for the KPSA members to pay for the Single Business Permit for 2021.
2. The KPSA members requests the waiver for the year 2021 only for schools that had paid licenses for 2020.
3. The KPSA members acknowledge the good working environment that has been created by the County Government of Tharaka Nithi.
4. That KPSA members welcome any other support that may be extended by the County Government of Tharaka Nithi.

The KPSA therefore acknowledges the powers of this honourable County Assembly to discuss the importance of the private sector members of the County.

That, the issues in respect of which the Petition is made are not pending before any court of law, constitution or legal body.

Therefore, your humble petitioners pray that the County Assembly:

- a. Duly and diligently respond to the matters raised in this Petition.
- b. That this Petition be dealt with immediately in the view of the urgency of this matter.
- c. To do all and anything necessary permitted under the law and the Constitution of the Republic of Kenya to grant this requested waiver.

And your petitioners will ever pray.

Petitioned and dated 10th day of March 2021.

Petitioner; for and behalf of the members of the Kenya Private Schools Association, Tharaka Nithi County Branch, the undersigned:

Mr. Kinyua B. Karingu, the chairman KPSA Tharaka Nithi; Mrs. Lucy Mugambi, the secretary KPSA tharka Nithi; Mr. Linus Mutegi B. the vice chairman, Tharaka Nithi County; and Mrs. Stella Muchiri, the treasurer KPSA Tharaka Nithi County.

I commit the petition to the committee on Trade, Tourism and Cooperatives.

(Hon. Muchiri the vice chair stood in his place and bowed to acknowledge)

Thank you honourable Muchiri, the member for Karingani.

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PAPERS LAID

REPORT OF THE COMMITTEE ON WATER, ENVIRONMENT AND NATURAL RESOURCES ON THE THARAKA NITHI COUNTY WATER SERVICES BILL, 2020.

Hon. Deputy Speaker: Yes, chair.

Hon. Margaret: Thank you Mr. Speaker. I lay on the table the report of the committee on Water, Environment and Natural Resources on the Tharaka Nithi County Water Services Bill, 2020.

(The paper was accordingly laid on the table)

REPORT OF THE COMMITTEE ON TRADE, TOURISM AND COOPERATIVES ON THE THARAKA NITHI COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2020.

Hon. Deputy Speaker: Yes, chair.

Hon. Muchiri: Thank you honourable Speaker. Mr. Speaker I am not the chair to this honourable committee but I am holding brief for the chair. Allow me to lay on the table the report of the Committee On Trade, Tourism and Cooperatives on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020. Thank you.

(The paper was accordingly laid on the table)

Hon. Deputy Speaker: Thank you honourable Godfrey Muchiri for your generosity.

STATEMENTS

RESPONSE TO THE STATEMENT ON CHUKA TOWN COMMITTEE BY THE CHAIRPERSON COMMITTEE ON LAND, HOUSING AND PHYSICAL PLANNING

Hon. Deputy Speaker: Yes, chair.

Hon. Kithinji: Thank you Mr. Speaker. We were to bring a report to this honourable House today but as you are aware the CEC in charge of Land Housing and Physical Planning docket is unwell and therefore we were not able to sit with him as a committee so that he can give us

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the answers as he had promised. The CEC got ill immediately after we had a meeting with him and it is only through the mercies of God that we are not in isolation.

I am seeking for more time. I may not be able to tell when the CECM will be able to recover but it is my wish that he recovers and we report back after the recess.

Hon. Deputy Speaker: Noted chair. Next order.

RESPONSE TO THE STATEMENT ON NDAGANI BARTER MARKET
BY THE CHAIRPERSON COMMITTEE ON LAND, HOUSING
AND PHYSICAL PLANNING

Hon. Kithinji: Thank you Mr. Speaker. This response suffers the same fate. So I beg for more time.

Hon. Deputy Speaker: Thank you for that. Next order.

RESPONSE TO THE STATEMENT ON MWEMA TEA BUYING CENTRE-NDAGANI
BY THE CHAIRPERSON COMMITTEE ON AGRICULTURE, LIVESTOCK
AND FISHERIES;

Hon. Deputy Speaker: Where is honourable Karen to respond? Clerk repeat maybe she did not hear.

(The order was read out again)

Hon. Deputy Speaker: Yes, honourable Karen.

Hon. Karen: Thank you Mr. Speaker. I beg to seek for some ore time so that we can bring a comprehensive report. This is because Cocid-19 issues affected our ability to visit the tea buying centre.

Hon. Deputy Speaker: Honourable Karen what amount of time would you like to be given to respond to that statement?

Hon. Karen: 21 days.

Hon. Deputy Speaker: Okay, thank you. I can see honourable Godfrey Muchiri, yes.

Hon. Muchiri: Thank you Mr. Speaker. Although you never asked me if I am contented with the response by the chair committee on land, housing and physical planning and also about

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Mwema tea buying centre, I feel that we have lost money when it comes to Mwema tea buying centre and I felt that...

(Interjection)

Hon. Deputy Speaker: Honourable Muchiri when matters are at the committee level they should not be discussed until the report is before the House.

Hon. Muchiri: I am not discussing the matter honourable Speaker. I think there should be some urgency on the same if we are serious in this House.

Hon. Deputy Speaker: Thank you honourable Muchiri but you have to remember that nobody knows when the disease will come so it is the nature of the situation. Honourable Kithinji kindly tell us the amount of time you would like us to give you to respond to those Statements.

Hon. Kithinji: Mr. Speaker as I was speaking I said after the recess. This is because as per the Assembly calendar I know we are going for the recess and I said soon thereafter the recess.

Hon. Deputy Speaker: Thank you honourable Kithinji but can you specify clearly the number of days that you would like to have after the recess?

Hon. Karangi: Mr. Speaker I am a member of that committee. The chair was very clear that the CECM is not well. We do not know when the CECM will recover. Once he has recovered we shall be able to handle this matter elaborately.

Hon. Deputy Speaker: Thank you honourable Karangi. However, you have to always plan ahead. Give us a tentative time.

Hon Karangi: But Mr. Speaker as you guided we cannot predict a disease. I am going as per your words.

Hon. Deputy Speaker: Thank you honourable Karangi and the chair, honourable Kithinji. Allow me to inform you that government offices never die. They are continuously working. For that matter then kindly plan and give us a span of time that you should be given after the recess. How many days? Fourteen days? Twenty-one days?

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Hon. Kithinji: Mr. Speaker, considering that we are going for the recess, it was unfortunate because that was the communication from the CECM. If there was somebody acting on his behalf, we could have set a date. But it is important that we are telling the government wing that there is a lacuna somewhere. So I hope they will be able to address that. That notwithstanding I request for 14 days immediately after the recess Mr. Speaker.

Hon. Deputy Speaker: Thank you chair. Next order.

BILLS

SECOND READING

THE THARAKA NITHI COUNTY WATER SERVICES BILL, 2020

Hon. Deputy Speaker: The Mover.

Hon. Margaret: Thank you Mr. Speaker. I have with me a report of the committee on Water, Environment and Natural Resources on the Tharaka Nithi County Water Services Bill, 2020 which I urge the committee to adopt so that the Bill can go to the next stage.

Honourable Speaker I have the report. On the chairman's forward, it is talking about the formation of the committee and how the Bill was tabled and committed to the committee. It is also talking about how the County Assembly advertised for the public participation to be done which was supposed to be attended by different stakeholders within the county. It is also talking about the Bill being on the Assembly website and how the views were to me received on the Bills. They were supposed to be delivered to the Tharaka Nithi County Assembly email.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the County Assembly that enabled it to discharge its mandate during the Water Services Bill activities. I further wish to express my appreciation to the honourable Members of the Committee who dedicated their time to participate in the activities of the Committee and preparation of this report.

It is therefore my pleasant duty and privilege, on behalf of the Assembly Committee on water Environment and Natural Resources, to table the Report on the Tharaka Nithi County Water Services Bill, 2020 for consideration by the House.

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Mr. Speaker, the committee findings and observations;

Overview of the Bill;

Mr. Speaker Sir, The Tharaka Nithi County Water Services Bill, 2020 is to provide for the legal framework for provision of water and sewerage services in the county

Part I of the Bill has 4 sections, preliminary consisting Short title, interpretation of words application, objects and purpose of the Act and guiding principles and values.

Part II- provides for the policy, coordination and oversight of water services and sets out the power and duties of the County Executive Committee Member, county water and sewerage services strategy and the directorate of water and sewerage service.

Part III of the Bill has 9 clauses that provide for establishment of water service providers, functions of the water service provider, governance of water services providers, meeting and procedures of the board, employment of Chief Executive Officer and other employees of the county water services providers, annual estimates of the county water service provider, accounts and audit and register of water services providers.

Part IV of the Bill provides for commercial viability and service delivery that include tariffs of water and sewerage services, ring fencing of revenue, private sector participation, customer relations and interruptions of water services.

Part V of the Bill provides for inspection, evaluation and monitoring that is powers of entry and inspection, evaluation and monitoring of service providers.

Part VI of the Bill provides for the offences relating to conduct of employees of water service providers.

Part VII of the Bill provides for general offences that is impersonation of a staff of the water service provider, vandalism of water and sewerage service infrastructure, illegal connection to water services and contamination of water and water supply to domestic premises.

Part VIII of the Bill provides for administration of certain water supply and infrastructure services that is raw water abstraction permits and access rights, septic tank sludge management, easement, access right, operation of community water projects, construction of bore holes within supply area and regulation of water vending kiosk.

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Part IX of the Bill provides for approvals of construction works and certificate of property development work connecting water mains.

Part X of the Bill provides for protection of water sources that is storm water drainage, rainwater catchment conservation and regulations.

The Members noted that the enactment of the Tharaka Nithi County Water services Bill, 2020 does not contravene any provision of the Constitution of Kenya and it is not ultra vires to any of the provisions of the national laws relating to water services. In case of any conflict between the Bill and national laws, the provisions of article 191 of the Constitution shall take effect.

The enactment of the Water Services Bill 2020 will occasion additional expenditure of public funds that have been provided for in the budget estimates.

Public participation;

Public participation in Kenya is considered a crucial pillar of the Kenyan constitution. It promotes democracy by providing the public with the opportunity to take part in decision making process in Government. Governments are mandated to give effect to public participation through the Fourth Schedule Part 2 (14) which states the county will ensure and coordinate the participation of communities and locations in governance at the local level. Counties are also to assist communities to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. Article 201 (a) also outlines public participation as one of the principles of public finance alongside openness and accountability. It is upon this premise that the Tharaka Nithi County Assembly organized public sector ward level consultative forums on 11th, 12th, and 13th March 2021 for the preparation of public participation forum.

Standing Order 152 (1) provides that ‘A Bill having been read a First Time shall stand committed to the relevant Sectoral Committee without question put’.

The Tharaka Nithi Assembly Standing Order 152 (3) provides that ‘the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the Assembly.

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Standing Order 152 (4) further provides that ‘subject to the provisions of Section 87 of the County Governments Act, in conducting public participation on a Bill, the Committee shall seek the views of the concerned County Executive Committee Member and persons or institutions within the County relevant to the subject of the Bill and may seek the views of the general public by way of written submissions, public hearings, surveys, focus group discussions, direct mail or electronic platforms. The committee sought views of the CECM in charge of water as evidenced in appendix ii.

Views on the Tharaka Nithi County Water Services Bill, 2020 by the public;

Despite announcing to the public to attend public engagement forums as evidenced in appendix ii and running daily adverts in the local radio station the public did not turn up from the public forums neither did the committee receive any written memoranda from the public as at the date the committee was writing this report.

Views on the Water Services Bill 2020 by stakeholders;

The committee sought views from different stakeholders as evidenced in the letters attached but at the time the committee was compiling its report it had not received any memoranda on the Tharaka Nithi County Water Services Bill, 2020.

Submissions by The County Executive Committee Member in charge of environment;

The Committee on water Environment and Natural Resources met with the County Executive Committee Member in charge of water services. His views on protection of water resources were well captured in the Bill.

Committee consideration of the Water Services Bill, 2020

The committee noted that the bill provides for protection of water resources by ensuring that:

- i. Before any development of a property in an urban area the developer will submit plans with provisions for storm water retention and augmentation of groundwater resource before discharge into storm water drainage channel for approval
- ii. The County government makes provisions to offset a portion of capital cost of installing storage system for householders, business and other users of water in the county who install rainwater catchment system.

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- iii. The county government formulates strategy for conservation of catchment and other sources of water from which a water service provider takes water for supply.
- iv. The county government enforcing and constructing water pans to harvest flood waters

The Bill also makes provisions to facilitate the development and operation of community water service providers in rural areas within which the county water service providers do not provide adequate water services.

On septic tank and sludge management the county will make regulations governing the sustainable management of septic tank sludge, including licensing of exhaustor service providers, and disposal of sludge after collection from septic tanks by exhaustor service providers.

On tariffs for water services and subject to the national policy and such requirements as may be imposed under national laws, tariffs for the provision of water services for domestic consumption in urban areas are set on the basis of full cost recovery while tariffs for the provision of water services in rural areas may be set on the basis of the full recovery of operational and maintenance but not capital cost.

While in appropriate cases the county government may provide financial assistance to a water service provider that satisfies the criteria stipulated in the water service strategy meet a portion of its operational and maintenance cost.

Committee Recommendations;

It is the committee's humble submission that the County Assembly approves the Tharaka Nithi County Water Services Bill, 2020 without amendments.

Mr. Speaker, I now move that the Tharaka Nithi County Water Services Bill, 2020 be now read a second time and I request honourable Nyaga Charles to second.

Thank you Mr. Speaker.

Hon. Deputy Speaker: Thank you chair.

(Hon. Charles Nyaga stood in his place and bowed to second)

Hon. Deputy Speaker: Thank you honourable Charles Nyaga. I now propose that the Tharaka Nithi County Water Services Bill, 2020 be now read a second time. The floor is open for debate. Yes, honourable member for Magumoni.

Hon. Kithinji: Thank you Mr Speaker. I wish to congratulate the honourable members and at the same time, I think I am finding a contradiction because where they have talked of the purpose of the Bill, of course they are talking of providing a legal framework, but when you go to their findings, they are saying it is providing the protection of water resources. I find that one a bit contradicting because the Bill before this House, if we just rush through it, it can be misused at one particular time considering that we have so many water projects groups if I can put it like that. Most of these water projects, were started by the members of the public. By then, the County Government and the National Government did not have their hands in whatever the groups were doing. We may come up with laws which may interfere with the daily running of these institutions. This is because we know like in Chuka, where we have NIWASCO, there was a big fight because some people felt that NIWASCO should have water meters and others felt we should not have the meters. The honourable member for Karingani is very much aware of that. In fact, that war propelled his predecessor to come to this particular house.

I may not have been so keen on this Bill but now that it is on the floor of this House, I still believe it is not very late for us to interrogate the Bill keenly. Otherwise, we may find ourselves being blamed when the CECM or the County Government comes in and takes over like the way they did in Magumoni. There is a case study of Mbogoni water irrigation scheme, which is a project that was begun by the members of the public. One day, the CEC woke up, he consulted the Chief, and they dismantled the committee. He is now acting as the Chairperson for that particular project. The members of the project are getting a lot of problems because they are not able to access him whenever they have needs. Of course I talked to him, now that he also comes from that particular area and he is also a member of that water project. I told him categorically that it is not good to misuse the powers. It is good now, that we are coming up with such a Bill. It may give them powers which may give us problems in future.

I do not know what will be the feeling of the honourable members, but I do feel that we have not exhausted interrogating this Bill. Otherwise, it may be a good Bill, but again remember, we have already two sewerage systems coming in. They have of course said that it will have

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regulations in future to ensure that this Bill works and of course at that particular time, it will direct us on what shall be done, now that we have sewerage systems construction ongoing. I do not want to rush to say that I support.

Let me reserve my comments but I urge the mover of this Motion to may be defer it for some time to give these honourable members a chance because not all of us are members of this committee, so that they can get time to interrogate the contents of this Bill. Of course we know that we have the copies but let us not shy from admitting that we may not have gone through this Bill. It is my humble request to the honourable member, to request for more time. Of course, that can be done by deferring the question to give us an opportunity to interrogate the Bill.

Thank you Mr. Speaker.

Hon. Deputy Speaker: Yes, Honourable Muthini.

Hon. Karangi: Mr Speaker, I get the concerns of honourable Kithinji. When we are interrogating these Bills if I am not wrong, and if I am wrong I should be corrected... I think if there are any issues, he could bring an amendment which we can interrogate and see how it can help our people. That is the essence of dealing with these Bills in this House. Otherwise, he is on the right side but kindly, if he has a proposed amendment it would be better.

Hon. Deputy Speaker: The Mover, do you wish to respond? Yes, honourable Margaret.

Hon. Margaret: Thank you Mr Speaker. I want to thank the honourable member so much because of bringing up such...

(Interjection)

Hon. Deputy Speaker: Honourable Margaret, I will give you time to respond, but let us hear from other honourable members and you will be the last person to speak. Yes, honourable Godfrey Muchiri.

Hon. Muchiri: Thank you honourable Speaker. Water is life. And the reason why we are here, it is to legislate. That is the most important issue. Personally, I went through the Bill. One time I casually had to engage the Chairperson committee on water. I felt that there was need, to engage the stakeholders of this Bill and especially water project groups that we have

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within our County. This Bill gives some powers.... I think there is need for me to be more audible...

(Loud consultations)

(Hon. Muchiri changes microphones)

Thank you honourable Speaker. I was saying that some of the Bills that we have in this honourable House, when we say that there is need for memoranda, sometimes, our people may not be all that ignorant about writing the memoranda. There is need to consult the stakeholders, especially on the issues of water. There are some groups that get water from the springs and when we talk of regulations these groups are supposed to be aware.

I have a lot of trust with the Chair when it comes to the issues to do with water because she has worked in this department in the ministry for quite a long time. Since I am not a professional on that department, and that the Bill is now in the second reading, I may not be in a position to move for amendment. But I feel that when she will be responding, she will assure me that we are not going to turn our people into slaves.

Thank you honourable Speaker.

Hon. Deputy Speaker: Thank you, honourable member for Karingani ward. The floor is still open for debate. Yes, honourable Denis Mutwiri.

Hon. Denis: Thank you Mr Speaker. I wish to congratulate this committee for coming up with this Bill. It is a good one because we know the issues of water, and especially a time like now, we need to ensure that we provide a legislation that will make our people to continue enjoying water as a natural resource. If you look around, in our county, bearing in mind that water is a devolved function, water is becoming very expensive. Like the NIWASCO case when we narrow it down. You realize that there are so many stakeholders and groups and every stakeholder, has a level whereby they provide these services.

As it has been raised as a concern by honourable Kithinji and honourable Muchiri, it is very important to try and keenly look at this Bill. I have seen that one of issues that the county will do, it is to formulate strategy for conservation of water catchment and other sources of water services, water services provider, intakes, water and supply. The biggest problem of water, it is the catchment. Bearing in mind that the County Government might not provide in the

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construction of dams which is done by the National Government. On the issue of distribution to the people that is what in most cases NIWASCO and other providers are keen on.

It is always important to consider the sensitivity of the whole issue and ask yourself once the Bill has been accented to, what are the consequences that other groups might face. It is important to take more time to ensure that we do not end up enslaving our people. Even NIWASCO itself and how it is providing services and when it comes to the protection, we have been seeing water running on our roads during the rainy season. When it comes to the dry season the consumers are forced to pay a lot of money. There is no waiver that they give. I believe this is a good Bill, but it requires a lot of input from other stakeholders.

Thank you.

Hon. Deputy Speaker: Thank you honourable Dennis. Yes, honourable Charles Nyaga.

Hon. Charles Nyaga: Thank you Mr Speaker. I am a member of this committee. Let me say that this is the second reading of this Bill. Water, is a natural resource. Being a natural resource, it is said that the third world war will be fought because of water, if we do not formulate the rules to control water. Of course, we have cartels. People who started these water projects in Chuka, Maara and elsewhere. There is a lot that has not been done, but this is the first step. I believe that there is nothing that we are putting a stamp in this House that cannot be amended. Amendments will always come whenever there is need. Therefore, I feel that it is the high time that we need to move on, and be ready for any future amendments.

Thank you Mr Speaker.

Hon. Deputy Speaker: Thank you honourable Charles Nyaga. The floor is still open for debate. Honourable members, I now give the mover, a chance to respond. Sorry, honourable Margaret, kindly wait for honourable Anita to contribute then you can respond. Yes, honourable Anita.

Hon. Anita: Thank you Mr Speaker. We will not be remembered for the many Bills that we passed in this House. We will be remembered for the effective implementation that gives service to the people that we are supposed to serve. I would not wish to say whether I support or not. I have been a member of WRA from 2004 and I think even the Chair to this committee knows that water is not a fully devolved function. I have been going through the

Bill, and from the CECM views to see if they have involved the WARMA that deals with water.

We have passed several Bills in this House, I remember there is another Bill we have passed here. I do not think we are in a hurry to pass a Bill that will gathering spider webs in the shelves. As honourable Kithinji was requesting, I am a very good supporter of anything to do with water, but I believe, I would not mind if you gave the honourable members, at least ten minutes by deferring the question so that at least we consult, and get an understanding. It is not shameful to say that we do not understand a few issues. This is not an issue that needs to be rushed for us just to be remembered as a House that has passed so many Bills, that are of very little importance to the residents of Tharaka Nithi County.

Even as I say this, I have in mind an issue that even honourable Murithi knows, an issue that residents in the ward I come from are going through this issue. They installed some pipes and somebody is bringing us something else that is not very useful to the residents and he is intending to remove those pipes. So even as you consult with the Clerks, I do not know whether they will say no or yes, but I know we will not be remembered for this Bill if at all it will not be of help to the residents that we serve.

I therefore reserve my comment on whether I support or not hoping that you will listen to us and give us a few minutes to consult and know how we go about it. Thank you.

Hon. Deputy Speaker: Thank you honourable Anita but being aware of the Speakers communication that I did on social distancing and generally the guidelines on covid-19 that I gave and aware that we are supposed to notify of intention to move an amendment of a Bill before, it is too late now for this House. Let me first of all give room to the mover to reply.

Hon. Margaret: Thank you Mr Speaker. First, I want to thank the honourable members because of giving their views. This is democratic and very important. Before I say anything, we all need to remember that we converged at Sunstar hotel, whereby we went through this Bill. This is where members of the County Assembly would have consulted and brought forward our views.

When one honourable member spoke about passing very many Bills, I am left wondering what is the work of this House. The work of this House is to pass Bills and the relevant authority to take up the issue and make sure that this Bill becomes a law and the law is

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enforced. As a legislator who came to this House lawfully I know that Bills should be brought to this House, they are passed or deferred, at the right stage by the honourable members so that members can have their input. We sat and went through the Bill and we gave our input where it was necessary. If it is in good faith, then I lack words.

In the year 2000 to 2003, I remember by then I was Tharaka Nithi District water resource officer. By then, so many projects including Mbogoni, Murugi-Mugumango, Rwanchege, Gakirwe, and so many other projects, were starting that time. It is unfortunate because these projects have never been guided by any law. You find a project started with one Chairman and twenty years down the line, you find that it is the same person who is still the Chairman running the project.

Without going there, there is a water Act that is supposed to cover the whole Country. This proposed Act of Tharaka Nithi County, it is supposed to localize the water issues. Taking into account that it is true, water has not been fully devolved. However, the little that we have in this County, if we do not set down machineries to make sure that this water is apportioned rightfully, and by the right people we will continue giving water... everybody wants water in this County,

(Interjection)

Hon. Deputy Speaker: Honourable Margaret before you conclude, allow me to go through standing order 157 (2), for the members to hear:

“No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee.”

(Loud Consultations)

I still move to the Constitution of Kenya on the implementation of a specific National Government policies of natural resources and environmental conservation including soil and water conservation and forestry. Honourable Margaret, you can proceed.

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Hon. Margaret: Thank you Mr Speaker. I was just informing the honourable members that water being life, and water being very important, in this County if we do not have an organ that is controlling the usage of water we may not be able to have even a drop coming from the mountain to the lower zones. As we speak now, the rains are here but you find because of over tapping and other issues right inside the forest, we have no water flowing downstream. I take the concern of the honourable members positively and if there is a project that has been taken over by the CECM, that is an isolated case but I want to believe that when this organ is formed, it is going to control the usage and the abuse of office by the committee members of the various water projects.

It is true that you even find water pipes lying around even for the big water projects. It seems as if nobody who is responsible. I urge the honourable members to sincerely think positively without seeing how many Bills have been passed or anything else. Let us see the need of having a control and not a control to these water projects. It is a control to make sure that these projects are answerable to somebody. Somebody they can ask questions. For the member's concern, which I take very positively, and as a member who has worked in the water department for many years, if we do not control the obstruction and usage, operations and maintenance and all what it appertains for water in this County, I believe our children will not have committees to govern because there will be no water. It will have been very poorly managed. If there is an organ, it is not right to take over these projects, but it is good to control these projects and enable them to speak in one voice. A water project should be managed by one Chairman for not more than six years. A term of three years and then another one of three years. Chairmen have been managing these projects for more than twenty years, but I want to believe that when this organ comes in place, the CEC will see the need to congregate all these projects together so that they can be managed even through water regulations. They have spoiled everything. Can we be sober Mr Speaker, and look this Bill as an issue that is going to help the residents of Tharaka Nithi County, so that we can pass this Bill, without reservations. I ask the honourable members who I respect so much that we should not politicize issues to do with water.

(Interjection)

Hon. Deputy Speaker: Yes, honourable Justin Kithinji.

Hon. Kithinji: Mr Speaker, I am seeking clarification from the honourable member on the floor because she has said that we should look at the document soberly. I do not know; could someone be intoxicated here? That is my question Mr. Speaker.

(Loud Consultations)

Hon. Deputy Speaker: Thank you honourable Justin Kithinji. Yes, honourable Margaret. Can you withdraw that statement?

Hon. Margaret: Mr Speaker, when I say I honourably take your statement positively honourable Kithinji through the Speaker I honestly respect what you said. Mr Speaker, we have rights to give our views, like the way members have given. As a Chair for this committee, I also have a right to respond.

(Interjection)

Hon. Deputy Speaker: Honourable Margaret, just withdraw the statement and proceed.

Hon. Margaret: Mr Speaker, I withdraw the statement, but we should know that there are many Bills that have passed through, but this one being a very important Bill, honestly I am seeing as if we want to divert and say it not the right time to bring this Bill. We sat as the Assembly, and we went through this Bill. As a committee we also sat and scrutinized the Bill, we came up with a report and now here we are. I urge the honourable members, to pass the Bill, and if there are any amendments to be made, that is why this August house is there. The amendments will be made at that time. If I have offended any honourable member, I am a Christian. I seek for forgiveness.

Thank you Mr Speaker.

Hon. Deputy Speaker: Thank you Honourable Margaret, the chair committee on water, environment and natural resources and the member for Chogoria.

Honourable members, I now put the question.

(Question put and agreed to)

(Orders for the second reading read for the second time)

SECOND READING

THE THARAKA NITHI COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2020

Hon. Speaker: Yes, the mover.

Hon. Muchiri: Thank you honourable Speaker. I stand to present the report of the sectoral committee on Trade, Tourism and Cooperatives on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020.

Mr. Speaker, on behalf of the members of the Sectoral Committee on Trade, Tourism and Cooperatives and pursuant to the provisions of Standing Order 152 of the Tharaka Nithi County Assembly Standing Orders it is my pleasure and duty to present to the House, the Committee's Report on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020.

Honourable Speaker, the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020 was read for a first time on 9th February, 2021 and was committed to the Sectoral Committee on Trade, Tourism and Cooperatives for consideration.

After the Bill was committed to the committee held several meetings, i.e. held a total of nine meetings and conducted three public hearing forums across the County.

On behalf of the committee on Trade, Tourism and Cooperatives, I have the honour and pleasure to present the Committee's Report on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020.

I also take this opportunity to thank all the Members of the Committee for their input and valuable contributions during the consideration and deliberations on the Alcoholic Drinks Control Bill. I also want to sincerely thank the honourable members of this House for how they actively participated when it came to this Bill on behalf of the committee.

Mr. Speaker, on the legal basis; the committee considered article 185 of the Constitution of Kenya, 2010 and the County Government Act, 2012 which stipulates the powers that has been given to this House concerning Bills. Mr. Speaker I don't think there is a reason of taking this honourable house back the powers and responsibilities bestowed to us by the Constitution, the County Government Act and the County Assembly Standing Orders.

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Public participation is a legal requirement. The Tharaka Nithi County Alcoholic Control Bill, 2020 was read for a first time on 9th February, 2021 and was committed to the Committee on committee on Trade, Tourism and Cooperatives for Consideration and conducting of public participation.

Standing Order 152 of the Tharaka Nithi County Assembly Standing Orders Provides that subject to the provisions of Section 87 of the County Governments Act, in conducting public participation on a Bill, the Committee shall seek the views of the concerned County Executive Committee Member and persons or institutions within the County relevant to the subject of the Bill and may seek the views of the general public by way of written submissions, public hearings, surveys, focus group discussions, direct mail or electronic platforms.

Pursuant to the provisions of Article 196 (1) (a) and (b) of the Constitution of Kenya, 2010 read together with Section 87 of the County Governments Act, 2012 conducted public hearings forums on the Bill from 11th to 13th March, 2021 as follows:

We were at Chuka/Igambang'ombe in the Trans-nation Hall in Chuka town on 11th March 2021, on 12th March we went to Tharaka in the Tharaka CDF Hall in Marimanti and in Maara we went to Chogoria Sub-County Hall on 13th March, 2021. Allow me Mr. Speaker to thank the member for Chogoria for the warm welcome she gave the committee.

Members of the Public, Civil Society Organizations, Community Based Organizations, Faith Based Organizations were encouraged to participate in this process by making their submissions in the venues above or through written memoranda.

Written views or memoranda on the Alcoholic Drinks Control Bill, 2020 were to be hand delivered to the Office of the Clerk or emailed to tharakanithicountyassembly@gmail.com or clerk@tharakanithica.go.ke on or before 13th March, 2021. Copies of the Bill were to be obtained from the Office of the Clerk, County Assembly Offices or the County Assembly website <http://tharakanithica.go.ke>. The adverts on Public hearing forums were appeared in two newspapers of national circulation. The advert was also made in two local language radios for three days prior to the days of the public hearing.

The Committee received one written memorandum with regard to the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020 that is annexed to the report.

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The Committee also held a consultative meeting with the County Executive Committee Member in charge of Finance, Trade and Economic Planning on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020.

Allow me Mr. Speaker also to thank the clerk to this committee for writing letters of invitation to the stakeholders on this Bill, i.e. the bar owners association and that is why the committee received a memorandum.

Mr. Speaker, the overview of the Bill:

Firstly, this Bill aims at providing a framework implementing Part 2 of the Fourth Schedule to the Constitution on matters related to alcoholic drinks control. The specific county functions related to alcohol control include promotion of primary healthcare, control of outdoor advertisement, liquor licensing and control of drugs.

Secondly, the Bill provides for mitigation measures for negative impact emanating from abuse of alcoholic drinks. The Bill is in line with the Alcoholic Drinks Control Act, 2010. It seeks to control the production and manufacture, distribution, sale, promotion and use of alcoholic drinks.

Part I of the Bill provides for preliminary provisions. The Part outlines the purpose of the Bill, which includes protection of health of individuals, protection of individuals from excessive consumption of alcohol, protection of persons under the age of eighteen years, promotion of treatment and rehabilitation and research and protection of persons under the age of eighteen years from excessive consumption of alcoholic drinks.

Part II of the Bill provides for the Administration matters. It establishes the directorate, which is an office in the county public service. the department is charged with the responsibility of supporting committees established under the Act, promoting public education, citizen participation, facilitating establishment of treatment and rehabilitation facilities and programs and research.

Part III of the Bill provides for the licensing framework for alcoholic drinks. It provides for the establishment of Sub-county alcoholic drinks Regulation Committee for receiving and reviewing licences, it provides for licensing procedures and the conditions that must be met in order for one to qualify for grant of a licence.

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Part IV of the Bill provides for general requirements, which are the conditions that a licensee under the Act must comply with. The matters include prohibition of sale, provision or supply of alcoholic drinks to children, prohibition for access to places where alcohol is stored, sold or manufactured and prohibition of sale in sachets.

Part V of the Bill deals with sale and consumption matters. It provides for control of matters such as drunkenness and disorderliness, prohibition of sale to already intoxicated persons, prohibition of sale of adulterated drinks among others.

Part VI of the Bill provides for advertisement and promotion matters. It provides for control of outdoor advertisements especially in the display of brand elements through paintings and placement of outdoor advertisements within schools and public properties.

Part VII of the Bill provides for the enforcement mechanisms. which is responsible for coordinating enforcement of the Act. It also provides for the enforcement processes.

The Bill also provides for license hours under the Second Schedule.

This Bill will not occasion additional expenditure to the county exchequer.

Honourable Speaker, on the issues of hours, it was brought up sometimes back by the stakeholders. We looked at our neighbours, i.e. Meru and Embu and considered the hours that they allow bars to open so that we don't set hours that isolate us in the region.

Mr. Speaker, having considered the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020 the Committee recommends as follows:

- i. That Clause 6 sub-Clause 4(b) be amended by deleting the words 'the County Commissioner who shall be the alternate chairperson' and substitute thereof with the words 'a representative from the office of the County Commissioner'.

We felt that when we say that the county commissioner will be the alternate chairperson we saw it fit to allow the county commissioner to delegate the responsibility to their juniors. That is why we felt it should be a representative from the office of the county commissioner.

- ii. That Clause 6 sub clause (j) be amended by inserting the words 'in consultation with the liquor dealers' association' at the end of the sub clause;

This clause deals with election of the members of the board and the committee opined that, having considered the importance of this section, although it is the mandate of the CECM in the department to appoint members of the board there is a need to hold consultations with the stakeholders, i.e. the liquor dealers' association. That is why we thought it is good to have that amendment.

- iii. That Clause 7 sub clause 4(b) be amended by deleting the words 'who shall be the alternate chairperson' appearing at the end of the sub-clause;

I have explained the same at part one.

- iv. That Clause 7 Sub clause 4 (g) be amended by inserting the words 'in consultation with the liquor dealers' association' at the end of the sub clause;

This is for the same reason as with the second proposed amendment.

- v. That Clause 7 sub clause 4 (h) be amended by deleting the words 'one of whom shall be a' appearing after the word 'Member' and before the word 'youth' and substitute therefor with the words 'taking into account the';

Mr. Speaker we felt that when we say the word youth directly it might have some consequences, i.e. that is why we thought it should read taking it account the youth.

- vi. That Clause 11 Sub Clause 3 be amended by deleting the words 'and the time, date and place of the meeting' appearing after the words 'applied for' and before the words 'and shall forthwith';
- vii. That Clause 11 Sub-clause 3b(a) be amended by deleting the words 'for a period not less than 21 consecutive days' appearing at the end of the sub clause;
- viii. That Clause 11 be amended by deleting the entire sub clause 3(c), sub clause 3(d) and sub clause (4);
- ix. That Clause 14 sub-clause (1) be amended by deleting the words 'upon recommendation of the committee' appearing between the words 'and 13' and the words 'the directorate';
- x. That Clause 14 be amended by deleting the word 'committee' wherever it appears in the Clause and substituting therefore with the word 'directorate';
- xi. That Clause 16 be amended by deleting the entire sub clause I (c);

- xii. That the Fourth Schedule be amended by inserting ‘a provisional licence will be charged 50% of the value of the licence applied for’.

In conclusion honourable Speaker, it is the Committee’s humble submission that the House adopts its report on the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020.

I now move that the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020 be now read a second time. I ask honourable Millicent to second the Motion.

Thank you honourable Speaker.

Hon. Deputy Speaker: Thank you honourable Godfrey Muchiri. Yes, honourable Muggana.

(Hon. Muggana stood in her place and bowed to second)

Hon. Deputy Speaker: Thank you. I now propose the question that the Tharaka Nithi County Alcoholic Drinks Control Bill, 2020 be now read a second time. The floor is open for debate. Yes, honourable Kithinji, member for Magumoni.

Hon. Kithinji: Mr. Speaker I rise to support this Bill. When you look at it, it speaks volumes. When the committee say that they have interrogated this Bill there are no doubts that they have because they have moved 12 amendments and I believe that is in the spirit of the people. You cannot doubt they went deep in it when you see that kind of interrogation.

I definitely support. Thank you Mr. Speaker.

Hon. Deputy Speaker: Thank you. The floor is still open for debate. Yes, honourable Muggana.

Hon. Muggana: Thank you honourable Speaker I rise with honour to support. I congratulate and give kudos to my chair in absentia and the committee members for a serious engagement through the process of considering this Bill. I thank the honourable members for their support because when we needed their input they were available and they were involved in the conversations that came around this Bill. I want to thank the committee clerk. Our clerk has been very supportive and has indulged herself through this process. Credit goes to the clerk for the committee.

This Bill has given us, as honourable Kithinji has said, the amendments that were proposed by the public and the committee. We are going to seal loopholes that in the alcohol sector. Considering that we are in the times of a Covid-19 pandemic, the involvement of everybody, I support what the committee has done and I also support the amendments that we have proposed as a committee.

Thank you honourable Speaker.

Hon. Deputy Speaker: Thank you. Yes, honourable Denis Mutwiri, member for Mugwe.

Hon. Denis: Thank you Mr. Speaker. The liquor industry has faced a lot of problems for many years. That is evidenced by the many court cases that used to be there by the bar owners. There is need for a Bill and regulations to ensure that this industry is protected. We have witnessed local industries being threatened without any guidelines being followed. This committee has done a good job coming up with this Bill. When it is implemented it will shape even the discipline in the industry. It will give the county a lot of revenue because when it comes to the licencing the county has been losing revenue because of the court cases. This is a good Bill and when it is implemented it will play the role of protecting the local industry, the consumers and also create an avenue for the county to generate more revenue.

I support.

Hon. Deputy Speaker: Thank you. Yes, honourable Anita.

Hon. Anita: Thank you Mr. Speaker. I rise without raising my emotions to support this Bill because I remember the problems with the alcohol industry in Tharaka Nithi that were there before the current regime. The county government has lost a lot of revenue because there was nothing to look into and there was no one. When you go through this Bill, I remember we went through several Bills and I remember that there are some that we agreed need to be looked into. I thank this committee for taking their time to go through this Bill and see what is for the benefit of the people of Tharaka Nithi county. As I have said before we are not making many Bills so that we can be praised as an Assembly that passes a lot of Bills. We are making Bills that will be important to the people of Tharaka Nithi and for generations to come but not those that need to amended in the next sitting after they pass.

This Bill is timely and when it is implemented it will earn revenue to the people of Tharaka Nithi county and at least give the people that deal with this business comfort that they will not be waiting for policemen or the county commissioner to close their business or run after them. This is a good initiative and if it is implemented it will be of great benefit for revenue collection and for the benefit of those who take one for the road.

Thank you Mr. Speaker.

Hon. Deputy Speaker: Thank you honourable Anita. The floor is still open for debate. honourable members allow me to call upon the mover to respond.

Hon. Muchiri: Thank you honourable Speaker. Once again let me thank the member of this House for the support. When it comes to the involvement of stakeholders on anything it is very vital that is why we had to talk to them, regardless of the pandemic. These rules will be applied. I know that they have supported the Bill with their hearts and I believe that this is a solution to most of the problems that honourable Mutwiri spoke about in this industry.

We did not only consider the issue of revenue but we considered other factors such as the issues of selling alcohol to people who are already drunk. I believe that we are going to make it a reality in Tharaka Nithi and that this Bill will work.

Thank you honourable Speaker.

Hon. Deputy Speaker: Thank you honourable Muchiri. I now put the question.

(Question put and agreed to)

(Orders for the second reading read for the second time)

ADJOURNMENT

Hon. Deputy Speaker: There being no other business on the Order Paper the House stands adjourned until the next sitting.

****The House rose at 11.10 a.m.****