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REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY
 PAPERS LAID
 THE NATIONAL ASSEMBLY
 DATE: 06 JUN 2019
 TWELFTH PARLIAMENT - THIRD SESSION - 2019

TABLED BY:	Lead member of the committee Chair - Transport & Public work PK
CLERK AT THE TABLE:	Iron Posing



DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON CONSIDERATION OF THE STATUTE LAW MISCELLENOUS
AMENDMENTS BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 21)

VOLUME I

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2019

TABLE OF CONTENTS

1.0 LIST OF ANNEXURES	1
CHAIRPERSON'S FOREWORD	2
EXECUTIVE SUMMARY	3
1 PREFACE	4
1.1 Establishment of the Committee	4
1.2 Mandate of the Committee.....	4
1.3 Committee Membership.....	5
1.4 Committee Secretariat.....	6
2 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2019	7
2.1 Background Information.....	7
2.2 Summary of the Bill.....	7
3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL	7
3.1 Task Catering Institute.....	8
3.2 Coast Parliamentary Group.....	8
3.3 Mr. Nyainda Paul Henry	8
3.4 State Department for Shipping and Maritime Affairs.....	9
4 COMMITTEE OBSERVATIONS.....	10
5 COMMITTEE STAGE AMENDMENTS	11

1.0 LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill (Volume I Report)
- Annexure 2:** Newspaper advertisement inviting the public to submit memoranda on the Bill (Volume I Report)
- Annexure 3:** Written submission received from stakeholders following newspaper advertisement (Volume II Report)

CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendment) Bill, 2019 (National Assembly Bill No. 21) was read a first time on **3rd April, 2019** and was subsequently committed to respective Departmental Committees (i.e. Justice and Legal Affairs, Administration and National Security, Finance and National Planning, environment and Natural Resources, Sports Culture and Tourism and Transport, Public Works and Housing) for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to, among other Statutes; amend the Merchant Shipping Act, No.4 of 2009.

The Clerk of the National Assembly placed adverts in the print media on **10th April, 2019** seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received memoranda from four (4) stakeholders. The Committee also wrote to the Principal Secretary for Shipping and Maritime Affairs inviting her for a meeting on 9th May, 2019.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and all those who responded to the National Assembly's advert inviting the public to present their views on the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendment) Bill, 2019.

THE HON. DAVID PKOSING, MP, CBS

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

EXECUTIVE SUMMARY

The Statute Law (Miscellaneous Amendment) Bill, 2019 (National Assembly Bill No. 21) was published on **29th March, 2019**. The Bill was read a first time on **3rd April, 2019** and thereafter committed to respective Departmental Committees (Justice and Legal Affairs, Administration and National Security, Finance and National Planning, Environment and Natural Resources, Sports Culture and Tourism, and Transport, Public Works and Housing) that were expected to process the amendments of the respective Statutes that fall within their purview. The Departmental Committee on Transport, Public Works and Housing considered amendments to the Merchant Shipping Act, 2009.

The Bill seeks to amend the Merchant Shipping Act, 2009 in order to exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

In order to fulfill the requirements of Article 118 of the Constitution, the Clerk of the National Assembly placed an advertisement in the print media on **10th April, 2019** requesting for comments from the general public on the Bill. The Committee received memoranda from five (7) stakeholders.

The Committee received memoranda from the following stakeholders:-

1. The Task Catering Institute;
2. The Coast Parliamentary Group;
3. Mr. Nyainda Paul Henry;
4. Seafarers Union of Kenya;
5. Hon. Mohamed Faki, Senator Mombasa County;
6. Maritime Industry Associations ;and
7. The State Department for Shipping and Maritime Affairs.

The Committee considered all the submissions before making its recommendation.

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
 - a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - b. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - c. study and review all legislation referred to it;
 - d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
 - g. examine treaties, agreements and conventions;
 - h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - k. examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-
 - a) Transport;
 - b) Roads;
 - c) Public works;
 - d) Construction and maintenance of roads, rails and buildings;
 - e) Air and seaports; and
 - f) Housing.
3. In executing this mandate, the Committee oversees various State Departments, namely:
 - i. The State Department of Transport;
 - ii. The State Department of Infrastructure;
 - iii. The State Department of Housing and Urban Development;
 - iv. The State Department of Public Works; and

v. The State Department of Shipping and Maritime Affairs.

1.3 Committee Membership

The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday 14th December 2017 comprising of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Ol Kalou
13.	Hon. Johnson Many Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central
18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

A. Committee Secretariat:

- | | | |
|----|--------------------------|-----------------------|
| 1. | Ms. Chelagat Tungo Aaron | First Clerk Assistant |
| 2. | Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel |
| 4. | Mr. James Muguna | Research Officer |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst |
| 7. | Mr. Collins Mahamba | Audio Officer |
| 8. | Ms. Zainab Wario | Sergeant-at-Arms |



2 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2019

2.1 Background Information

4. The Statute Law (Miscellaneous Amendment) Bill, 2019 seeks to among other Statutes, amend the Merchant Shipping Act, No.4 of 2009 by inserting a new section 4A immediately after section 4.

2.2 Summary of the Bill

5. The Bill seeks to amend the Merchant Shipping Act, 2009 in order to exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

6. Proposed amendment to section 4 of the Act

Insert the following new section immediately after section 4—

4A. Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the Gazette and subject to such conditions as may be appropriate, exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

7. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows-

“The Departmental 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 recommendations to the House”

8. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of April 10th 2019 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.

The Committee received written submissions on the proposed amendments to the Merchant Shipping Act, 2009 Act.

The written submissions received are contained in Annexure 3 of the report.

9. The following stakeholders submitted their memoranda to the Committee:-

- a. The Task Catering Institute;
- b. The Coast Parliamentary Group;
- c. Mr. Nyainda Paul Henry;
- d. Seafarers Union of Kenya;
- e. Hon. Mohamed Faki, Senator Mombasa County;
- f. Maritime Industry Associations ;and
- g. The State Department for Shipping and Maritime Affairs.

3.1 Task Catering Institute

10. In their memorandum to the Committee, the Institute submitted that they supported the proposed amendment because it will lead to the MSC Cruise Ships to be given a berth by Kenya National Shipping Line under Kenya Ports Authority in the port of Mombasa. Further, that the proposed amendment will have a ripple effect in terms of opening up employment opportunities for Kenyans and enhancing capacity for locals.

3.2 Coast Parliamentary Group

11. The Members of the Coast Parliamentary Group requested that the public participation through the Departmental Committee on Transport, Public Works and Housing be done in Mombasa County (Coast Region).

3.3 Mr. Nyainda Paul Henry

12. In his submission, he stated that he supported the amendment on the basis that thousands of unemployed Kenyan youth in the maritime sector will finally gain meaningful employment on board ocean-going vessels.

3.4 Seafarers Union of Kenya

13. In their written submissions, the Seafarers Union of Kenya supported the proposed amendments because in their view, there is urgent need to revive, build and strengthen the Kenya National Shipping Line. That this would be in line with the Blue Economy which will provide employment and training opportunities to thousands of Kenyan seafarers. That since 2014 to date, Kenya has been training youths in marine engineering and nautical science from certificates to degrees.

14. It was their further submission that as a long term plan, Kenya must own and run its own ships through the Kenya National Shipping Line. That in order to get there, laws and policies must be developed to facilitate and enhance the process hence the need to amend the Merchant Shipping Act, 2009.

15. It was also submitted that about 80% of the cargo that goes through the port of Mombasa is owned by the Government of Kenya and that in shipping transport, whoever has the cargo controls the ships. That once the Kenya National Shipping Line is empowered to handle all government owned cargo, it will be in a position to control and actually own ships.

3.5 Hon. Mohamed Faki, Senator Mombasa County

16. In his submission to the Committee, the Hon. Senator for Mombasa County submitted that the amendment as proposed, gave the Cabinet Secretary wide and unfettered powers to exempt any entity, a matter that was of great concern since the CS will have unchecked powers. He submitted to the Committee that it was a matter of great concern on how a Cabinet Secretary can solely determine what public interest without public participation is.
17. The Senator further submitted that whereas it was public knowledge that the intention was to exempt KNSL from the provisions of section 16, it was important to note that the KNSL had no capacity to operate berth C2 at the Mombasa Port. He noted that the KNSL was not wholly owned by the government with the government owning 53% while a private entity owning 47% of the shares. He submitted that any failure by the Kenya Maritime Authority to fully enforce the existing Act cannot be blamed on the people or the leaders. The Senator submitted that it was true people were being exploited and that it was the Cabinet Secretary who had the mandate and powers over the industry in general.

3.6 Maritime Industry Associations

18. The Committee received a delegation of representatives from different associations related to the maritime industry, all in support of the amendment. These include the Association for Women in the Maritime Sector in Eastern and Southern Africa (WOMESA), Mission to Seafarers, Homa Bay Boat Owners Association, Faza Isand Dwellers, Old Port Boat Owners Association, South Coast Windsurfing Association, Young Seafarers Workers Group, National Marine Cadets Association, Technical University of Mombasa Nautical Science Students Association (TUMNSA), among so many others, all of who submitted their written memoranda to the Committee.
19. The groups submitted that there was high and unfair exploitation of workers in the maritime sector, where foreign companies enrich themselves in the country at the expense of the poor workers. They submitted that the amendment will create job opportunities. The Secretary General of the Seafarers Union of Kenya submitted that Kenya has goods, has cargo but has no ships, making matters worse for the industry. He submitted that the revival of the KNSL will be very helpful for Kenya.

3.7 State Department for Shipping and Maritime Affairs.

20. In their written submissions, they stated that the State Department supported the amendment and further proposed that the Merchant Shipping Act be amended in section 16 by inserting the

words “except the Kenya National Shipping Line” immediately after the words “shipping line”. *Section 16 provides that-*

16. Restriction on ship owner

(1) No owner of a ship or person providing the service of a shipping line shall, either directly or indirectly, provide in the maritime industry the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section.

21. The rationale for the proposed amendment to section 16 of the Merchant Shipping Act is that the section as currently worded shuts out any national shipping aspirations. The revival of the Kenya National Shipping Line is now a part of the Medium-Term Plan III of Vision 2030 and as part of support to the “Big 4” Agenda particularly as regards to Manufacturing, Food security as well as agro-processing. That further, it will enable the KNSL take pride of its place as a national carrier of local imports and exports as well as create the catalytic impact of developing a full blown Blue Economy with the full participation of Kenyans in the sector while reducing the maritime transport burden on the national economy. That restriction of international companies in certain aspects of marine transportation logistics is a global practice aimed at encouraging participation of locals in segments where capacities can easily be created.

4 COMMITTEE OBSERVATIONS

The Committee while considering the Bill made the following key observations;

- 1) The proposed amendment is substantive in nature since it seeks to allow the Cabinet Secretary to exempt an organization from the application of the Act hence ought not to be contained in a Statute Law (Miscellaneous) Amendment Bill, whose purpose is to make minor amendments to existing statutes. The merits of the proposed amendment should be considered in a substantive amendment Bill to the Merchant Shipping Act, No.4 of 2009.
- 2) The proposed amendments gives draconian powers to the Cabinet Secretary to exempt any government entity or enterprise from the provisions of the Merchant Shipping Act and thus, the said powers may be abused.
- 3) The import of the proposed amendment is to revive the Kenya National Shipping Line by ensuring that the Kenya National Shipping Line provides the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator,

container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section 16 of the Merchant Shipping Act, No.4 of 2009.

5 COMMITTEE STAGE AMENDMENTS

Having considered the Bill and the views by different stakeholders, the Committee proposed that:

SCHEDULE

THAT the Schedule to the Bill be amended by deleting the proposed amendment to section 4 of the Merchant Shipping Act, No.4 of 2009 and substituting therefore the following new amendments—

s.2 Insert the following new definition in its proper alphabetical order—
 “national shipping line” means the Kenya National Shipping Line;

 Insert the words “except a national shipping line” immediately after the
s.16(1) words “shipping line”.

SIGNED.......... DATE..........

THE HON. DAVID PKOSING, MP, CBS

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

Annexure 1:

Minutes of Committee sittings on the consideration
of the Bill (Volume I Report)

MINUTES OF THE THIRTY SIXTH (36TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 9TH MAY 2019 AT 11.30 A.M. IN 5TH FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Johnson Many Naicca, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Ahmed Abdisalan Ibrahim, M.P.
7. Hon. Kulow Maalim Hassan, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Peris Pesi Tobiko, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Gideon Mutemi Mulyungi, M.P.
6. Hon. Rigathi Gachagua, M.P.
7. Hon. Shadrack John Mose, M.P.
8. Hon. Tom Mboya Odege, M.P.
9. Hon. Vincent Kemosi Mogaka, M.P.
10. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel

4. Mr. Collins Mahambe - Audio Officer
5. Ms. Zainab Wario - Sergeant-at-arm

IN ATTENDANCE

1. Mrs. Nancy Karigithu, CBS - Principal Secretary, Maritime and Shipping A.
2. Mr. Joseph Joma - Ag. MD, KNSL
3. Maj. (Rtd) George Okong'o - DG, KMA
4. Mr. John Omingo - Head, Commercial of Shipping, KMA
5. Mr. Simon Mungai - Senior Economist, Shipping and Maritime

MIN No. TPWH 160/2019: PRELIMINARIES

The meeting was called to order at ten o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the proposed amendment to the Merchant Shipping Act, No.4 of 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2019 where the Principal Secretary for Maritime and Shipping Affairs was invited to present her views.

MIN No. TPWH 161/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS

Confirmation of minutes of the previous sitting was deferred to the next sitting of the Committee.


MIN No. TPWH 162/2019: CONSIDERATION OF THE PROPOSED AMENDMENT TO THE MERCHANT SHIPPING ACT, NO.4 OF 2009 – MEETING WITH THE PRINCIPAL SECRETARY FOR MARITIME

The Principal Secretary submitted her written presentation before Members sought clarification on whether the Kenya National Shipping Line was under the State Department for Maritime and Shipping Affairs or it was under Transport. The Principal Secretary explained that the Act proposed to be amended is under her docket even though Kenya National Shipping Line was transferred to the State Department for Transport. Members noted that since the expected beneficiary of the proposed amendment was the Kenya National Shipping Line, it was then in

order that the Principal Secretary for Transport was the one who should be executing the support submissions for the Ministry. The Committee resolved that the Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works, the Principal Secretary for Transport and the Principal Secretary for Maritime and Shipping Affairs be invited on Thursday, 16th May 2019 at 10am to submit the Ministry's views on the proposed amendment and to afford both the Ministry and the Committee a single platform to clear any questions that may arise. The Committee further resolved to invite the Coast Parliamentary Group on the same day at 12 noon and the Kenya Ports Authority at 2pm. Agenda for the meetings is consideration of the proposed amendment to the Merchant Shipping Act, No.4 of 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2019.

MIN No. TPWH 163/2019: **ADJOURNMENT**

There being no other business, the sitting was adjourned at thirty minutes past twelve noon. The next meeting to be held on Thursday, 16th May 2019 at 10:00am.

Signed..........

(Chairperson)

Date.....23/5/19.....

MINUTES OF THE THIRTY SEVENTH (37TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 16TH MAY 2019 AT 10.15 A.M. IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Dominic Kipkoech Koskei, M.P.
5. Hon. Johnson Many Naicca, M.P.
6. Hon. Mugambi Murwithania Rindikiri, M.P.
7. Hon. Tom Mboya Odege, M.P.
8. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Gideon Mutemi Mulyungi, M.P.
6. Hon. Kulow Maalim Hassan, M.P.
7. Hon. Peris Pesi Tobiko, M.P.
8. Hon. Rehema Dida Jaldesa, M.P.
9. Hon. Shadrack John Mose, M.P.
10. Hon. Savula Ayub Angatia, M.P.
11. Hon. Rigathi Gachagua, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel

- | | | |
|------------------------|---|-----------------|
| 4. Mr. Collins Mahamba | - | Audio Officer |
| 5. Mr. Bernard Omondi | - | Sergeant-at-arm |

IN ATTENDANCE

- | | | |
|---------------------------------|---|---|
| 1. Sen. Mohamed Faki, M.P. | - | Senator, Mombasa County |
| 2. Mrs. Nancy Karigithu, CBS | - | PS Shipping and Maritime Affairs (SDSMA) |
| 3. Mr. Daniel Manduku | - | Managing Director, Kenya Ports Authority |
| 4. Maj. (Rtd) George N. Okong'o | - | Director General, Kenya Maritime Authority |
| 5. Mr. Joseph Juma | - | Ag. MD, KNSL |
| 6. Capt. W. Ruto | - | GM Operations, KPA |
| 7. Mr. Julius Segerera | - | Dep. Director, Maritime Transport |
| 8. Affraya E. Dena | - | Gen. Man. Boar and Legal Services |
| 9. Mr. John Omingo | - | Head, Comm. Shipping, KMA |
| 10. Mr. Steve Owaki | - | Sec. General, Seafarers Union of Kenya |
| 11. Mr. Zablon Mwangagi | - | Secretary, Kenya Ship Contractors Association |
| 12. Mr. Daudi Haji | - | Chairman, Seafarers Union of Kenya |
| 13. Mr. Sammy Mwendar | - | Chairman, Kenya Seafarers Welfare Association |
| 14. Mr. Mohamed Sebe | - | Committee, Seafarers Workers Union |
| 15. Ms. Fatuma M. Kisiwa | - | Cadet, Jomo Kenyatta Uni. of Agric. & Technology |
| 16. Ms. Janet W. Mirobi | - | Co-ordinator, Seafarers Union of Kenya |
| 17. Mr. Paul Nyainda Henry | - | Marine Engineer Class III |
| 18. Dr. Christiaan Adika Adenya | - | Chairman, Marine Engineering Dept. JKUAT |
| 19. Ms. Florence Wanjiku Njau | - | Ag. Gen. Manager, Utalii Hotel |
| 20. Mr. Sadiq Feysal Abdi | - | Unemployed Youth, Unemployed Seafarers |
| 21. Mr. Samuel Wabuke | - | Consultant, Blue Economy |
| 22. Mr. Joshua Kiminza | - | Coordinator, Blue Economy Stakeholders Forum |
| 23. Ms. Betty Makena | - | ITF Inspector, Internation Transport Workers Fed. |
| 24. Ms. Emma Nkirote | - | Rep. Family, Parents Association |

MIN No. TPWH 164/2019:

PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as meeting with the Ministry and other stakeholders to receive views on the Statute Law (Miscellaneous Amendments) Bill, 2019.

MIN No. TPWH 165/2019: **CONFIRMATION OF MINUTES OF THE PREVIOUS**

Confirmation of minutes of the previous sitting was deferred to the next sitting of the Committee.

MIN No. TPWH 166/2019: **SUBMISSION FROM THE MINISTRY ON THE PROPOSED AMENDMENT TO THE MERCHANT SHIPPING ACT, 2009 AS CONTAINED IN THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2019**

The Principal Secretary for Shipping and Maritime Affairs conveyed the apologies of the Cabinet Secretary for Transport and the Principal Secretary for Transport, both of whom were away on official duties. The Principal Secretary submitted that the Ministry was fully in support of the amendments to the Merchant Shipping Act 2009. She gave a historical account of the Kenya National Shipping Line (KNSL), informing the Committee that the government of Kenya through the Kenya Ports Authority owns 53% of the shares while the Mediterranean Shipping Company S.A. (MSC), the world's second-largest shipping line in terms of container vessel capacity, owns 47% of the shares in the KNSL.

The Principal Secretary further asserted that no private company will take over the port of Mombasa, a position confirmed by the Managing Director, Kenya Ports Authority (KPA). It was submitted that the KNSL was a subsidiary which was under government oversight and that KPA- just like the Attorney General, the National Treasury, the PS transport and other four independent directors- has a seat in the board of KNSL. The Ministry further submitted that no staff of KPA will lose their jobs as a result of the expected revival and restructuring plans of the KNSL.

While noting the concerns that the scope of powers as proposed in the amendment was too wide, the Ministry submitted that that the proposed amendment was only aimed at exempting the

Kenya National Shipping Line from the provisions of section 16 of the Merchant Shipping Act 2009 and no other party. In the alternative, the Ministry proposed that instead of amending section 4 of the Act, the National Assembly may opt to amend section 16 of the Act by adding the words “provided that the above provisions will not apply to the National Shipping Line” immediately after section 16. The meeting noted that the second option was better, provided that a definition of “National Shipping Line” was also included in the Act.

The Ministry submitted that the intention for the revival and empowering of a national shipping line was to create employment and other opportunities in the maritime sector for the youth.

MIN No. TPWH 167/2019:

**SUBMISSIONS FROM STAKEHOLDERS IN THE
MARITIME SECTOR ON THE PROPOSED
AMENDMENT TO THE MERCHANT SHIPPING
ACT, 2009 AS CONTAINED IN THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2019**

The Committee received a delegation of representatives from different associations related to the maritime industry, all in support of the amendment. These include the Association for Women in the Maritime Sector in Eastern and Southern Africa (WOMESA), Mission to Seafarers, Homa Bay Boat Owners Association, Faza Isand Dwellers, Old Port Boat Owners Association, South Coast Windsurfing Association, Young Seafarers Workers Group, National Marine Cadets Association, Technical University of Mombasa Nautical Science Students Association (TUMNSA), among so many others, all of who submitted their written memoranda to the Committee.

The groups submitted that there was high and unfair exploitation of workers in the maritime sector, where foreign companies enrich themselves in the country at the expense of the poor workers. They submitted that the amendment will create job opportunities. The Secretary General of the Seafarers Union of Kenya submitted that Kenya has goods, has cargo but has no ships, making matters worse for the industry. He submitted that the revival of the KNSL will be very helpful for Kenya.

MIN No. TPWH 168/2019:

**SUBMISSION FROM THE SENATOR OF
MOMBASA COUNTY ON THE PROPOSED
AMENDMENT TO THE MERCHANT SHIPPING
ACT, 2009 AS CONTAINED IN THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2019**

In his submission to the Committee, the Hon. Senator for Mombasa County submitted that the amendment as proposed, gave the Cabinet Secretary wide and unfettered powers to exempt any entity, a matter that was of great concern since the CS will have unchecked powers. He submitted to the Committee that it was a matter of great concern on how a Cabinet Secretary can solely determine what public interest without public participation is.

The Senator further submitted that whereas it was public knowledge that the intention was to exempt KNSL from the provisions of section 16, it was important to note that the KNSL had no capacity to operate berth C2 at the Mombasa Port. He further submitted that the KNSL was not wholly owned by the government with the government owning 53% while a private entity owning 47% of the shares. He further asserted that any failure by the Kenya Maritime Authority to fully enforce the existing Act cannot be blamed on the people or the leaders. The Senator submitted that it was true people were being exploited and that it was the Cabinet Secretary who had the mandate and powers over the industry in general.

MIN No. TPWH 169/2019:

ADJOURNMENT

There being no other business, the sitting was adjourned at fifteen minutes past two o'clock. The next meeting to be held on Monday, 20th May 2019 at 9:30am.

Signed.....

(Chairperson)

Date.....23/5/2019

Annexure 2:

Newspaper advertisement inviting the public to
submit memoranda on the Bill.

(Volume I Report)

