



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

SPECIAL SITTING

MONDAY, JUNE 15, 2015 AT 10.00 A.M.

1. The Senate assembled at Ten O'clock.
2. The Proceedings were opened with Prayer.
3. COMMUNICATION FROM THE CHAIR ON CIRCUMSTANCES OCCASIONING THE SPECIAL SITTING

The Speaker made the following Communication from the Chair-

"Honourable Senators,

I wish to welcome you to this Special Sitting of the Senate and thank you for finding time from your busy schedules to attend the sitting.

Honourable Senators,

This Special Sitting of the Senate has been convened, pursuant to Standing Order 29 (1) of the Senate Standing Orders, upon a request by the Senate Majority and Minority Leaders which was supported by twenty one (21) other Senators. The request was made to me vide letter Ref. No. SML/GEN.CORR/VOL.1 (115) dated 5th June, 2015.

In the letter, the Leaders requested the Speaker to appoint a day for a Special Sitting of the Senate to deliberate on the matter of the re-allocation by the National Assembly, of various monies intended for key constitutional organs and institutions in the Budget Estimates for the Financial Year 2015/2016, at a sitting of the National Assembly held on Wednesday, 3rd June, 2015.

Honourable Senators,

Following consideration of the request by the two leaders, I was satisfied that it met the requirements of Standing Order 29 (2). It is in this respect that I convened this special sitting of the Senate, by *Gazette Notice* No. 4347 of 9th June, 2015, which was carried in a Special Issue of the Gazette of 12th June, 2015.

Hon. Senators, as required by Standing Order 29 (5), the Notice specified that the business to be transacted at this sitting would be the consideration of a Motion regarding the re-allocation by the National Assembly of various monies intended for key constitutional organs and institutions in the Budget Estimates for the Financial Year 2015/2016.

Honourable Senators,

As specified in the Gazette Notice and in accordance with standing order 29(5) of the Senate Standing Orders, the business specified in the Notice shall be the only business before the Senate during this Special Sitting, following which the Senate shall stand adjourned until tomorrow, Tuesday, 16th June, 2015 at 2:30 p.m. in accordance with the Senate Calendar.

Indeed, Honourable Senators will observe that at Order Nos. 2 and 3 in today's Order Paper, pursuant to the provisions of the Standing Orders and as indicated in the *Gazette Notice*, the Business to be transacted is the consideration of a Motion regarding the re-allocation by the National Assembly of various monies intended for key constitutional organs and institutions in the Budget Estimates for the Financial Year 2015/2016.

I thank you".

4. **MESSAGE FROM THE NATIONAL ASSEMBLY ON THE PASSAGE OF THE DIVISION OF REVENUE BILL, 2015**

The Speaker reported the following Message from the National Assembly-

"Hon. Senators,

I wish to report to the Senate that, pursuant to Standing Order 40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the approval of the mediated version by the National Assembly, of the Division of Revenue Bill 2015, (National Assembly Bill No. 11 of 2015).

"PURSUANT to the provisions of standing orders 150 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly-

WHEREAS, the Division of Revenue Bill (National Assembly Bill No. 11 of 2015), was referred to a mediation Committee in accordance with the provisions of Article 112 (2) (b) of the Constitution;

AND WHEREAS, the National Assembly, on the 3rd of June, 2015, considered and approved the mediated version of the said Bill as required under Article 113(2) of the Constitution;

NOW THEREFORE, in fulfillment of Standing Order 150(4) (b) of the National Assembly Standing Orders, I hereby convey to the Senate, the said decision of the National Assembly”.

Hon. Senators,

Article 112(1) (b) of the Constitution provides that-

if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

Further, Article 112(2) (b) of the Constitution provides that-

if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

For the benefit of Senators, Article 113 provides as follows-

- (1) If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.*
- (2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.*
- (3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.*
- (4) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.*

Hon. Senators,

Accordingly, the decision of the National Assembly to approve the version of the Bill developed by the Mediation Committee was taken on Wednesday, 3rd June, 2015, pursuant to Article 113 (2) of the Constitution.

The approval of the Division of Revenue Bill, 2015 sets the stage for the introduction and consideration of the County Allocation of Revenue Bill, 2015 by the Senate.

Hon. Senators,

For your information, Article 218 (1) (b) of the Constitution states-

1) At least two Months before the end of each Financial Year, there shall be introduced in Parliament-

b) A County Allocation of Revenue Bill, which shall divide among the Counties the revenue allocated to the County level of Government on the basis determined in accordance with the resolution in force under Article 217.

I therefore urge the House to expeditiously dispense with the Bill.

I thank you."

5. **NOTICE OF MOTION** – (Sen. Murkomen on behalf of The Senate Majority Leader)

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-

- (a) Shareable Revenue – Kshs. 1.767 billion; and
- (b) Allocation for Level 5 Hospitals – Kshs. 1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;
- (c) Allocations for the Integrated Financial Management System – a reduction of 325 million; and
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in

a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include *"patriotism"*, *"the rule of law"* and *"good governance"*;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that *"promotes its purposes"*, *"advances the rule of law"*, *"permits the development of the law"* and *"contributes to good governance"*;

NOW THEREFORE THE SENATE-

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate's constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only

to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND RESOLVES to establish a select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider to be appropriate.

6. **MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO INQUIRE INTO THE MATTER OF REALLOCATION BY NATIONAL ASSEMBLY OF VARIOUS MONIES INTENDED FOR KEY CONSTITUTIONAL ORGANS AND INSTITUTIONS IN THE BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2015/2016**

Motion made and Question proposed;

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-

- a) Shareable Revenue – Kshs. 1.767 billion; and
- b) Allocation for Level 5 Hospitals – Kshs. 1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (e) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;
- (f) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;
- (g) Allocations for the Integrated Financial Management System – a reduction of 325 million; and
- (h) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include *"patriotism"*, *"the rule of law"* and *"good governance"*;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that *"promotes its purposes"*, *"advances the rule of law"*, *"permits the development of the law"* and *"contributes to good governance"*;

NOW THEREFORE THE SENATE-

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

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REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate's constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND RESOLVES to establish a select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider to be appropriate.

(Sen. Kipchumba Murkomen on behalf of the Senate Majority Leader)

Debate arising;

And the time being One O'clock, a Temporary Speaker (Sen. Mositot) adjourned the Senate without question put pursuant to the Standing Orders.

7. **SENATE ROSE** - at One O'clock.

MEMORANDUM

*The Speaker will take the Chair Today,
Monday, June 15, 2015 at 2.30 p.m.*

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