



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

WEDNESDAY, OCTOBER 07, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR REGARDING NOTICE OF MOTION BY SEN. KIRAITU MURUNGI ON SURVEY AND MARKING OF COUNTY BOUNDARIES**

The Speaker conveyed the following communication from the Chair-

"Honorable Senators, on Tuesday, 22nd September, 2015, the Senator for Meru County (Sen. Kiraitu Murungi) gave a Notice of Motion whose main thrust is to request the Office of the President and the Ministry of Lands to establish a task force to survey, mark and fix beacons for all county boundaries.

Thereafter, several Senators including Sen. (Dr.) Machage, Sen. Murkomen, Sen. Khaniri and Sen. Mutula Kilonzo Jnr raised reservations on whether the Notice was proper in terms of procedure and whether it was constitutional given the framework regarding alteration of county boundaries as provided in Article 188 of the Constitution. In addition, there were assertions that a similar motion sponsored by Sen. Mutula had been passed and that a Bill on County boundaries was on the verge of introduction to the Senate.

Honourable Senators, let me begin by giving Senators a chronology of events surrounding this matter.

First, a motion was earlier filed by Sen. Mutula Kilonzo Jnr. urging the Standing Committee on Legal Affairs and Human Rights to initiate and prioritize the drafting of legislation within ninety days to provide for an independent commission to inquire into, examine and identify the boundaries of counties, taking into account the criteria set out in Article 188 (2) of the Constitution. The motion was subsequently approved by the House.

Secondly, I am aware that the Standing Committee on Legal Affairs and Human Rights has done a great deal of work to implement the resolution of the House and that a Bill has been drafted in that respect. However, the Bill has not been introduced in the House by way of First Reading as required under Standing Order 129.

Honourable Senators, it is important to note, that the motion by Sen. Mutula and the Bill being developed by the committee aim to establish an independent Commission to consider the boundaries of counties in accordance with Article 188 of the Constitution.

I would like to clarify that what Senator Kiraitu's motion is seeking is to have the boundaries as they now stand clearly surveyed, marked and beacons fixed for the avoidance of doubt. He is not seeking to have the boundaries altered as doing so without the recommendations of an independent commission would violate the provisions of Article 188 of the Constitution.

This is a different matter altogether because, regardless of any disputes, and regardless of any proposals that may be made for the alteration of county boundaries counties remain in existence and have boundaries. It may be that such a process of survey and marking would be affected and would be difficult to undertake while disputes subsist. But that goes to the merits of the motion and is a matter for the Senate to determine in debate and decision on the Motion.

Honourable Senators, arising from the foregoing, therefore, I am satisfied that there is no contradiction in the motions by Sen. Mutula and Sen. Kiraitu and they can both proceed.

I thank you."

4. PAPERS LAID

The following Papers were laid on the Table of the House-

- i) Annual progress report of the Commission for the Implementation of the Constitution for the year 2014/2015.

(Sen. Murkomen, on behalf of the Chairperson of the Standing Committee on Legal Affairs and Human Rights)

- ii) Report of the Commission for the Implementation of the Constitution on the assessment of the transferred functions to the County Governments.

(Chairperson, Sessional Committee on Devolved Government)

5. THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILL NO. 35 OF 2014)

Order for Second Reading read;

Motion made and Question proposed-

That, the Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014) be now read a Second Time.

*(Chairperson, Standing Committee on Legal Affairs and Human Rights –
22.09.2015)*

Debate interrupted on Tuesday 22nd September, 2015 resumed on a Division;

The House proceeded to a Division;

The Speaker directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for two minutes;

After the expiry of two minutes, the Speaker directed that the doors be locked and Senators asked to log-in using their cards;

The Speaker put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Speaker allowed eight Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**-

1. Sen. Gwendu Joy Adhiambo– on behalf of Nairobi City County delegation
2. Sen. Haji Mohammed Yusuf
3. Sen. Kembi Gitura James
4. Sen. Kimani Paul Wamatangi
5. Sen. Lesan Wilfred Rotich
6. Sen. Melly Isaac Kipkemboi
7. Sen. Mungai James Kiarie
8. Sen. Muriuki Karue Muriuki

Following the Division, Question agreed to.

The results of the Division were as follows-

AYES - 38

NOES - 0

ABSTENTIONS – 0

AYES

1. Sen. Billow Adan Kerrow
2. Sen. Chiaba Abu Mohamed
3. Sen. Gwendu Joy Adhiambo – voted verbally on behalf of Nairobi City County delegation
4. Sen. Haji Mohamed Yusuf – voted verbally
5. Sen. Hargura Godana
6. Sen. Hassan Omar Hassan
7. Sen. Kembi Gitura James – voted verbally
8. Sen. Khalwale Boni
9. Sen. Khaniri George
10. Sen. Kilonzo Mutula Junior
11. Sen. Kimani Paul Wamatangi – voted verbally
12. Sen. Kivuti Lenny
13. Sen. Kuti Mohamed Abdi
14. Sen. Lesan Wilfred Rotich – voted verbally
15. Sen. Lesuuda Naisula – on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Machage Wilfred Gisuka
18. Sen. Madzayo Stewart Mwachiru
19. Sen. Melly Isaac Kipkemboi – voted verbally
20. Sen. Mohamud Halima Abdille - on behalf of Wajir County delegation
21. Sen. Mositet Peter Korinko
22. Sen. Mungai James Kiarie – voted verbally
23. Sen. Muriuki Karue Muriuki – voted verbally
24. Sen. Murkomen Onesmus Kipchumba
25. Sen. Murungi Kiraitu
26. Sen. Musila David
27. Sen. Mutahi Kagwe
28. Sen. Muthama Johnson Nduya
29. Sen. Mwakulegwa Danson Mwazo
30. Sen. Ndiema Henry Tiole
31. Sen. Ntutu Stephen Kanyinke
32. Sen. Nyong'o Peter Anyang'
33. Sen. Obure Christopher Mogere
34. Sen. Okong'o Kennedy Mong'are
35. Sen. Orengo James
36. Sen. Sang Stephen Kipyego
37. Sen. Wako Sitswila Amos
38. Sen. Wetang'ula Moses Masika

Bill Read a Second Time and committed to the Committee of the Whole tomorrow.

6. THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILL NO. 42 OF 2014)

Order for Second Reading Read;

Motion made and Question proposed-

That, the Office of the County Printer Bill (Senate Bill No. 42 of 2014) be now read a Second Time.

(Sen. Sang' – 22.09.2015)

Debate interrupted on Wednesday 23rd September, 2015 resumed on a Division;

The House proceeded to a Division;

The Speaker directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for two minutes;

After the expiry of two minutes, the Speaker directed that the doors be locked and Senators asked to log-in using their cards;

The Speaker put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Speaker allowed four Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**-

1. Sen. Gwendu Joy Adhiambo – on behalf of Nairobi City County delegation
2. Sen. Kembi Gitura James
3. Sen. Kimani Paul Wamatangi
4. Sen. Lesan Wilfred Rotich

Following the Division, Question agreed to.

The results of the Division were as follows-

AYES - 38

NOES - 0

ABSTENTIONS – 0

AYES

1. Sen. Billow Adan Kerrow
2. Sen. Chiaba Abu Mohamed
3. Sen. Gwendu Joy Adhiambo – voted verbally on behalf of Nairobi City County delegation
4. Sen. Haji Mohamed Yusuf
5. Sen. Hargura Godana
6. Sen. Hassan Omar Hassan
7. Sen. Kembi Gitura James – voted verbally
8. Sen. Khalwale Boni
9. Sen. Khaniri George
10. Sen. Kilonzo Mutula Junior
11. Sen. Kimani Paul Wamatangi – voted verbally
12. Sen. Kivuti Lenny
13. Sen. Kuti Mohamed Abdi
14. Sen. Lesan Wilfred Rotich – voted verbally
15. Sen. Lesuuda Naisula – on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Machage Wilfred Gisuka
18. Sen. Madzayo Stewart Mwachiru
19. Sen. Melly Isaac Kipkemboi
20. Sen. Mohamud Halima Abdille - on behalf of Wajir County delegation
21. Sen. Mositet Peter Korinko
22. Sen. Mungai James Kiarie
23. Sen. Muriuki Karue Muriuki
24. Sen. Murkomen Onesmus Kipchumba
25. Sen. Murungi Kiraitu
26. Sen. Musila David
27. Sen. Mutahi Kagwe
28. Sen. Muthama Johnson Nduya
29. Sen. Mwakulegwa Danson Mwazo
30. Sen. Ndiema Henry Tiole
31. Sen. Ntutu Stephen Kanyinke
32. Sen. Nyong'o Peter Anyang'
33. Sen. Obure Christopher Mogere
34. Sen. Okong'o Kennedy Mong'are
35. Sen. Orengo James
36. Sen. Sang Stephen Kipyego
37. Sen. Wako Sitswila Amos
38. Sen. Wetang'ula Moses Masika

Bill Read a Second Time and committed to the Committee of the Whole tomorrow.

7. THE SENIOR CITIZENS CARE AND PROTECTION BILL (SENATE BILL NO. 43 OF 2014)

Order for Second Reading;

Motion made and Question proposed-

That, the Senior Citizens Care and Protection Bill (Senate Bill No. 43 of 2014) be now read a Second Time.

(Sen. (Prof) Wilfred Lesan - 29.09.2015) - Division

Debate interrupted on Tuesday 6th October, 2015 resumed on a Division;

The House proceeded to a Division;

The Speaker directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for two minutes;

After the expiry of two minutes, the Speaker directed that the doors be locked and Senators asked to log-in using their cards;

The Speaker put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Speaker allowed five Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**-

1. Sen. Kembi Gitura James
2. Sen. Kimani Paul Wamatangi
3. Sen. Lesan Wilfred Rotich
4. Sen. Melly Isaac Kipkemboi
5. Sen. Mungai James Kiarie

Following the Division, Question negatived.

The results of the Division were as follows-

AYES - 23

NOES - 15

ABSTENTIONS - 0

AYES

1. Sen. Billow Adan Kerrow
2. Sen. Chiaba Abu Mohamed
3. Sen. Gwendu Joy Adhiambo – on behalf of Nairobi City County delegation

4. Sen. Haji Mohamed Yusuf
5. Sen. Kembi Gitura James – voted verbally
6. Sen. Kimani Paul Wamatangi – voted verbally
7. Sen. Kivuti Lenny
8. Sen. Kuti Mohamed Abdi
9. Sen. Lesan Wilfred Rotich – voted verbally
10. Sen. Lesuuda Naisula – on behalf of Samburu County delegation
11. Sen. Lonyangapuo John Krop
12. Sen. Machage Wilfred Gisuka
13. Sen. Melly Isaac Kipkemboi – voted verbally
14. Sen. Mositet Peter Korinko
15. Sen. Mungai James Kiarie – voted verbally
16. Sen. Muriuki Karue Muriuki
17. Sen. Murkomen Onesmus Kipchumba
18. Sen. Murungi Kiraitu
19. Sen. Mutahi Kagwe
20. Sen. Ntutu Stephen Kanyinke
21. Sen. Nyong'o Peter Anyang'
22. Sen. Sang Stephen Kipyego
23. Sen. Wako Sitswila Amos

NOES

1. Sen. Hargura Godana
2. Sen. Hassan Omar Hassan
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Madzayo Stewart Mwachiru
7. Sen. Mohamud Halima Abdille - on behalf of Wajir County delegation
8. Sen. Musila David
9. Sen. Muthama Johnson Nduya
10. Sen. Mwakulegwa Danson Mwazo
11. Sen. Ndiema Henry Tiole
12. Sen. Obure Christopher Mogere
13. Sen. Okong'o Kennedy Mong'are
14. Sen. Orengo James
15. Sen. Wetang'ula Moses Masika

8. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. (Dr.) Machage – in the Chair)

The Climate Change Bill (National Assembly Bill No. 1 of 2014)**Progress Report.**

Motion made-

That the Committee of the Whole reports progress on its consideration of the Climate Change Bill (National Assembly Bill No. 1 of 2014) and seek leave to sit again tomorrow.

(Vice-Chairperson, Standing Committee on Land and Natural Resources)

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson of Committees ruled that the question did not affect counties;

Question put and **agreed to.**

9. **HOUSE RESUMED** - (Temporary Speaker - (Sen. Mositet) - in the Chair)

10. **THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)**

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.

(Vice-Chairperson, Standing Committee on Land and Natural Resources)

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Mositet) ruled that the question did not affect counties;

Question put and **agreed to.**

11. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. (Dr.) Machage – in the Chair)

The Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014)

Clauses 3 and 4

Motion made and Question Proposed.

That, Clauses 3 and 4 be part of the Bill.

Putting of question deferred.

Clause 5

Motion made and Question Proposed.

That Clause 5 be part of the Bill

Amendment proposed.

THAT the Bill be amended by deleting clause 5 and substituting therefor the following new clause –

(1) An advertisement inviting applications for nomination for appointment to an office to which this Act applies shall specify that the candidate shall be required to appear before a committee of the relevant County Assembly.

(2) An applicant shall not be required to appear before the committee of a County Assembly pursuant to a notice issued under subsection (1) within a period of less than twenty-one days.

(Chairperson, Standing Committee on Labour and Social Welfare)

Debate arising.

Putting of question deferred.

Clause 6

Motion made and Question proposed.

That, Clause 6 be part of the Bill

Amendment Proposed.

THAT clause 6 of the Bill be amended by inserting the following new subclause immediately after subclause (1) –

(1A) An appointing authority shall, in issuing a notice under subsection (1), notify the members of the public on the proposed nomination through such media and platforms established under section 91 of the County Governments Act as it considers appropriate.

(Chairperson, Standing Committee on Labour and Social Welfare)

Debate arising.

Putting of question deferred.

Clause 7

Motion made and Question proposed.

That Clause 7 be part of the Bill

Amendment proposed.

THAT clause 7 of the Bill be amended –

(a) in subclause (2) by –

- (i) deleting the word “seven” appearing immediately after the words “later than” and substituting therefor the words “fourteen days”;
- (ii) inserting the words “Subject to subsection (2A)” at the beginning of sub-clause (2).

(b) inserting the following new subclause immediately after subclause (2) –

(2A) The approval hearings shall be held in a public place and shall be conducted during working hours.

(c) in subclause (4) by deleting the word “two newspapers” appearing immediately after the words “in at least” and substituting therefor the words “one newspaper”;

(d) by inserting the following new subclause immediately after clause 10 –

(10A) A candidate shall have a right to be heard on any statement or evidence submitted to the Clerk contesting the suitability of the candidate to hold the office to which the candidate has been nominated.

(Chairperson, Standing Committee on Labour and Social Welfare)

Putting of question deferred.

Clause 8

Motion made and Question Proposed.

That Clause 8 be part of the Bill

Putting of question deferred.

Clause 9

Motion made and Question proposed.

That Clause 9 be part of the Bill

Amendment Proposed.

THAT clause 9 of the Bill be amended in subclause (1) by deleting the word "fourteen" appearing immediately after the words "decision within" and substituting therefor the word "twenty-one".

(Chairperson, Standing Committee on Labour and Social Welfare)

Debate arising.

Putting of question deferred.

Clause 10

Motion made and Question proposed.

That Clause 10 be part of the Bill

Amendment proposed.

THAT clause 10 of the Bill be amended –

- (a) by renumbering the existing clause as subclause (1);
- (b) in subclause (1) by deleting the word "may" appearing after the words "appointing authority" and substituting therefor the word "shall";
- (c) by inserting the following new subclause immediately after subclause (1) –
 - (2) A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.

(Chairperson, Standing Committee on Labour and Social Welfare)

Debate arising.

Putting of question deferred.

Clauses 11-13

Motion made and Question proposed.

That Clauses 11-13 be part of the Bill.

Putting of question deferred.

THE FIRST SCHEDULE

Motion made and Question proposed

That the First Schedule be part of the Bill

Amendment proposed.

THAT the First Schedule be amended –

(a) by deleting item 4. and substituting therefor the following new items –

4. **(a) Date of birth:**

(b) Place of Birth:

(b) by deleting items 6 and 7 and substitute the following new items –

6. **Mobile phone number:**

(c) by inserting the following new phrase immediately after item 21
(d)-

(Attach clearance letter from the Ethics and Anti-Corruption Commission)

(d) by deleting item 25 and substituting therefor with the following new item –

25. **Tax status:** (Attach your Kenya Revenue Authority Clearance Certificate)

(e) in item 31 by inserting the following new phrase immediately after the words "your nomination?"

If yes,

explain:_____

(Chairperson, Standing Committee on Labour and Social Welfare)

Debate arising.

Putting of question deferred.

THE SECOND SCHEDULE

Motion made and Question proposed.

That the Second Schedule be part of the Bill

Putting of question deferred.

Clause 2

Motion made and Question proposed.

That Clause 2 be part of the Bill

Putting of question deferred.

Title and Clause 1

Motion made and Question proposed.

That the Title and Clause 1 be part of the Bill

Putting of question deferred.

Progress Report.

Motion made-

That the Committee of the Whole reports progress on its consideration of the Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014) and seek leave to sit again tomorrow.

(Chairperson, Standing Committee on Labour and Social Welfare)

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson of Committees ruled that the question did not affect counties;

Question put and agreed to.

12. **HOUSE RESUMED** – Temporary Speaker – (Sen. Mositet - in the Chair)

13. **THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)**

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.

(Chairperson, Standing Committee on Labour and Social Welfare)

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Mositet) ruled that the question did not affect counties;

Question put and agreed to.

14. COMMITTEE OF THE WHOLE:

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. (Dr.) Machage – in the Chair)

The County Early Childhood Education Bill, (Senate Bill No. 32 of 2014)

Progress Report.

Motion made-

That the Committee of the Whole reports progress on its consideration of the County Early Childhood Education Bill, (Senate Bill No. 32 of 2014) and seek leave to sit again tomorrow.

(Vice-Chairperson, Standing Committee on Education)

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson of Committees ruled that the question did not affect counties;

Question put and agreed to.

15. HOUSE RESUMED – Temporary Speaker – (Sen. Mositet - in the Chair)

16. THE COUNTY EARLY CHILDHOOD EDUCATION BILL, (SENATE BILL NO. 32 OF 2014)

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.

(Vice-Chairperson, Standing Committee on Education)

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Mositet) ruled that the question did not affect counties;

Question put and agreed to.

17. **THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL, (SENATE BILL NO. 4 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed-

THAT, the HIV and AIDS Prevention and Control (Amendment) Bill, (Senate Bill No. 4 of 2015) be now read a Second Time.

(Sen. (Dr.) Wilfred Machage- 1st October, 2015)

Debate interrupted on Tuesday, 6th October, resumed;

There being no other Senator willing to contribute;

Mover replied;

Raising a point of order pursuant to Standing Order 54 (3), the Senator for Migori County (Sen. (Dr.) Wilfred Machage) requested the Temporary Speaker to defer putting of the question to another day;

And the Temporary Speaker (Sen. Mositet) acceding to the request, deferred putting of the question to Thursday, 8th October, 2015.

18. **THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL NO. 37 OF 2014)**

(Chairperson, Committee on Legal Affairs and Human Rights)

Order for Second Reading read;

Order Deferred

19. **THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)**

(Sen. David Musila)

Order for Second Reading read;

Order Deferred

20. **THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)**

(Sen. Hassan Omar)

Order for Second Reading read;

Order Deferred

21. THE COUNTY LIBRARY SERVICES BILL, (SENATE BILL NO. 6 OF 2015)
(Sen. Joy Gwendo)

Order for Second Reading read;

Order Deferred

And the time being thirty minutes past six O'clock, the Temporary Speaker (Sen. Peter Mositet) adjourned the business of the Senate without Question put pursuant to the Standing Orders.

22. SENATE ROSE - at thirty minutes past six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, October 8, 2015 at 2.30 p.m.*

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