

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 16<sup>th</sup> June, 2016

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

*[The Speaker (Hon. Ethuro) in the Chair]*

### PRAYERS

### PETITION

#### DELIVERY OF SERVICES BY NATIONAL GOVERNMENT TO RESIDENTS OF KAJIADO NORTH SUB COUNTY

**The Speaker** (Hon. Ethuro): Is Sen. Mositet in the House? We are now on Petitions.

**Sen. Mositet:** Mr. Speaker, Sir, I have a Petition from the residents of Kajiado North Sub County in Kajiado County concerning delivery of services by the national Government to residents of the sub county.

The undersigned, being the residents of Kajiado North Sub County and officials of Kajiado North Citizen Participation Forum (KNCPF), have signed the Petition. I am ready to hand over the Petition to you.

The people of Kajiado North Sub County have a number of issues and I wish to read them to the Senate. They are praying to the Senate to intervene and make sure that the services they are crying for from the national Government or the county government, reach them. Their prayer is that the Senate conducts its own investigation with a view to directing the respective county or national Government to take necessary steps, including budget provision, to ensure the realization of the matters raised in this Petition and ensure the following:-

(1) Cause the Ministry of Transport and Infrastructure of the national Government via the Nairobi Metropolitan Transport Authority to integrate Bomas-Ngong-Kiserian, Ngong-Karen Junction corridor in the design of the bus rapid transport and passenger rail system to address the perennial traffic jam in Kajiado North Sub County, particularly at Ongata Rongai and Ngong.

(2) Cause the county government and the national Government to come up with an implementable work plan to issue the title deeds in the informal settlement in the county, including the villages of Kware, Gishagi in Ngong, Mathare in Ngong, Ole

Kasasi in Ongata Rongai, Bulbul in Ngong and Line Saba in Kajiado North Sub County which have in the past been exploited during political seasons due to lack of security of tenure for their properties. The capacity of the county government cannot allow them to clear the current work load as may be desired.

Mr. Speaker, Sir, the prayer is that the site currently occupied by the structures put up by the investors of the abbatoir of Halal in Ngong--- Understandably, there is a court case between the national Government and the investor who had acquired the land illegally. The national Government is alleged to have halted the progress and development more than 15 years ago.

I think they are talking about the case---

**The Speaker** (Hon. Ethuro): Order, Senator! Read it as it is.

**Sen. Mositet:** Mr. Speaker, Sir, in putting in place the remedial measures above, both the county and the national Governments to acknowledge the rights and place of citizen participation forums as enshrined in the Constitution. Any initiatives, therefore, put in place must be through the committee's task forces with the forum representatives.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): You need to table the Petition.

*(Sen. Mositet handed over the document to  
the Clerks-at-the-Table)*

Order, Sen. Mositet! That is not the Table. I did not ask you to hand over the document to somebody else. I asked you to table the Petition.

**Sen. Mositet:** Thank you, Mr. Speaker, Sir. I beg to table the document.

*(Sen. Mositet laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Order, Senator! You can now deliver.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Kagwe:** Mr. Speaker, Sir, I rise to support the petitioners. As you are aware, Kajiado County forms part of the Nairobi Metropolitan area. Many people who work in this town live in Kajiado Town, Ngong, Kiserian, Ongata Rongai and so on. The residents of Kajiado County can be referred to as the residents of Nairobi. It, therefore, makes sense that in order for us to make Kajiado County exploit its economic potential, it is important for it to become part of Nairobi through a properly organised transport system. That transport system could be the Nairobi Metropolitan Transport system that is being designed.

A mass rapid transport system is what is essential in Nairobi, not just for the City, but for Kiambu, Machakos and Kajiado counties. A light rail is the way to go. It does not matter how much we expand our roads, but as long as the volume of vehicles is increasing, we will always experience traffic jams in this country. The reason this is happening is that people who live in Kajiado drive their vehicles to this city. For instance,

if you are driving on Magadi Road from Ongata Rongai to Nairobi, it will take you three or four hours.

I speak with authority on this matter because I served as the chairman of Multimedia University Council. The transport system from town to those areas is absolutely impossible. Therefore, the prayer that the petitioners have brought here is not just important for Kajiado or Nairobi counties, but it will benefit the whole country.

I support the petitioners and ask the Government to think quickly about a light rail system that will serve Nairobians and the metropolitan residents.

**The Speaker** (Hon. Ethuro): Hon. Members, restrict your comments to not more than two minutes.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Petition by the people of Kajiado is a confirmation of a cry by the whole country on the total failure of the Jubilee Government to offer services to the people of Kenya. According to the Constitution, a number of roads are supposed to have been relinquished to the county government system. However, the national Government has persistently refused to do so. It is a pity that they have intentionally refused to offer services to the citizens despite the fact that year in, year out, we allocate a lot of money to roads construction in this country. What does this money do? Who is keeping it? Will it be used in the next election?

Mr. Speaker, Sir, we are worried because there is a belief by many communities that some animals tend to eat their intestines. One animal is notorious for that and it dies in the process of doing the same. That is exactly what the Jubilee Government is doing and it will die soon for “eating its own intestines”. We had a good transport system in Nairobi, the Kenya Bus System (KBS). It was intentionally and progressively killed for purposes of which I do not want to mention here. The issue is, it is getting too late and Kenyans want services. The people of Kajiado County have the right as per the Constitution to petition the House for the same. I wonder how useful this House will be to the people of Kajiado in the petition because we do not control the kind of money that they want. Anyway, we have heard and I support.

**The Speaker** (Hon. Ethuro): Sen. Karaba

**Sen. Karaba:** Mr. Speaker Sir, the Petition should have come earlier than today because it seems that Kajiado, as has always been said, is geographically not in Rift Valley but in Nairobi. To make it worse, it borders the Nairobi National Park. I know you have travelled along that route, along the National Park, as you drive towards Magadi. There is a very careless way of operating because lions pass through the fences because the highway is just next to the road. The Petitioners are asking that the road be made wider for use; this will even save the lions from being crashed by vehicles and contain them in the National Park.

The road is dangerous to use, narrow, steep, rugged and potholed. With all those adjectives, therefore, it is necessary to come up with an upgrade of good concessional road works so that we can get to Lake Magadi, where soda ash and salt fish are found. The road will also enable us to get to Kitengela and Namanga, our border town with Tanzania. That is missing and lacking because of the kind of road and infrastructure which is between Kajiado and Nairobi.

There are many other settlements which have also come up between Namanga, Kajiado and Nairobi. There are many farms which have come up. Some of these farms are doing very good business in horticulture and pastoralism. The hotel industry in that area has also come up. Therefore, we need to think about this issue; otherwise, we will lose money if this Petition is not addressed.

Mr. Speaker, Sir, we also have the Nazarene University which has many students--

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba. You should now be concluding.

**Sen. Karaba:** Mr. Speaker, Sir, most of the students at the Nazarene University have their hostels in Kajiado yet they have to travel all the way to Nairobi for their university education. That is a very important area to be looked into. Therefore, we need to look into this issue in view of the importance of university education, tourism and leisure.

**Sen. (Prof.) Anyang' Nyong'o:** Mr. Speaker, Sir, I rise to support this Petition from the people of Kajiado County. When we developed the Vision 2030, it was called a "globally competitive and prosperous Kenya". One of the pillars of Vision 2030 in Chapter Two of that vision was the foundation for a Socio-economic transformation of this nation. The first item in that transformation was infrastructure.

If you look at Vision 2030, it envisaged modern infrastructure as Sen. Kagwe says, that will connect the bedrooms of Nairobi to the city. Nairobi's bedrooms are in Kiambu, Juja, Thika, Ongata Rongai, Kajiado and if you go further, Machakos County. There is no way, given population growth, that these bedrooms will be efficiently connected to the city without the kind of infrastructure that the people of Kajiado are talking about. That is a rapid transit system using railway and if possible, an underground system.

If we did an underground system, we would give a lot of our people labour. The idle youth in this town will be put under the ground digging, getting out the earth, and making sure that we have a rapid transit system. This is a very progressive proposal by the people of Kajiado. I hope that we can all support it and the Jubilee Government will proceed quickly to implement what the people are proposing.

I beg to support.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I also rise to support the Petition by the people of Kajiado. My sympathies mainly go to the young children who are seeking education in Nairobi. Because of the need by parents to have their children educated, they actually transport them every morning to Nairobi and back home. My main concern is the fact that these children have less than four hours of rest in that they leave their homes at 4.00 a.m. and do not get back home until 10.00 p.m. Considering the time for preparations to wake up and sleep, this leaves only about two or three hours for these children to rest.

Mr. Speaker, Sir, if there is anything that will make these children hate education, it is the fact that they are going through a punitive programme or routine of having an education. I am aware that if we continue subjecting these children to this kind of programme, the only result is that they will detest education. The only remedy to this is to speedily agree with the Petition from the people of Kajiado and implement this

programme as quickly as possible, as we look at other avenues of taking these children to school in a more acceptable and accommodative routine than the one that is ongoing.

I support this Petition and hope that the Jubilee Government will act on it first and not only get a road network in Kajiado but also in Nairobi.

**Sen. Munyes:** Mr. Speaker, Sir, I support this Petition. I live in Kitengela, Kajiado County. For the last 15 years, I have seen Kitengela and Kajiado grow. The people of Kajiado will thank the Member for introducing this Petition because they have suffered problems of infrastructure and security. This mainly affects the rural and peri-urban population of Kajiado.

Kitengela Town, for example, was poorly designed for passengers and traffic. It takes a motorist four hours to reach Nairobi from Kitengela. I leave at 5.00 a.m. and arrive here at 9.00 a.m. Kitengela alone will take someone two hours because the road is very narrow. People going to Tanzania complain about this town. During the rainy season, people are unable to access their houses because of a poor road network. I have raised this issue with the Governor and the Senator, who is my friend.

The population there also lacks clean water. There is also poor sewerage in many of the towns in Kajiado. My appeal is for Members to support this Petition because in our wish to decongest Nairobi, Kajiado, Kiambu and parts of Thika and Limuru, this will be the solution. We need to fix the infrastructure, provide clean water and fix the sewerage problems in order for the population to survive.

**The Speaker** (Hon. Ethuro): Hon. Senators, I realise there are three Senators who are interested in contributing to this issue. Let us conclude this matter at this point because we need to make progress.

Hon. Senators, it is noted that the issues that are subject of the Petition fall within the mandate of various committees among them the Standing Committee on Roads and Transportation, the Standing Committee on Land and Natural Resources and the Standing Committee on Agriculture, Livestock and Fisheries. I, therefore, direct that the Standing Committee on Roads and Transportation takes the lead in considering the Petition and, where required, the other two committees will be able to make their input on the matter.

In terms of Standing Order No.227(2), the Committee will be required in not more than 60 days, from the time of reading the prayer to respond to the petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

*(The Petition was referred to the Standing Committee  
on Roads and Transportation)*

## PAPERS LAID

### REPORT ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015

**Sen. Kivuti:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 16<sup>th</sup> June, 2016:-

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Report on the Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 (National Assembly Bill No.54 of 2015).

*(Sen. Kivuti laid the document on the Table)*

ANNUAL REPORT OF THE SRC FOR FY 2014/2015

**Sen. Mohamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 16<sup>th</sup> June, 2016:-

Annual Report of the Salaries and Remuneration Commission for the Financial Year 2014/2015.

*(Sen. Mohamud laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Let us move on to the next Order.

*(Several hon. Senators stood up in their places)*

Order, Members! I check the screen. I see three hon. Senators on their feet.  
Sen. Haji, proceed.

THE SIXTH BI-ANNUAL STATUS REPORT OF NACADA:  
APRIL - SEPTEMBER, 2015

**Sen. Haji:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 16<sup>th</sup> June, 2016:-

The Sixth Bi-annual Report of NACADA on Alcohol and Drug Abuse control status for the period April-September, 2015.

*(Sen. Haji laid the document on the Table)*

*(Sen. Ndiema spoke off-record)*

**The Speaker** (Hon. Ethuro): Order, Senator! Resume your seat. That is not your business.

Proceed, Sen. Karaba.

THE TRAFFIC (REGISTRATION PLATES) RULES – 2016

**Sen. Karaba:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
The Traffic (Registration Plates) Rules, 2016

ANNUAL REPORT AND FINANCIAL STATEMENT  
OF THE CRA FOR FY 2014/2015

**Sen. Mositet:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
The Annual Report and Financial Statement of the Commission on Revenue Allocation (CRA) for the Financial Year 2014/2015.  
A Brochure containing information on CRA.

**NOTICE OF MOTION**

ADJOURNMENT OF THE HOUSE PURSUANT TO THE APPROVED  
CALENDAR FOR THE 2016 SESSION

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.28(3), the Senate do  
adjourn until Tuesday 28<sup>th</sup> June, 2016.

Thank you, Mr. Speaker, Sir.

**COMMUNICATIONS FROM THE CHAIR**

VISITING DELEGATION OF MCAs AND STAFF  
FROM VARIOUS COUNTIES

**The Speaker** (Hon. Ethuro): Hon. Senators, before we move on to the next Order which is Statements, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting Members of the County Assemblies (MCA) and staff from Nairobi, Bomet and Wajir County Assemblies.

The MCAs who are members of the Committee on Delegated Legislation in their respective Assemblies are here on a one day benchmarking visit at the Senate.

I request each Member of the delegation to stand when called out so that he or she may be acknowledged in the usual Senate tradition.

Nairobi County Assembly:-

- |                        |   |                  |
|------------------------|---|------------------|
| 1. Hon. Pius Otieno    | - | Chairperson      |
| 2. Hon. Shadrack Juma  | - | Vice Chairperson |
| 3. Hon. Kennedy Oduro  | - | Member           |
| 4. Hon. Fredrick Njogu | - | Member           |
| 5. Hon. Samuel Njoroge | - | Member           |
| 6. Hon. Daniel Mari    | - | Member           |
| 7. Hon. Samuel Mwangi  | - | Member           |
| 8. Hon. Jaffer Kassam  | - | Member           |
| 9. Hon. Elkana Mauti   | - | Member           |
| 10. Hon. Wilfred Odalo | - | Member           |
| 11. Hon. Erastus Mburu | - | Member           |

12. Hon. Alexina Mudi	-	Member
13. Hon. Joyce Bocha	-	Member
14. Hon. Hawa Dafala	-	Member
15. Hon. Petronilla Achieng	-	Member
16. Hon. Martin Karanja	-	Member
17. Hon. Christine Abuto	-	Member
18. Hon. Monica Ndegwa	-	Member
19. Hon. Amina Mohammed	-	Member
20. Ms. Cammelyne Anguche	-	Staff
21. Abdi Mohamed	-	Staff

Bomet County Assembly:-

1. Hon. Beatrice Chebomui	-	Chairperson
2. Hon. Patrick Chepkwony	-	Vice Chairperson
3. Hon. Nancy Chepkirui	-	Member
4. Hon. Robert Bett	-	Member
5. Hon. John Molel	-	Member
6. Hon. Robert Metet	-	Member
7. Hon. Josphine Rotich	-	Member
8. Calvin Kitur	-	Staff
9. Joan Chemutai	-	Staff

Wajir County Assembly:-

1. Hon. Mulki Daud Sheikh	-	Chairperson
2. Hon. Katra Adawe	-	Vice Chairperson
3. Hon. Ousman Kuresh	-	Member
4. Hon. Aden Duale Khalid	-	Member
5. Hon. Abdi Kunow Hassan	-	Member
6. Hon. Zeinab Saney	-	Member
7. Hon. Aden Ibrahim	-	Member
8. Mr. Siyad Osman	-	Clerk

I hope that they have a fruitful programme. On behalf of the Senate, and on my own behalf, I welcome all of you to the Senate and wish you well for the remainder of your stay.

Thank you.

**Sen. Karaba:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it, Sen. Karaba?

**Sen. Karaba:** Mr. Speaker, Sir, on behalf of the Committee on Delegated Legislation - I being a Member and in the absence of the Chairperson - I take this chance to welcome Members of the Committee on Delegated Legislation from the three counties. They should be comfortable when they are here. I am sure that they have learnt a lot from us. They should share what they have learnt from us when they go back home.

**Sen. Haji:** Mr. Speaker, Sir, I thank you for allowing the three counties to come to benchmark with the Senate. I welcome the delegation from all the three counties that are with us today. I have a particular message for the people of Wajir County. I travelled from Garissa at 4.00 a.m after I brought together the people of Wajir South and Lagdera

who have been fighting over the boundary for the last ten years. I successfully mediated and they signed a peace treaty. I hope that when they go back, they will pass this message to the governor so that it trickles down to the public in those areas.

**The Speaker** (Hon. Ethuro): Indeed, hon. Members, we need to applaud the work of one of our distinguished Senators, Sen. Haji. He did it for those counties and also for Marsabit County. I think he needs special recognition.

Sen. (Dr.) Machage, I am told that Sen. Murkomen might require your services.

**Sen. (Dr.) Machage** : Mr. Speaker, Sir, as we welcome the hon. Members from the three counties to this Chamber, I am only concerned that we have not been able to see all of them when their names were called. It would have been a source of pride for us to see who is interested to know what goes on in this Chamber. I can assure them there is a lot to learn from the Senate. I would like the Senate to specifically invite the speakers of all the assemblies to come and see how we conduct our proceedings so that we have a uniform *modus operandi* in all the assemblies that resemble the Senate of Kenya. I have visited a few and I have seen some disparities in the way they conduct their business.

**Sen. (Prof.) Lonyangapuo**: Mr. Speaker, Sir, I join colleagues in thanking the three county assemblies for choosing to come to the Senate. I sit in the County Public Accounts and Investments Committee (CPAIC) where we see a lot of audit reports from both the county assemblies and executives. It is prudent that we encourage county assemblies in the whole Republic to come and sit in the gallery or sometimes visit the respective Committees to benchmark.

The audit reports from some counties are shocking. It is, therefore, important that the oversight teams in county assemblies take their role seriously to ensure that they are capable of safeguarding the money for the people of Kenya and to protect devolution which we are all proud of.

**The Speaker** (Hon. Ethuro): Which Senator is logged in as Temporary Card No.1?

**Sen. Kittony**: Mr. Speaker, Sir, I join you in welcoming the Members of the County Assemblies (MCAs). However, my name is Sen. Kittony. I am not temporary. It is only that I lost my card that is why I am not able to log in as Sen. Kittony.

**The Speaker** (Hon. Ethuro): Order, Sen. Kittony! You are completely out of order. You are an imposter. I called out the Senator with Temporary Card No.1 and you rose to speak. Why did you do so?

*(Laughter)*

**Sen. Kittony**: Mr. Speaker, Sir, I am not an imposter. I just do not have my usual card. You know me very well. They must have given me a wrong card.

*(Laughter)*

I join you in welcoming the three counties who have realized that the Senate is the custodian of the county governments. Therefore, they are in the right place. We welcome

them to see how we deliberate. I wish them a good stay in Nairobi and hope that they take our greetings when they go back.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I join you in congratulating and welcoming the MCAs from the three county assemblies. This venture by the MCAs to come to the Senate is useful and it will benefit their counties in matters of operations. About 30 per cent of the issues that are raised in the audit queries are due to lack of capacity. I am sure with them coming here, we shall have less audit queries that are as a result of lack of capacity in counties. I, therefore, welcome the MCAs that are here, particularly from Bomet County which I represent. I encourage them to come here more often and use the facilities of the Senate to improve their capacity in our county assembly.

VISITING DELEGATIONS OF TEACHERS/STUDENTS FROM  
ST. BRIDGITS AND KAMACHARIA SECONDARY SCHOOLS

**The Speaker** (Hon. Ethuro): Hon. Senators, I would like to acknowledge the presence in gallery of St.Bridgits Secondary, Kiminini from Trans Nzoia County and Kamacharia Secondary School, Murang'a County.

*(Applause)*

VISITING DELEGATION OF MCAs AND  
STAFF FROM KITUI COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery, this afternoon of visiting Members and staff from Kitui County Assembly. The Members of the County Assembly (MCAs) and staff are here on a five-day training at the Centre for Parliamentary Training (CPST).

I request each Member of the delegation and staff to stand when called out so that they may be acknowledged in the Senate tradition. They are:-

1. Hon. Peter Kilonzo – Chairperson of the Justice and Legal Affairs Committee
2. Hon. Stephen Kithuka – Chairperson of the Labour and Social Welfare Committee
3. Hon. Alex Ng'ang'a – Leader of Minority
4. Hon. Alex Munyoki - Member
5. Hon. Muve King'ala – Member
6. Hon. Titus Mbisia - Member
7. Hon. Patricia Kimanzi – Member
8. Hon. Catherine Kasimu – Member
9. Hon. John Nyamai – Member
10. Hon. Nzuki Wambua – Member
11. Hon. Jemimah Mbiti – Member
12. Hon. Joyce Mutemi – Member

They are accompanied by three Clerk assistants, namely:.

1. Mr. Japheth Kiamba
2. Ms. Mercy Kilonzi
3. Mr. Mathia Ket

I hope that they have a fruitful programme at the Senate.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.

Next order!

## STATEMENTS

**The Speaker** (Hon. Ethuro): Let us deal with the requests for Statements first. Please, proceed, Sen. Karaba.

### CONSTRUCTION OF KIRINYAGA SEWERAGE PLANT

**Sen. Karaba:** Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Roads and Transport regarding the construction of Kirinyaga Sewerage Plant. In the Statement, the Chairperson should:-

- (1) Explain why the construction of the sewerage plant has not yet commenced.
- (2) State whether plans to construct the sewage plant are still on.
- (3) State how much money has been set aside for the construction of the sewerage facility.
- (4) State who the contractor awarded the project is.

### ONGOING RENOVATION OF SAGANA-KAGIO-KUTUS ROAD

Pursuant to Standing Order No. 45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Roads and Transport regarding the ongoing renovation of the Sagana-Kagio-Kutus Road. In the Statement, the Chairperson should:-

- (1) State why the renovation of the Sagana-Kagio-Kutus Road has stalled.
- (2) State when the renovation of the road will resume.
- (3) Explain whether the road will be renovated to bitumen standards.
- (4) State how much funds were set aside for the renovation of the road.
- (5) State the completion date of the renovation works on the road.

### DELAYED PAYMENT TO FRENCH BEANS FARMERS

Mr. Speaker, Sir, the other statement is directed to the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding delayed payment of French beans farmers in Kirinyaga County by a company called Value Pak Food Limited. In the Statement, the Chairperson should explain:-

(1) Why French beans Farmers in Kirinyaga County have not been paid for produce delivered to Value Pack Limited last year.

(2) Measures taken by the Government to ensure French beans farmers in Kirinyaga County are paid their dues and protected from exploitation by brokers.

**The Speaker** (Hon. Ethuro): Sen. Karaba, I can see that you have three statements. Have you requested all of them? I heard two.

Did you put the three together?

**Sen. Karaba:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): So, you directed two of them to the Chairperson of the Committee on Roads and Transport while the Chairperson of the Committee on Agriculture, Livestock and Fisheries has one.

Regarding the one directed to the Chairperson of the Committee on Roads and Transport, let Sen. Obure respond.

**Sen. Obure:** Mr. Speaker, Sir, I am not very sure if the request on statement (a) is within the mandate on the Committee on Roads and Transport. However, we will seek clarification on that. In case it is, we will provide a response in two weeks' time.

On the second statement which is (b) ---

**The Speaker** (Hon. Ethuro): Order, acting Chairperson. That is why we print these things. We have heard the Member. Just give us when the response will be due. You will have your say that day.

Issue the response to statement (b).

**Sen. Obure:** Mr. Speaker, Sir, we will issue the response in two weeks' time.

**The Speaker** (Hon. Ethuro): It is so ordered.

Where is the Chairperson or the Vice Chairperson of the Committee on Agriculture, Livestock and Fisheries?

**Sen. Ndiema:** Mr. Speaker, Sir, we shall respond in two weeks' time.

**The Speaker** (Hon. Ethuro): It is so ordered.

Proceed, Sen. (Dr.) Khalwale, Senator for Kakamega County.

#### VACANCIES IN THE SUPREME COURT

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) to request for a statement from the Chairperson of the Committee on Legal Affairs and Human Rights on the vacancies that have arisen in the Supreme Court. The Chairperson should clarify the following:-

(1) Is the Government aware that the declaration of the retirement of Justices Kalpana Rawal and Philip Tunoi by the Court of Appeal which was upheld by the Supreme Court; and the exit of the Chief Justice Mutunga today has left a skeleton and headless Supreme Court which is technically functionless?

(2) In view of the vital role played by the Supreme Court, what is being done to expedite the recruitments to fill these vacancies?

(3) Why has the Government Printer refused to gazette the vacancies of the Chief Justice, the Deputy Chief Justice and the Judge of the Supreme Court in spite of communication in writing from the Registrar of the Judiciary to that effect?

(4) When will those vacancies be gazetted and advertised?

(5) what assurances are there that the process of recruitment of the next Chief Justice, especially, and the deputy Chief Justice and the Judge of the Supreme Court will be insulated against dark forces that are hell bent on creating a lame-duck Supreme Court.

**The Speaker** (Hon. Ethuro): What is it, Sen. Murkomen?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir, even as my Chairperson will give timelines, is Sen. (Dr.) Khalwale in order to direct his question through the Chair to the Government? Introduction to his statement states, “is the Government aware.” In reality we have a constitutional body which those questions should be directed to. Is it possible that we still have the hangovers of yesteryears of imperial presidency?

**The Speaker** (Hon. Ethuro): What is it, Sen. Khaniri?

Even as Sen. Khaniri gives his piece; well it is possible to have a hangover, but I do not see any hangover in Sen. (Dr.) Khalwale’s statement.

Secondly, the Judiciary is one arm of Government. So, whether he is directing to the Government, it will go to the relevant Government. Even by any stature of imagination, Sen. Murkomen does not belong to that particular one.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, allow me to indulge you. Could Sen. Murkomen confirm that he is a lawyer?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale!

In fact, I am overindulging you.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, in view of the point of order by Sen. Murkomen, could you confirm that, indeed, he is a lawyer.

**The Speaker** (Hon. Ethuro): Sen. Murkomen, you have been challenged.

**Sen. Murkomen:** Mr. Speaker, Sir, first of all, I am a lawyer and an advocate of the High Court of Kenya for the last 10 years. I am a former lecturer of law in five universities. I have two master’s degrees in law with distinction. Actually, it is *magna cum laude* from the University of Pretoria and the American University; Washington College of Law. Besides that I have done so many other things in this country in my capacity as a lawyer. The fact is that I am young but I have done a lot. The hon. doctor should know that I have earned my time to be here.

However, my question still stands. The Judicial Service Commission (JSC) is an independent constitutional office. It is not an arm of the Judiciary, the Executive or the Legislature. As a lawyer of repute, I stand by what I said. The question being directed to any arm of Government is misplaced. It must be directed to the necessary institution unless we have hangovers of the imperial presidency of the past.

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! Now you are treading on very dangerous grounds. You are the one with multiple hangovers. You have been challenged whether you are a lawyer and you must remain relevant to the question. As far as I am concerned, you have responded to adequately. It is an understanding I share with you. In fact, I thought the natural question about that is whether, between a lawyer and a doctor, who is privy to these deliberations better than the other one.

What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Is Sen. Murkomen in order to assert that he is a lawyer when he cannot even remember that the Government of Kenya has three arms?

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! You do not have to respond to everything, especially when the Chairperson is sympathetic to that alternative view. Before I direct, I want to put it to you that, that independent commission is chaired by the Chief Justice of the Republic of Kenya who also heads one arm of the Government. So, let us leave it there.

What is it, Sen. Murkomen?

**Sen. Murkomen:** Mr. Speaker, Sir, in his ruling two days ago, Justice (Dr.) Smokin Wanjala, my former lecturer, repeated that the independence of the Judiciary can be purely separated from the independence of the JSC. The mere chairmanship and representation of judicial officers in the JSC does not turn it to be part and parcel or an arm of the Judiciary.

In the same manner, the Kenya National Human Rights and Equality Commission (KNHREC) and all other independent commissions are not an appendage of either the Executive, the Legislature or the Judiciary. Unless we want to talk about constitutional issues, it is not correct for laymen to challenge professors of law on serious matters of constitutionalism.

**The Speaker** (Hon. Ethuro): Order, Senator! As far as I am concerned, Sen. Murkomen was challenged to confirm that he is a lawyer and not whether he is a professor of law. In his own submission, he could only confirm that he was just a teacher of law and not a professor of law. This House has real professors including; Sen. (Prof.) Lesan, Sen. (Prof.) Anyang'-Nyong'o, Sen. (Prof.) Kindiki and Sen. (Prof.) Lonyangapuo. So, we know professors!

*(Laughter)*

We live with these professors. So, you cannot teach us to make the distinction.

Even more substantially, Sen. Murkomen, are you trying to say that this House representing the people of Kenya cannot get information from an independent commission? You are emphasizing on what was not the issue. The issue was about the situation on the ground which information is being sought. You sat in this House during the issue on the Independent Electoral and Boundaries Commission (IEBC) and you never raised this matter, because you could argue the same way about the IEBC.

**Hon. Senators:** On a point of order.

**The Speaker** (Hon. Ethuro): Order! For the benefit of the lawyers in the House, the question was specific to one particular lawyer, to identify his credentials. It is not applicable across the board.

What is it, Sen. Ong'era?

**Sen. Ong'era:** On a point of order, Mr. Speaker Sir. Is the distinguished Senator for Kakamega, who happens to be the “bullfighter”, in order to ask about a question which has already been overtaken by events? If you read the *Daily Nation* newspaper of today, you will see that these jobs have been advertised.

**Sen. Hassan:** On a point of order, Mr. Speaker Sir. As a follow-up to that question, the Chairperson should also address the issue of how the independence of institutions relates with the Office of the Government Printer because we are privy to the fact that the Government Printer refused to gazette these vacancies yesterday. Therefore, that in itself interferes with the independence of the independent arms. We want a clear direction from the Office of the Attorney-General with respect to the independence of constitutional bodies and consequences for those who refuse to undertake assignments from the various independent constitutional bodies.

**The Speaker** (Hon. Ethuro): Let us have the last one by Sen. (Dr.) Khalwale.

**Sen.(Dr.) Khalwale:** On a point of order, Mr. Speaker Sir. You heard the distinguished Sen. Ong'era challenge me. She wanted to know whether I am aware that some newspaper advertised. I have two points to make especially this afternoon when we have visitors from our county assemblies. Is she in order to leave the impression that this House is run by newspapers and media houses? Further to that, is she aware that even if this House was to accept to admit that newspaper advertisement, it is null and void until and unless the vacancies have been gazetted in the Kenya Gazette? Is she in order to mislead the House and is she a lawyer?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Members. Sen. (Dr.) Khalwale, I had already directed that the question to Sen. Murkomen does not apply across the board. So, we should not be asking every other person the same question. I do not see the need why you keep shopping for a lawyer in the House because there is no legal emergency. In fact, when Sen. Murkomen stood on a point of order, I thought he was trying to support this Chairman because you talked of dark forces. I wondered how you expected the Committee to find out the dark forces.

Chairman, proceed.

**Sen. Wako:** Mr. Speaker, Sir, I am prepared to give a reply. Regarding the first question, apart from the use of the words "Skeleton and headless Supreme Court," I admit the rest; that the posts of the Chief Justice, the Deputy Chief Justice and one other senior judge are now vacant.

Concerning the second question regarding the vital role played by the Supreme Court and what is being done to expedite the recruitment, a lot is being done. That is why these gazettelements were sent to the Government Printer to be published.

Thirdly, he wanted to know when those vacancies will be gazetted. The vacancies are now being printed and they will be in the Gazette Notice of tomorrow. The only slight delay was because two notices were taken there signed by different personalities. So, that issue had to be cleared. It has been cleared and I have personally been assured that they are in print now. Gazette notices normally come out on a Friday. Therefore, they will be published tomorrow. That means that the JSC is already moving with speed to fill the vacancies. In fact, they have moved with utmost speed. You are aware that sometimes it takes seven days before a notice is done by the Government Printer. However, as soon as the ruling was made, they sent the notices to the Government Printer. One or two other

things happened when another notice was sent but that issue has been resolved and they will come out tomorrow.

Regarding the fifth question about the assurances that are there that the process of recruitment will be insulated against “dark forces”, there are no dark forces because I believe that the JSC is acting strictly in accordance with our Constitution. We have given the JSC the necessary independence to do that. They have already confirmed by moving with speed to fill the urgent posts that need to be filled. These posts will not be filled as it used to happen by mere consultation with the Attorney-General.

Article 172(2)(a) of the Constitution is very clear. Article 172(2) states that:-

“ In the performance of its functions, the Commission shall be guided by the following—

(a) competitiveness and transparent processes of appointment of judicial officers and other staff of the judiciary.”

So, that is going to be followed. Actually, I was a member of the Judicial Service Commission (JSC) when we appointed these very judges. We followed a very transparent process and it was on television---

**The Speaker** (Hon. Ethuro): Order, Senator! Please, complete.

**Sen. Wako:** Mr. Speaker, Sir, I am quite sure that, that process is being followed. I also draw the attention of the Senate to the fact that the Judicial Service Commission Act, whose amendment had the effect of giving three names to the appointing authority, out of whom he will appoint one, was declared unconstitutional. Consequently, in accordance with the Constitution, the President, in appointing the Chief Justice and the Deputy Chief Justice, shall do so on the recommendation of the JSC. In other words, there is no intermediary between that recommendation and the appointment by the hon. Chief Justice.

I am quite confident that the “dark forces” that the Senator, my *mukhwasi* from Kakamega referred to, will have no room. Things will go on as stipulated.

**The Speaker** (Hon. Ethuro): Order! I think that is a very satisfactory answer.

Sen. (Dr.) Khalwale, do you have any clarifications to seek?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, just a small one. Under our Constitution, it is only Madam Amadi, the Registrar of Judiciary, who could have requested the Government Printer, either directly or through somebody else, that this gazette be done. The Chairman has just disclosed that there were two such requests. That is exactly what I was pointing to; dark forces. Could the Chairman disclose who this second person is?

Finally, our biggest fear about the dark forces during this exercise is borne out of the fact that from 2013 appointments in public service have been attracting some form of ethnic affiliation with two or so communities in this country. Could the Chairman assure us that these dark forces, that have been advancing the tribal interests of two communities, will not again interfere with this process?

**The Speaker** (Hon. Ethuro): Sen. Wako, I think you had answered that question.

**Sen. Wako:** Mr. Speaker, Sir, I have already answered it. The JSC is acting properly.

**The Speaker** (Hon. Ethuro): Just answer the first portion.

**Sen. Wako:** Mr. Speaker, Sir, I do not know who it was, but I can assure Sen. (Dr.) Khalwale that there was some genuine mistake, which has been cleared. That genuine mistake was at the high level and not the low level.

*(Sen. (Dr.) Khalwale spoke off-record)*

There is no dark force. If I were you, I would not mention the words ‘dark force’ because you would be making allegations against very upright men and women of integrity in this country; men and women who have more integrity than even ourselves. So, I would not---

**The Speaker** (Hon. Ethuro): Order, Sen. Wako! Speak for yourself. From where I sit there are many men and women of integrity in this House. In any case, you are making references to some anonymous characters. Here, we know one another as Senator so-and-so.

Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, I want to find out from the Chairman whether the JSC is inclined to think in the manner that Sen. (Dr.) Khalwale has brought out.

**The Speaker** (Hon. Ethuro): Order! You need not respond to that, Chair.

Members, it is 3.45 p.m. and we need to move with speed, just as we are asking the JSC to move with lightening speed.

Sen. (Dr.) Machage.

**Sen. (Dr.) Machage:** Sen. (Dr.) Khalwale, in his question to the Chair, did assert that the head of Judiciary has hitherto always been from two or three communities, and the Chairman has not disputed or agreed to this. If he agrees, which are the three communities?

**The Speaker** (Hon. Ethuro): Order, Members! Sen. (Dr.) Machage, you are completely out of order. I disallowed it on the basis that it was related to issues of interference of independence. The Chairman quoted Article 172 (a), although I pointed out that even that Article has part “b”, which he has deliberately refused to talk to, but I suppose it is obvious.

Order, Senators! The last business is by the Senate Majority Leader on the business for the coming week.

What is it, Sen. (Prof.) Anyang’-Nyong’o?

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Speaker, Sir, I had requested to make a Statement.

**The Speaker** (Hon. Ethuro): I am not aware. Whom did you request?

**Sen. (Prof.) Anyang’-Nyong’o:** I requested you.

**The Speaker** (Hon. Ethuro): I now remember. I think it is because of the content of the request.

You will proceed after Sen. Murkomen.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 21<sup>ST</sup> JUNE, 2016

**Sen. Murkomen:** Mr. Speaker, this is the Statement of the Senate Majority Leader on the business of the Senate for the coming week, pursuant to the provisions of Standing Order No.45.

Pursuant to Standing Order No.28 (3) I will, at the appropriate time as listed in today's Order Paper, move a Motion for the Senate to proceed on a 10-day recess beginning this Friday, 17<sup>th</sup> June, 2016 as per the gazetted Senate Calendar. We shall resume sittings on Tuesday 28<sup>th</sup> June, 2016.

Allow me to thank and commend you all for the good work done so far since we resumed from the last recess on 31<sup>st</sup> May, 2016, which culminated in among others, the passage of the following crucial Bills: The Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016), The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) and The County Allocation of Revenue Bill (Senate Bill No.3 of 2016.)

I am certain that we shall continue in the same spirit when we resume, as we shall be considering the Committee of the Whole of critical Bills that are subject to a constitutional deadline. These Bills include: The Forest Conservation and Management Bill, The Protection of Traditional Knowledge and Cultural Expression Bill, the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No.54 of 2015), the Health Bill and The Petroleum (Exploration, Development and Production) Bill.

Hon. Senators, I take this opportunity to wish you a restful short recess, subject to the said approval. I hereby lay the Statement on the Table.

Thank you.

*(Sen. Murkomen laid the document on the Table)*

**SENATOR'S GENERAL STATEMENT**

ALLEGED DISORDERLY CONDUCT BY SEN.  
MBUVI SONKO IN CPAIC MEETING

**Sen. (Prof.) Anyang'-Nyong'o:** I rise, pursuant to Standing Order 45 (2) (a) to make a Statement on an issue of topical concern. As you may be aware, the Sessional Committee on County Public Accounts and Investments has been considering the Auditor-General's reports on financial operations of county executives and county assemblies for the Financial Year 2013/2014, pursuant to Articles 228 (b) and 229 (7) of the Constitution and Standing Order No.212.

I wish to bring to your attention that the Committee invited the county executive of Nairobi City County to appear before it on Wednesday 15<sup>th</sup> June, 2016 and the county executive and Governor obliged to do so. Pursuant to Standing Order No.199, the Senator for Nairobi County attended and participated in the session as a friend of the Committee.

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However, during the Sitting, the Senator for Nairobi presented various documents for tabling before the Committee, in relation to one of the audit queries under discussion. The admissibility of these documents is, however, still outstanding; awaiting determination by the relevant authorities in the Senate.

Despite the Committee accepting the documents, the Senator for Nairobi proceeded to level serious allegations against the Governor of Nairobi, his family and close associates, captured in the HANSARD of our meeting yesterday. This led to a verbal exchange, resulting in disorderly conduct and adjournment of the sitting indefinitely by me, as the Chairman. It is to be noted that the Senator for Nairobi County, Sen. Mike Sonko, insisted on being disorderly, notwithstanding several appeals by me and the Committee Members to desist from doing so and to respect the Standing Orders and procedures of the Committee.

Mr. Speaker, Sir, I seek your advice on various matters as follows:-

1. The scope of participation of a Senator, who is a non-Member of the Committee, as envisaged in Standing Order No.199 (2).
2. The psychological and physical security guaranteed to Senators and witnesses appearing before the Committee.
3. The admissibility of documents tabled before a Committee by a non-Member during a sitting, in which he or she attends as a friend.

Mr. Speaker, Sir, Standing Order Nos.200 and 175 envisage the procedure of a Committee to be nearly as possible the same as that in the Committee of the Whole. Further, our practices and procedures in the Senate dictate a level of decency and decorum in the conduct of sittings, in line with etiquette, established by history of parliaments, particularly in the Commonwealth.

The incident was, therefore, unfortunate and unnecessary, and may have caused embarrassment and dishonour to this honourable House. Further, this occurrence must have caused discomfort to the Governor of Nairobi, who by and large, has been a very co-operative witness to the Committee. The Committee desires to extend our apologies in writing to the governor.

Mr. Speaker, Sir, I seek your guidance.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise under Standing Order No.94 to be given an opportunity to make a comment on what the Chairman of the County Public Accounts and Investments has just said.

I was in that meeting yesterday and so were several other Members who I can see are in Plenary this afternoon. Whereas I want to agree with the Chairman of the Committee that the conduct of Sen. Sonko was disorderly, if we must be honest and true to fact, the Senator of Nairobi was provoked. Sen. Sonko was provoked when he started being frustrated in making his contribution, which he had been permitted by the Chair.

He was frustrated by points of order from the committee members, and in the process, he succeeded to insult the Governor of Nairobi using the bad words that our Chairman has talked about. Upon being challenged under Standing Order No.94, he then defended his words by tabling very damaging documents. So, as you make your ruling, do find that the Senator was attempting, in his own way, to substantiate his allegations and he did it using documents.

Finally, I would like the Chair to also guide us. Since our Committee has not met--

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale, which Chair? Are you referring to me?

**Sen. (Dr.) Khalwale:** I am referring to the Speaker himself.

**The Speaker** (Hon. Ethuro): Then make the distinction.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I request that you also guide our Committee. Since we, as a committee, have not sat to decide to extend apologies to the Governor of Nairobi County, are we, therefore, going to be seen to be apologising to the Governor even before we conclude the very investigation that Sen. Sonko is being accused of being disorderly? You should advise us very well on that one because we have a life outside the committees. We also have a political life outside this Senate. We can very well be misunderstood to be advancing an agenda that is supposed to sanitise witnesses who appear before the Committee.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I hold brief for nobody. However, I am just wondering whether this proceeding is in order because I am not certain whether we can actually proceed to discuss any Senator in his absence and without notice. Secondly, I am not certain whether we are violating our own Standing Orders to the extent that rules of natural justice are not applying. Thirdly and lastly, maybe you should give direction as to whether a matter of misconduct, as it is said by the two Senators, should come to the Floor of the Senate before it is discussed internally.

Now, the Senate appears to be issuing apologies that have not been sought for, or giving some repentance where it is not necessary. We are in the dark. This is where dark forces apply.

**The Speaker** (Hon. Ethuro): So, the authors of the words dark forces---

**Sen. (Dr.) Machage:** On a point of order.

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, first of all, let me make it clear that I do not want to be misunderstood that I may be condoning the behaviour of Sen. Sonko. However, the point of order as raised by---

**The Speaker** (Hon. Ethuro): Order, I can make this one abundantly clear.

**Sen. (Dr.) Machage:** Why do I not finish?

**The Speaker** (Hon. Ethuro): You cannot finish because if you continue on that route, you will be prone to danger. So, I am just warning you against the danger as you proceed.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I am so warned.

**The Speaker** (Hon. Ethuro): I have a legal duty to protect you from trouble.

**Sen. (Dr.) Machage:** Please do.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr. has rightly put it that we cannot discuss the conduct of any Senator without a substantive Motion. That is what I just wanted to clarify so that you are very sure.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, that is exactly what I want to raise. Are we in order to discuss the conduct of Sen. Sonko without a three-day notice for a substantive Motion to do the same on the Floor of the House?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I sympathise with the Chairperson, particularly when his statement is meant to protect the integrity of the Committee. He better listens because Sen. Mositet is distracting him. I sympathise with the Chairperson to the extent that the publicity that was generated by yesterday's events has implication on the Committee and the Senate. It can easily pass the wrong message to the world that even where we disagree with other people or the investigations that the CPAIC carries out are direct witch-hunt to the extent of going physical between governors and Senators. To that extent, the Chairperson has the latitude, even without consulting the Committee, to apologise to the rest of us and the country that what happened yesterday is embarrassing to the country.

When it comes to whether to apportion blame to Sen. Sonko or to defend Governor Kidero, that is the thin line that the Chairperson could have avoided because then, questions of evidence related to the Governor or the Senator cannot be substantiated. He should have avoided mentioning Governor Kidero and the Senator. The public spectacle yesterday; that there was a fight in the Senate in whichever way is something regrettable and not the kind of conduct, behaviour or manners that should represent the stature of our Senate, no matter how much you are provoked.

Mr. Speaker, Sir, yesterday, the Chief Justice challenges us to show statesmanship. Statesmanship must be demonstrated even in situations where you have evidence against somebody. Even where there is a behaviour of whatever manner, we must continue behaving in a very restrained manner on behalf of this House and the country.

**The Speaker** (Hon. Ethuro): Finally, Sen. Wako.

**Sen. Wako:** Mr. Speaker, Sir, thank you for giving me this opportunity. I can see that the Senate Deputy Majority Leader and the Chief Whip are already talking across each other. That is a type of behaviour that we do not want to see in this House. We are Senators and statesmen, but not---

**The Speaker** (Hon. Ethuro): Order, Sen. Wako! The Chair was not following. What did you say?

**Sen. Wako:** Mr. Temporary Speaker, Sir, Sen. Murkomen whom I respect quite much and I can confirm is an advocate with 10 years' experience in the profession. When he has done 15 years and if he behaves that way, the Chairman of the Senior Counsel may consider him becoming a senior counsel. However, I am surprised that he is shouting across to another very senior lady advocate. In fact, one of the most senior lady advocates we have in this country.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Wako to say that we were shouting when you did not notice or see us shouting? Secondly, do Senators shout? The only thing we do here is to consult and sometimes we do so loudly.

**Sen. Wako:** Mr. Temporary Speaker, Sir, if you consult, you should do it quietly when you are very close to the other person. I would have expected him to go near and consult. However, consulting from across is consulting too widely and interfering with the other people.

**The Speaker** (Hon. Ethuro): Order, Sen. Wako. You put me in a very awkward case to be sympathetic to your case. You put a case, but in the process, you seem to be enjoying what you are objecting to.

*(Laughter)*

Sen. Wako, proceed.

**Sen. Wako:** Mr. Speaker, Sir, I was present at this Committee together with the other Senators. It is true that what happened there is terrible and shameful because although it happens in the chambers of other parliaments, we do not expect it to happen in the Senate. However, blame must go where it lies. I do not want us to be directly or indirectly perceived that this matter was caused by Senators in that Committee as a whole. That is the impression that we are giving. I also do not want the impression to go out that maybe the Committee was not in control of the situation. This is the impression we are creating when we say that we have an apology. I can say, for sure, the Committee has not said that we do not agree that we give an apology to Kidero. If we use the words that it is desirable the committee gives an apology, the Chairperson should have waited for the Committee to meet so that we can discuss this matter. However, what is the apology for? It is not as the Deputy Minority Leader has stated. This apology that was mentioned by the Chairman is not to the country, he said it is to Kidero.

**The Speaker** (Hon. Ethuro): Order, Sen. Wako. Can you conclude? There is no one called “Kidero”; there is “Governor Kidero”.

**Sen. Wako:** Mr. Speaker, Sir, His Excellency Governor Evans Kidero.

**The Speaker** (Hon. Ethuro): Those were not my words.

**Sen. Wako:** Mr. Speaker, Sir, I just wanted to be more clear now. I want to inform the House that, that apology was not agreed on by the Committee as a whole because the Committee has nothing to apologise to an individual. That matter is still pending before us. We adjourned and we will meet again. But we as a Senate agree---

**The Speaker** (Hon. Ethuro): Order, Senator. Can you now conclude?

**Sen. Wako:** I am concluding, Mr. Speaker, Sir, by asking that you refer the matter to the Committee so that we can discuss it and come up with some conclusion on it. In other words, the Chairman of a Committee should not just come to this House without having canvassed the matter in the Committee.

**The Speaker** (Hon. Ethuro): Order, Members. I see the Chairperson wants to have a second bite at the cherry but I will not allow that for now because, one; there is no matter for us to dispose. I think these were just views on how to proceed on particular issues raised by the Chairperson of the Committee.

I would like to invite Members to look at the following Standing Orders. Let me start with Standing Order No.89 that indicates that we should not refer to the active proceedings of a Committee before they have been concluded.

Standing Order No.90 also indicates that we should also not discuss the conduct of a Senator or other persons.

Standing Order No.94, which Sen. (Dr.) Khalwale rose on, speaks on the issue of responsibility for statement of fact.

Standing Order No.93 speaks on Declaration of Interest whereas Standing Order No.184 indicates, amongst other things, that the Chairperson shall be the Spokesperson of a Committee.

Take your time, familiarize yourselves with those Standing Orders because I know you are all very literate and men and women of letters and you know what I am talking about. In the meantime, I direct that the Committee does not issue an apology until the matter is discussed by the Committee. Neither did I hear the Chairperson saying that he was to do so unilaterally. He only pointed out the process and the intention. I am extremely sympathetic to that view. We should not be the type of leadership that cannot say we are sorry if we are sorry. But we should not also say we are sorry if we are not sorry.

That is the position as things stand now. However, I know all of us agree, without apportioning blame, there is a certain conduct that is not expected of the Senators of the Republic of Kenya. It is only yesterday that the retiring Chief Justice told us as much. Most of you, in your contribution, will agree to it.

Chairperson of the Committee, I am an interested party and I want to get to know what actually transpired. A report has been compiled for my attention. I will follow it up. It is a matter that might attract the attention of the Powers and Privileges Committee, in our case the Rules and Business Committee. This is a matter that will not end at the Committee level. You can take that assurance wherever you wish to take it. Let us leave that at matter this point.

## COMMUNICATION FROM THE CHAIR

### REORGANIZATION OF BUSINESS ON THE ORDER PAPER

Hon. Senators, I would like to reorganize the Order Paper. Let us attempt to conclude orders No.9, No.10 and No. 20 today in that order. Senate Majority Leader, you know what to do if you realise that the time is gone; you can always extend time. In the meantime, instead of Motion No.8, we will start with the Motion listed under Order No.9 because I do not expect it to attract much debate. It is important that we conclude the Motion listed under Order No.10 also before we proceed on recess.

## MOTIONS

### ADOPTION OF REPORT OF THE RBC ON REVIEW OF THE STANDING ORDERS

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order 247, the Senate approves the Report of the Rules and Business Committee on amendment to the Standing Orders, laid on the Table of the House on Tuesday, 7th June, 2016.

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen. Read the words in the amended form. We have heard you and we know you. Repeat.

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move the following Motion in an amended form:-

THAT, pursuant to Standing Order 247, the Senate approves the Report of the Rules and Business Committee on amendment to the Standing Orders laid on the Table of the House on Tuesday, 7th June, 2016 subject to deleting the words “5<sup>th</sup> March, 2014” appearing in Paragraph 5 on page 7 of the Report and substituting thereof the words “5<sup>th</sup> April, 2013.”

First, I would like to acknowledge the work done by the Rules and Business Committee and note the efforts of Sen. (Dr.) Machage who raised questions related to the role of the Chairpersons Panel and the need of having a Rules Committee separated from the Business Committee.

I have served before in the Speaker’s Panel, thanks to you and the House. It is clear that there are a lot of issues that arise in so far as the management of the House is concerned. The persons who are serving in the Speaker’s Panel have no institutional framework of reaching back to you, the Deputy Speaker and the House. Having served in that capacity for three years, all our meetings were informal. They are not recognized in so far as the Standing Orders are concerned where minutes are noted and proposals for amendments of the Standing Order are done. Ways and means of managing the House are not achieved because the meetings are *ad hoc*.

It is important to note through this Report that there is a proper institutional framework for capturing both what has already been done in an *ad hoc* manner by this Committee and also going forward, giving an opportunity for you and those who serve in the Speaker Panel, the Senators who shall be nominated to serve in the rules and Business Committee. This will then separate the RBC as a composition of yourself as the Chairperson, the Senate Majority Leader and the Senate Minority Leader and other nine Senators to continue performing the other role as provided for in this Committee of preparing the calendar of the Senate and monitoring implementation of that business, among others.

This is a very important amendment suggested by the Committee and also being a matter that does not concern counties, but just related to the management of this House, and bearing in mind that there are already existing reports in so far as the work we are supposed to do before going on recess, I do not wish to say much. I would like to reiterate what you said; that in our conduct, whether in this precincts, or outside the Chambers, we have a responsibility that goes beyond the constitutional provisions of article 96. That is what I borrowed yesterday from the former Chief Justice.

That responsibility is provision of leadership at anytime, anywhere. Whether we are sleeping in our houses or in our constituencies, we always represent the institution of the Senate and we are part of the team that is called leaders of this country. As we prepare and ensure that our procedures and feedback system is well and our committees are working well, we must continue to remember that at such a time as this, the nation is watching us in our conduct, speech and behaviour.

The hot topic now is speech. Each one of us ---

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! There is plenty on Order No.8 on that argument. Let us just conclude this one. This is more procedural.

**Sen. Murkomen:** Mr. Speaker, Sir, I am just emphasizing. This particular Statement must be said all the time until Kenyans appreciate that one can be a leader without insulting others. It must be said until all leaders appreciate that you can make your point in a very lethal manner and very firmly without resorting to statements like “this community or the other, is backward”. The only thing accepted by the Constitution is to mention communities in a positive manner. To say the Kambas are lucky to have given us the duke of Makueni, that is a positive mention of our communities. If we go backward to mention the negative things, we will not move forward.

I move this report in its amended version and ask Sen. (Dr.) Machage to second, in recognition of his contribution to this amendment.

*(Sen. (Dr.) Machage walked to the Dispatch Box)*

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I bow.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, I am not sure that you actually seconded the Motion.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I bowed.

**The Speaker** (Hon. Ethuro): Why did you come to the Dispatch Box? You could have done it from where you were. For clarity, you either bow where you are seated or you say, “I second.” It is simple

*(Sen. (Dr.) Machage stood in his place and bowed)*

I am now satisfied that the Motion has been seconded.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I am sorry I was not in the House on 7<sup>th</sup> when the rules were being laid. However, I would have expected either the Mover or Seconder to tell us what informs the amendment to be backdated to 2013. We need to be clear as we support or oppose the Motion. Could you allow him just a second to do so?

**Sen. Murkomen:** Mr. Speaker, Sir, sorry I thought I mentioned it. If I did not, it is because the amendment must have been necessitated by a typo error. Instead of writing 2013 somebody wrote 2014. It is meant to coincide with the time just after the last elections.

**The Speaker** (Hon. Ethuro): Hon. Members, my understanding is that this Committee is like a hive off from the RBC. So, from the time that the RBC began its work, that is the period we are covering.

**Sen. Ong’era:** Mr. Speaker, Sir, I rise to support the amendment. As a Member of the RBC, this is an amendment that is fairly straightforward. It calls for the orderly

management of the committee, knowing that sometimes the Chair and the delegated Deputy Chair are very busy officers of the Senate. Therefore, this is quite orderly that we provide for another alternate chairperson.

You know that we, as leaders, it behooves us that at any time whether night or day, we are given the dignity that we deserve as Senators. Therefore, that is why I feel that police should not use excessive brutality and deny the rights of hon. Members of Parliament on matters that are merely misdemeanors. They are not really criminal offences in nature.

**The Speaker** (Hon. Ethuro): Order, Senator! There is a Motion coming up which gives you a lot of latitude to raise all those kind of issues. This is quite a specific Motion.

**Sen. Ong'era**: Mr. Speaker, Sir, I stand guided.

I support.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, I just have a problem with the date, 5<sup>th</sup> March---

**The Speaker** (Hon. Ethuro): Order! It is 5<sup>th</sup> April.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, it cannot be 5<sup>th</sup> March because I attended your Election of 28<sup>th</sup> March, 2013.

**The Speaker** (Hon. Ethuro): Order! What I have here is 5<sup>th</sup> April, 2013, which is past March.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, we have a different report. We are clear. We just like clarity.

**The Speaker** (Hon. Ethuro): That is right. We convened on 28<sup>th</sup> March, 2013. I can see your difficulty.

Order Members; since Sen. (Dr.) Khalwale and Sen. Mutula Kilonzo Jnr. are a satisfied lot, I do not see any other interest.

*(Question put and agreed to)*

Next Order!

THANKS FOR THE ADDRESS BY THE  
HON. CHIEF JUSTICE

THAT, the thanks of the Senate be recorded for the address of the Chief Justice of the Republic of Kenya, the Hon. (Dr.) Willy Mutunga, delivered on Wednesday 15<sup>th</sup> June, 2016.

*(Sen. (Prof.) Kindiki on 15.6.2016)*

*(Resumption of Debate 15.6.2016)*

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, you were on the Floor and you have a reminder of six minutes.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I was remaining with two points. The first point of the two is that I wanted to speak to the low moments that we have had in the Judiciary while the Chief Justice was in charge.

The first one is the 2013 contested presidential election between Hon. Raila versus President Uhuru Kenyatta. I expected that the Chief Justice would use this opportunity to speak to that election. If you were to ask all non-legal minds in this country, especially students of history, the best thing that they remember about that particular contested election was that evidence of about 1800 pages was set aside and the ruling was done in a record three minutes. Such a serious determination that was being made, when weighed against the determination of the retirement age, the ruling of the determination of the retirement age went on into the night for six hours. Yet, a more critical thing like the presidential elections was treated like a joke and comedy. Hon. (Dr.) Willy Mutunga will find it difficult to remove that black spot in his biography.

The ruling by the Judiciary on the impeachment of Governor Wambora of Embu will again remain a black spot in the auto-biography of Chief Justice, Hon. (Dr.) Willy Mutunga. Some of us who know Chief Justice Willy Mutunga and have worked with him elsewhere were expecting a slightly better performance by way of the approach on fighting corruption in the Judiciary. It is sad that purely because of corruption, the Judicial Service Commission (JSC) went through what it did when Chief Justice Willy Mutunga was in charge. To the extent that even the President attempted to interfere with that Commission at one stage.

*[The Speaker (Hon. Ethuro) left the Chair]*

*[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]*

The third low moment is for the people of Kakamega County. While Justice Willy Mutunga was the Chief Justice, in its budget, the National Assembly, passed and allocated Kshs280 million for construction of a court building in Kakamega but that money was taken to construct a High Court in Kirinyaga. This is not acceptable. The people of Kakamega will never forgive Justice Mutunga for taking the budget for Kakamega High Court to construct a High Court in Kirinyaga.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, on a point of information.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I do not want to be informed. I am an angry man because the people of Kirinyaga took our High Court. Sen. Karaba will make his point in his own contribution.

My last contribution on this important speech, which I am so proud of, is on the appointment of the new Chief Justice. There is a tendency in this country to want to muzzle leaders who want to speak to the important aspect of our Constitution, that is, inclusivity in making public appointments. It was the wish, thinking and spirit of the drafters of the Constitution that under the new Constitution, not a single community, not two, three or minority communities would enjoy public appointments at the expense of other communities in this country. Today, we have a country where the head of the

Executive and the head of the National Assembly are from one community. We also know the head of the Independent Electoral and Boundaries Commission (IEBC)---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I want to make my point.

**The Temporary Speaker** (Sen. (Dr.) Machage): Be fair. The Chair knows that what you are saying is totally not true.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I want to make my point especially in these times when our speeches are dissected under a microscope; one needs to be specific. I am driving this point in saying that the three arms of Government; the Judiciary, the Executive and the Legislature must not be held in the hands of a single community at any one time. It is our hope and desire, as patriotic Kenyans who want inclusivity, that the next Chief Justice must not be drawn---

Kenyans are now fully educated, including the Kuria and Turkana people, where the Chair and the substantive Speaker comes from. We would like a situation whereby we are spared the pain and monotony of that again. However, because people enjoy extended powers in this country, you will find that through whatever processes, again, the Chief Justice will be skewed towards two communities that are currently dominating appointments in public service. That is the point I am driving. I feel that under the Constitution of Kenya all of us - especially in this Senate - must stand up and be counted.

Mr. Temporary Speaker, Sir, with those few remarks, I support the speech.

*(Question proposed)*

**Sen. Gwendu:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to also add my voice to the speech by our outgoing Chief Justice. I applaud him for being the Chief Justice who served in the bi-cameral Parliament and in the new devolved system of Government. I would like to give him a heads up for that.

Mr. Temporary Speaker, Sir, the Chief Justice did a good job considering that devolution is not an event, it is a process. We expect that each day comes with a new thing yet he managed to handle it well. I remember the time when the Senate sought an opinion on whether we should be involved in issues of legislation. He did a good job for us on that. He clarified the relevance of the Senate in his speech yesterday.

I believe that he has supported devolution well and made us to understand that this is not an event that is meant to start at 8.00 a.m. and end at 8.00 p.m. It is a process and each and every person is supposed to play their role to make it a success and make us proud. This is the first Senate after devolution and we should make it work.

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, before I speak, am I in order to say that we have children in the public gallery who have not been recognized?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. Mutula Kilonzo Jnr. That is not your responsibility.

Please proceed.

**Sen. Mutula Kilonzo Jnr.:** Nonetheless, Mr. Temporary Speaker, Sir, I have said it.

Chief Justice (Dr.) Willy Mutunga has distinguished himself by addressing the Senate and being the first Chief Justice to do so and by deliberately refusing to address any other organ other than ourselves. The Chief Justice was very clear that the Senate is behaving like a toddler. If he did not say it properly, then allow me to say it. We are behaving like toddlers and we have been treated like so. I thought that this would be an opportunity for the Senate to pronounce itself in respect of our legislative responsibility.

I think that we should use this as a cue particularly because they have raised issue with the way that we have prioritised our work and the work from the National Assembly, while allowing our work to be put on the back burner; yet when I ask, you say that two wrongs do not make a right and that we cannot behave like everybody else.

Mr. Temporary Speaker, Sir, Chief Justice (Dr.) Willy Mutunga will walk away without the tag that the former Chief Justice Evans Gicheru or former Chief Justice Chunga walked away with. I would like to ask a question that I should have asked him when he was here; whether he thinks that he has left a Judiciary or a Supreme Court that is stable. This afternoon, only three judges appeared for the last ruling on his Bench. Before the lawyer Pheroze Nowrejee could finish his address, they all left. The ruling on the question of disqualification on the matter of the retirement left a bad taste in my mouth because the judges ended up accusing one another of many things, even sometimes of improper motives particularly on the order that was supposed to be heard on 24<sup>th</sup> June, 2016.

Mr. Temporary Speaker, Sir, the persons who contemplated having a Supreme Court had in mind a situation where we would have a fair arbiter. I did research on this particularly in the new Constitution. In a matter where the police through the Inspector General (IG) can abuse the rights of the Members of Parliament, that a Member can be denied the right to pray, who are we going to turn to? When we raise such issues, Kenyans say that it is time for the Members of Parliament to taste the medicine of how ordinary Kenyans operate. Do those two wrongs make a right? Who is going to save this country from what I call abuse and excessive power if not the Supreme Court? They have abdicated responsibility, some have refused to retire and we have problems on whether a gazette notice should be put up. Somebody has refused to gazette it yet we are talking about the highest court in of the land.

Mr. Temporary Speaker, Sir, although Chief Justice (Dr.) Willy Mutunga leaves an efficient Judiciary, 34 high courts and registries and proper administrative structures, unfortunately, the questions of corruption dogging the Judiciary have not been addressed on his departure. Instead, he has talked about bandits in his backyard and said that if you deal with them, you either die or go to exile. Therefore, what are people supposed to do about a Judiciary that is supposed to resolve the most ordinary questions?

**The Temporary Speaker** (Sen. (Dr.) Machage): Just an advice, usually, in the African context, at a funeral, whatever the character of the individual, people will always speak positively.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, that is true.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I subscribe to African culture in its full entirety and I could not agree with you more. However, are you suggesting that we are presiding over the death of the Chief Justice (Dr.) Willy Mutunga?

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): By analyzing Sen. Mutula Kilonzo Jnr.'s speech, he thinks that the Judiciary is dead.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, Sen. (Prof.) Anyang'-Nyong'o once made a speech at a funeral and the widow approached him and said: "I am sorry, you are not discussing the person we are burying today." This is because he praised the person.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it Sen. (Prof.) Anyang'-Nyong'o ?

**Sen. (Prof.) Anyang'- Nyong'o:** On a point of order, Mr. Temporary Speaker, Sir. I reported to Sen. Mutula Kilonzo Jnr. that somebody told me. So, it was reported speech.

**The Temporary Speaker** (Sen. (Dr.) Machage): Can Sen. Mutula Kilonzo Jnr. withdraw that remark?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I will just rephrase and say that he told me a story about a funeral where somebody made a speech about the deceased and after the funeral, the widow said: "No, you must have been referring to the wrong man. That is not the person I know." So, it is not correct that everybody is praised at funerals.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir, if we let the debate to proceed the way it is doing now, then we are going to set a new precedent. We have never had a debate in this House that is run in mysteries. What are the two distinguished Senators talking about?

**The Temporary Speaker** (Sen. (Dr.) Machage): Well, it is actually a non-issue. I would rather advice Sen. Mutula Kilonzo Jnr. to continue making his contribution.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir, for saving me.

Sen. (Dr.) Khalwale might not be aware that the expansion of courts is actually a programme that is being done through the World Bank. The system of ensuring that we have 47 high courts in 47 counties is through the work of Chief Justice Mutunga and I give credit to him.

There are issues about the determination of one of the most important jurisdictions of the Supreme Court in terms of the Presidential Petition. Kenyans are asking those questions that Sen. (Dr.) Khalwale is asking; that in the Presidential Petition, the Supreme Court left this country with more questions than answers. I am very specific.

Although the Elections Act has a provision that says that we may conduct our elections electronically, the Supreme Court should have been very clear about that aspect. It left it hanging.

On the question of the conduct of the Independent Electoral and Boundaries Commission (IEBC), the Supreme Court abdicated by pushing the question to another person instead of determining whether or not the conduct of IEBC in terms of the audit of the equipment was proper, fair and transparent. We must tell them. By abdicating, that question remains lingering to date and has never been answered. I do not think it will be answered in the near future because we are now dealing with other issues.

Mr. Temporary Speaker, Sir, in terms of the work of the Senate, I agree entirely with Chief Justice Mutunga in the manner that we conduct ourselves. I hope that when we come back from our recess, the Speaker will issue a direction on the Bills that are pending, including the one of Sen. (Dr.) P.S. Zani, and other Bills which Senators have put in a lot of effort. We must stop playing toddler in a situation where the Chief Justice is clear. If a Bill does not come to the Senate when it is supposed to come to the Senate and it is signed into law, it is not an Act of Parliament. We must say so.

Therefore, where the Chief Justice says we must act in the interest of this Republic, I will turn and look at my colleagues on the other side. He was most likely speaking about them more than us. If we have a matter coming to the Senate, it should not take political lines like we did with the Public Audit Bill and allowed amendments on it under Article 115 of the Constitution and had a sort of black and white or grey-area ruling as to what constitutes the work of a President when exercising veto power. We abdicated responsibility. I hope one day we will correct that historical mistake.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. As a legislator, you have the powers to move an amendment at the right time. So, stop crying.

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I thank you for allowing me to contribute to the Speech delivered by Chief Justice Mutunga yesterday. We listened to this very moving Speech. It was a milestone in the Judiciary. That Speech should be quoted and put in the annals of history. Chief Justice Mutunga came to the Senate and told us the truth about the impression he has seen about the Senate and how he views it outside the Senate. This is an impression that we have been battling with very many forces. At one time, we are reduced to a force that is belittled. We are not in the same position with the National Assembly. We are not even what we refer to ourselves as serving in the “upper” House as in other countries. We are an underdog; a House that is said not even to pass Bills. Bills are normally passed by the other House. Thanks to this gentleman who came to tell us the truth.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Are you sure that Bills are normally passed only by the National Assembly. Do not belittle your own Senate.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, we are not in a position like other Upper Houses elsewhere in the world, for instance, the United States of America (USA), Britain, Germany and Australia. That is what many people have not straightened out. Some people are ignorant to define the Senate. We, as Senators, are sometimes not well received when we define ourselves. However, since there is someone who came from

outside and works in the Judiciary, the Chief Justice; I assume what he did here yesterday was a final judgment. This is the “Upper” House. That is what he articulated. I was very happy to listen to his speech. I hope many Kenyans listened to this speech. The speech should be circulated to every citizen in Kenya so that they know what the Senate stands for and what it means.

Mr. Temporary Speaker, Sir, we have a lot of problems in this country as far as dispensation of justice is concerned. We have 48 county headquarters. Some lack proper structures. For example, a number of courts in some counties and sub counties leave a lot to be desired. It pains me to hear some leaders saying Kerugoya has the best facilities in terms of courts. It is just like many other law courts that we have in the country. It was not done by the current Chief Justice. It was done before. So, it is important to note that.

The other thing is that there are some courts you can easily see the presiding Judge because they are dilapidated. We cannot even refer to them as courts. They are semi-permanent structures. The Chief Justice should have come up with a policy to upgrade some of these structures they refer to as law courts. They are far below to be referred as such.

We also have a transition gap. As I speak, I cannot say whether there will be a Chief Justice in office from tomorrow. There should have been a proper transition system. This system should have been put in place earlier; say, six months so that we avoid creating a vacuum when the Chief Justice exits the scene. This was not done. We should not repeat it in future because this was a serious omission. .

In addition, we have many pending cases before our courts. For example, the Senate went to court over development fund offices. This matter has been pending for the last three years. We also have the case of the Early Childhood Education (ECD). This matter has been lying in the High Court. It has never been decided yet we have devolved functions and devolved funds. Most of the counties cannot employ ECD teachers. The court has not pronounced itself on the matter. Does it mean that some of these cases are so complicated that they take three or four years? If there is something else, it should be streamlined so that urgent matters are handled by the courts with the urgency that they deserve.

It is important, therefore, to note that we need to know the outcomes of these cases. It is sad to note that cases involving the rich are dispensed with immediately. In most cases, the rulings are made in favour of the rich. However, when a case involves a poor person who have stolen a chicken or broken a glass in a bar, the fine is astronomical. They are fined heavily. People who manipulate books of accounts, squander or steal public funds to the tune of billions are set free or not even asked to account for it.

So, there is a lapse and the Chief Justice should have told us exactly if the High Court and other courts in Kenya are addressing these issues. He should have told us whether you are rich or poor or whatever colour, justice is the same to everybody. It should not be a preserve for some and a detriment to others. Justice should be applied uniformly and people should be subjected to one common law; the law of mankind. Laws should not be applied differently to discriminate against others.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Wako:** Mr. Temporary Speaker, Sir, thank you very much for giving me this opportunity to make a contribution on a very important speech that was made yesterday by the Chief Justice. When he was making his speech, at times I did not quite follow what he was saying. When I read it afterwards, slowly, I found that it was pregnant with very many good ideas on how we, as a Senate, can move forward.

Mr. Temporary Speaker, Sir, I was fortunate to have served in the Judicial Service Commission (JSC) when the former Chief Justice was appointed. I want to say that the JSC made the right decision to appoint Justice (Dr.) Willy Mutunga as the Chief Justice and a lot has been achieved under his tenure. The judges have increased from 53 to 136. The Kadhis have also increased by about four times from 15 to 56. So, the Muslim Community is now being taken care of in matters of administration of justice. The High Court stations have increased from 14 to 34 with plans to add much more. In some of the counties where there are no such stations, the High Court Registry is there.

Mr. Temporary Speaker, Sir, when you talk about the gender issues, out of 25 judges of the Court of Appeal, eight are women and that is about one third. Concerning reducing the backlog of cases, whereas there were over a million cases when he took over, they have now been reduced to 420. That still remains a big challenge for the new Chief Justice.

Regarding infrastructure, courts have been constructed all over many counties and so on. About training of Judiciary personnel, the judges and their staff are now very much vibrant and in place. Therefore, the former Chief Justice has achieved a lot.

Mr. Temporary Speaker, Sir, when his tenure began, we, as a Senate - and he has supported the Senate - went to the Supreme Court and sought an advisory opinion on the Division of Revenue Bill. That particular judgement delivered by five judges who all read long judgements will remain forever one of the outstanding judgements of the court which has established the place of the Senate and the devolved governments. The problem in this country at times is not following the letter and spirit of the law and rulings that come, particularly from the highest court of the land and that will remain a challenge for the new Chief Justice.

Mr. Temporary Speaker, Sir, he challenges this House and that is what I want to focus on just a bit. He told us that there should be less politics and I hope there will be less politics. He told us that we should act and behave like the “upper” House and, indeed, we ought to act and behave as the Upper House. He told us that in our debates and whatever we do, we should rise above the narrow partisan politics and be capable of engaging beyond the ethnic lanes of the Kenyan politics.

Mr. Temporary Speaker, Sir, if there is one institution which can make this country rise above the ethnic divide, I believe very strongly that it is this House. Therefore, a heavy responsibility lies on each and every Senator to ensure that debates which take place go beyond the narrow partisan, ethnic and political divide. Some examples have been quoted about some legislation that was passed which was governed mainly by those considerations.

I will request every Senator to behave the way the Chief Justice has told us. It is easier for us – I saw it at the very beginning when we came here – because each Senator becomes a Senator because he or she is committed to devolution. Under the Constitution,

our job is to protect the interests of counties and county governments. Therefore, there is no need for you to stand as a Senator when you do not have the interests of devolution at heart. So, ideologically, both sides have one ideology; the protection of devolution in this country. Therefore, that ought to make us rise above the narrow political and ethnic interests that we are caught up in sometimes during the debates in this House.

He told us that we should be statesmen and stateswomen. Looking around, these Senators who have remained in the House are the statesmen and stateswomen and other Senators should follow that example. They should cease the habit of going away and leaving the House almost empty. That is what the Chief Justice wants, so that we play our role. In fact, he told us that we have not lived up to the promise of the Senate. The promise of the Senate has not been realised. To live up to the promise of the Senate, we must not only change our ways, but also it becomes necessary to amend the Constitution. This House has a committee which made excellent proposals for amendment of the Constitution to restore the Senate to its place. There is a committee which is supposed to carry that way forward.

Therefore, in order to fulfill what the Chief Justice said that we must live up to our promise, we should ensure that the amendments that our Committee ably drafted are enacted into law. I am always a pragmatist. I believe that may not be possible because some of them may require a referendum between now and the next elections. That is not possible, but those amendments are there.

It will very well be that the incoming Senate which will be elected after 2017 will be the one to carry that mantle forward. That is why I am sometimes disturbed when I hear that many of our senior colleagues now want to vie for gubernatorial seats. Most of these senior colleagues who want to leave this House know the track record of where we have reached, up to the point of specific amendments to restore this House to its dignity. If they leave and we have a new Senate or new people with only a sprinkle of old faces here, shall we really achieve that in the next elections? That is why I appeal to them. Of course, it is their right to stand for governorship, but I want to appeal to them not to do so.

From his speech, Hon. (Dr.) Willy Mutunga made it very clear and even made us know that we have not lived up to our promise. Therefore, this House still has some work to do and it requires able hands to do that. I would like to appeal to those Senators who have declared their interest for governorship to think again stand for re-election so that if people elect them, they will come back to this House and we will finish the job during the next term of the Senate. This will be my very strong plea arising out of the Chief Justice's address.

Mr. Temporary Speaker, Sir, as the Chief Justice leaves, the new Chief Justice will face great challenges. We have all observed some of the weaknesses in Judiciary. For example, there is weakness in expeditious disposal of cases. Although the backlog of cases has been reduced, there is need to have a system where the most urgent cases in courts, particularly those that touch on the operation of the Constitution itself, should be expedited and finalised quickly.

Mr. Temporary Speaker, Sir, we all know that this House met and exercised one of its most important functions. That was the impeachment of a governor. The very first

governor that this House decided to impeach is still in office as the governor. As the case was being heard and so on, he openly spoke at public rallies that he will be the governor until 2017. With that one, he has beaten us. Part of the problem was the Judiciary not hearing such cases expeditiously and with finality. The new Chief Justice will have to find a system where some of the important constitutional cases can be expedited and finalized.

The other issue is the handover. Having served in the Committee of Experts other committees, commissions and so on, one common theme was the chapter of the Judiciary. We justified the establishment of the Supreme Court because we were completely dissatisfied with the way the highest court of the land then, the Court of Appeal, was operating. There was no jurisprudence and many cases were not being heard on merit. Cases were being thrown out on technicalities of corruption, not just in the Court of Appeal, but also Magistrates Courts and the High Court. Therefore, we felt that the best way to uplift the standards in the Judiciary, particularly in the area of jurisprudence, was to establish the highest court called the Supreme Court, manned by very eminent persons from all walks of life in the legal system. These would be former judges, practitioners and so on. The JSC appointed the best among those who had applied.

We all agree that the Supreme Court has not operated as we would have liked it to. The Chief Justice is leaving it. There will be a vacancy in the position of Chief Justice, the Deputy Chief Justice and other Supreme Court judges. Therefore, the challenge will be how to put up some handover system. The Chief Justice gave a notice that---

**The Temporary Speaker** (Sen. Mositet): Order, Senator! You time us up.

Yes, Sen. Murkomen Onesmus Kipchumba.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, first of all, I would like to congratulate Justice (Dr.) Willy Mutunga, the former Chief Justice of the Republic of Kenya, for a very wonderful speech that he gave yesterday. I would also like to congratulate him for the five years he has been in leadership in the Judiciary. As human beings, all of us have our strengths and weaknesses. He did his job and completed his work. We wish him well even as he resumes other duties. I am told, as reported by the media, that he has been appointed a Commonwealth Ambassador to Maldives.

Mr. Temporary Speaker, Sir, Justice (Dr.) Mutunga joined the Judiciary from outside, having not served as a judge anywhere, but as a distinguished law professor. When I use the word “professor”, it is in the English sense of professing and teaching. He also taught a number of Members in this House, including Sen. Murungi and Sen. Kembi-Gitura. He also mentored very many people in the civil society sector and many other places. He came in with greater expectations to clean the Judiciary and restore a new order, using a new Constitution. It does not take five years to clean something that has been in problems since before Independence.

Mr. Temporary Speaker, Sir, I just want to point out that one of the most celebrated achievements of the Chief Justice would be the fact that he brought humility to the Judiciary. Personally, I appreciate the fact that he has been down to earth. You may not agree with him in terms of his decisions or anything, but we must recognise the fact that Justice (Dr.) Mutunga removed the Judiciary from the mystery of behind the scenes.

*(Loud Consultations)*

Mr. Temporary Speaker, Sir, I cannot even hear myself because of the loud consultations around you and I am struggling to concentrate. I request that you bring the House to order so that I can hear myself. I have overheard the loud consultations and I agree that Sen. (Prof.) Anyang'-Nyong'o was far much ahead of all of us.

**The Temporary Speaker** (Sen. Mositet): Order, Senators! Sen. Murkomen, continue.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, humility is one of the things that we will remember the Chief Justice for. He was down to earth and he could interact with every Kenyan. He was willing to respond to all of us, whether on *Twitter* or any other platform. Many lawyers who are practicing can bear me witness that Justice (Dr.) Mutunga responded to any letter that was written to him. He responded to all his correspondences whether in the affirmative or not. His interaction with the common *mwananchi* is commendable.

The second thing is that he has tried his best to take access to justice to places that were marginalized for a long period of time. That process is ongoing. There are efforts to build courts in Elgeyo Marakwet and other places that did not have High Courts, and that process is commendable. We also want to commend him for hiring new judges and increasing the number of judges in the Court of Appeal, the High Court and magistrates and also putting a lot of efforts in the area of training that is now a culture in the Judiciary. All these things are commendable. However, I want to disagree with my colleagues and the Chief Justice on a few things.

*(Loud consultations)*

Mr. Temporary Speaker, Sir, can you protect me from the Senators who are heckling?

**The Temporary Speaker** (Sen. Mositet): Sen. Murkomen, the Senate Minority Leader is not heckling. They are consulting.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I will talk about the decisions of the Judiciary starting with the presidential petition to the decision about the jurisdiction of this House on Division and Allocation of Revenue Bills.

We praise the Judiciary because they have remained consistent in making decisions. However, there are decisions we never agreed with. For example, how Gov. Wambora's issue was handled. There are places of law of correcting those issues, either in appeal or application. We may never have agreed with the decision of the Supreme Court on the presidency, but it is the same Court that gave the decision on the Division of Revenue. You cannot tell us that 'I love the court because they gave a decision on division of revenue that preserved my jurisdiction as a Senator. I do not like them because they made a decision on the presidential petition'. That is the hypocrisy that the Chief Justice was addressing; that we must remain consistence and be people of value.

We cannot just cherry pick what we want. It is the same Judiciary that cleared the Senate Minority Leader, which enables him to continue to serve, despite involvement in

an election malpractice in his constituency. At that time, we all celebrated. However, when they make a separate decision, you say “I do not like it.”

The Judiciary has made a decision to say that our colleagues, both in Jubilee and CORD were supposed to be in a police cell up to Friday. The same Judiciary released the Senate Minority Leader in this House. So you cannot say that we will storm the police cells because the Judiciary has made certain decisions that are not favoring you. You cannot say that it is wonderful because it is favouring you. That hypocrisy and short memory that is permeating our society must be eliminated and we must ensure that we, as leaders, remain consistent in our society.

Secondly, I did not agree with the Chief Justice yesterday when he talked about the tyranny of numbers. The opposite of the tyranny of numbers is dictatorship. Tyranny of numbers is, basically, a definition of democracy; which is clear in that the majority shall have their way while the minority shall have their say. The opposite of following the constitutional provision on tyranny of numbers, which is democracy, says that those who have numbers shall vote and win. After winning, the minority cannot go around throwing stones, teargas and so on. That is the position of democracy in our country. Anything else would mean that we are introducing the Iddi Amin rule to this country. We must start learning and believing that when we are defeated in elections and when defeated in numbers in Parliament---

I have heard conversation out there that mocks this House. That is what Chief Justice Mutunga was talking about; that we, as a Parliament, must protect the role of the institution of Parliament; of making law. I have heard even some colleagues discussing out that they will have a *Kamkunji* over a cup of tea and bring it to this House and brainlessly, we will come and pass whatever they have decided out. Which parliament is that in the world? Which constitution do these people read?

This House is an institution that gives us the opportunity to exercise democracy and use our brains. No one can dictate to this House, including the President of this Republic who is even not a Member of this Parliament. He can only request to be assisted in doing something, and we can decide to refuse. No President, governor, or opposition leader can dictate to this House what it is going to do. That is what Chief Justice Willy Mutunga was saying; that we must guard the institution of Parliament while doing what we must do as an institution; protecting the integrity of the House.

Mr. Temporary Speaker, Sir, the Chief Justice talked about protection of county governments. This is another area I do not agree with him. In his speech, he had the confusion that protecting county governments is protecting governors or protecting devolution is protecting governors. That confusion must be banished from our midst. The greatest threat to devolution are those who are presiding over serious pilferage of our resources, the stealing of our money, corruption, buying wheelbarrows with over Kshs100,000 and all kinds of corruption; these are the things that we fighting as a Senate. We, as a House, must be appreciated when we summon governors to come and respond to that kind of malpractice. In any case, we have been misunderstood by many people, as a House.

We have been here for less than four years. In those four years, we have managed to protect our jurisdiction and carry out very serious tasks. Remember, initially the whole

country thought that summoning governors by the Senate for accountability was the wrong thing, and that we were fighting devolution and governors. There is now a growing acceptability across the country that the only place to run to when you are talking about misuse of public resources is the Senate. That is a pointer to the fact that when you stand firm on what you believe and what you are supposed to do, that will lead to the situation that we are talking about now.

Mr. Temporary Speaker, Sir, one of the things that the Chief Justice must not confuse is the provisions of the Constitution and the judicial activism. Some judges have misused the word “judicial activism” to go on flair of their own and give orders that are not provided for in the Constitution or go to the extent of denying constitutional provisions. Look at the question of Gov. Wambora. If you ask yourself why judges have spent about two years keeping in office a governor who has been impeached when the provisions of the Constitution on impeachment were supposed to ensure that it becomes short as it is a governance question and tried in this House to finality; why would a judge say that we did not consult the public on the removal of a governor? How do you consult the public as though the public are the ones who are going to try, question corruption, stealing money and violation of the Constitution? It is this House that the Constitution gave the responsibility to do the trial, both for the President and for the governors.

Mr. Temporary Speaker, Sir, in issues of “judicial activism,” some judges have been compromised. They are pretending to be protecting governors and devolution, but in essence, they are compromising the very essence of the Constitution. Otherwise, although the Chief Justice was a great man of great brains, great ideas, and humility; he failed on the management question. There was a lot of bickering in the judiciary. You could just see the decision of Justice Tunoi and Justice Rawal and see the exchanges that the Judges had and the bitterness the judges had. That is a demonstration that the Chief Justice may have not succeeded in keeping judges of the Supreme Court as a team.

The question of removal Mrs. Shollei, Justice Tunoi and all those things exposed the fear that the Judiciary and the JSC would have done better in terms of portraying the institution of justice as an institution that is willing to listen to both sides and follow the due process of law with the presumption of innocence being in place.

Mr. Temporary Speaker, Sir, to a great extent, there was a lot of failure as far as management is concerned. Otherwise, the Chief Justice is one man I would be more than happy to continue interacting with even after his tenure because of his immense knowledge, humility and ability to listen to various ideas. This is what we need at a time such as this.

We, as a House, must be able to stand up against what is wrong, whether it is done by our political side of the divide or the opposite side. We must stand firm, particularly on the question of hate speech. We must stand to be counted and say that all animals are equal and must be treated equally before the eyes of the law, whether it is by a Jubilee Senator or a CORD Senator.

The citizens of this Republic must be able to punish each one of us, as a leader, who is going to propagate hate and violence because if they do not do so, they lose their positions as our bosses over all of us who are being paid by taxpayers to be able to

maintain a country. If we lose this nation to violence, there will be no Senate to preside over a country because we would have already lost the fabric of this Republic.

I beg to support and wish the Chief Justice the very best in his new assignment within the Commonwealth and any other responsibility that he will undertake. I believe that he will continue to set an example for those of us who are in office not to remain in office forever.

**The Temporary Speaker** (Sen. Mositet): Sen. Musila, what happened? I went through and found that his card had been removed. He is the one who was supposed to come after Sen. Wako.

*(Sen. Musila spoke off record)*

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Temporary Speaker, Sir, I am sorry. When I went out to receive a phone call, somebody came and messed up with my seat, but that is okay.

As the Chief Justice leaves office today, it is regrettable that he leaves at a time when we are going more or less backwards in terms of the institutionalisation of democracy in this country. What has been happening in this nation in the last three weeks is really a throwback to old times. There is growing authoritarianism. In the last two days, we saw what amounts to detention without trial. The police abuse of people in custody last Monday was in the headlines of our papers. There was a police officer here in Nairobi County directing the police to use maximum force against citizens exercising their rights under the Constitution. This is not a good omen for the kind of society the Chief Justice struggled for.

I was with him at the university when he was our chairman for the University Staff Union (USU) which has transformed to a Union so that all workers in the university from a sweeper to the cook, secretary, lecturer and professors could belong to one union because their employer was one person. He removed the previous class distinction between academic staff association and the union as workers under the Domestic and Hotel Workers Union, so that there could be real social equality among product workers in the university. We chose the Chief Justice as our chairman. Unfortunately, almost all of us who were leaders in that union either ended up in detention, police custody or were forced to flee the country as forced immigrants elsewhere in search of peace and freedom.

Mr. Temporary Speaker, Sir, this is the kind of society that we thought we had left behind. Unfortunately, if you look at Article 51(1) of the Constitution under the rights of persons detained, held in custody or imprisoned, it says:-

“A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right of fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.”

There cannot be a right incompatible to being healthy because under Article 43 of the Constitution, every Kenyan has a right to health, education and so on. So, when a

detained or a person held under police custody – detention without trial was abolished by this Constitution – is denied access to medicine, that goes against Article 51(1) of the Constitution.

Further, we know in the history of this country, of persons who have died as a result of being denied access to health. One was Mr. Adungosi who was a student leader at the university and who was detained. The other was Hon. Okello Odongo who was the first Member of Parliament (MP) for Kisumu Rural, who died in Kodiaga Prison because he could not access his hypertensive drugs. To add insult to injury, the late Mr. Otieno Ambala, who was under arrest and in prison awaiting trial for the alleged involvement in the murder of Mr. Owiti Ongili, also died as a result of not having access to his hypertensive drugs. Hon. Kenneth Matiba was mentioned yesterday. He suffered a stroke which disabled him as a politician as a result of not having access to his hypertensive drugs in detention. There are living examples of persons who have died as a result of being denied access to good health. Fortunately, this has now been dealt with in Article 51 of the Constitution but is currently being abrogated by this Government.

The Chief Justice leaves the stage of leading the Judiciary in this Nation at a very sad time. I was telling him yesterday that we need him now more than ever. Unfortunately, he made a principled stand that he should give the Judiciary time to choose his successor when he is out, one year before he was due to leave. This makes a very sad reading of his other two colleagues, Justice Kalpana Rawal and Justice Tunoi, who although the Constitution is very clear on the retiring age, have dragged the Judiciary through a very painful process that we, as Senators, have watched with astonishment. We hope that as the saga ends, the Judiciary can move on to choose members of the Supreme Court through the JSC without much agony.

The Chief Justice also leaves the Judiciary at a time when the lands and environment courts are still suffering from lack of efficiency. In the land and environment court, I know of a case which has dragged in court for 29 years and has not, as of now, been determined. I know of another case which has dragged in that court since 2008 and has not yet been determined. I have previously written to the Chief Justice about this particular one in Kisumu County, and I am told that the lands and environment courts are that inefficient because of lack of judges. I would imagine that after the Judiciary has been investing heavily in infrastructure, land and environment being so critical to the economy, because you cannot invest without access to land, the first division that should have been made very efficient was the land and environment courts.

Many people are suffering. Indeed, some of the issues that we ourselves in the Committee on County Public Accounts and Investments encounter relate to land and environment in the counties, particularly issues related to assets of the county governments. If these courts were efficient, then county governments could take these cases there to be decided on expeditiously.

The other issues that I want to draw the Chief Justice to, he said that he will write a book. I hope that contrary to what Sen. Murkomen said here earlier, I do not think the issues of the Court of Appeal decision in the year 2013 is an issue that we can talk about in terms of partisanship. This issue relates to the Constitution. Article 151 of the

Constitution reads as follows and it is entitled, Judicial Authority. For the record, I will read it *in toto*, particularly (1) and (2).

**The Senate Minority Leader** (Sen. Wetangula): *In extenso*.

**Sen. (Prof.) Anyang'-Nyong'o**: Yes: *In extenso*. Thank you, Sen. Wetangula. Article 159 states that:-

(1) Judicial authority is derived from the people and vests in and shall be exercised by the courts and tribunals established by or under this Constitution”

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

- (a) Justice shall be done to all irrespective of status;
- (b) Justice shall not be delayed;
- (c) Alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to Clause (3);
- (d) Justice shall be administered without undue regard to procedural technicalities.

That is the point I want to make. When the Chief Justice came into office, I paid particular attention to his inaugural speech. He said, under his jurisdiction, charge and care, justice shall be determined without undue regard to procedural technicalities. Unfortunately, when it came to an important case in the Supreme Court to determine who will be the President of this country, after a troubled and doubtful election, the decision was made on a technicality. The technicality was that the affidavit of CORD that had been taken to court - according to the bench - was taken too late. Those are the kind of technicalities which should---

Recently, in Uganda, Amama Mbabazi took his case to court and took affidavits at the time when the judges could have said it was late but they extended the time and allowed more affidavits to be filed in the court of Uganda. Notwithstanding the fact that the judge finally made a decision that was doubtful or doubtable in terms of justice. At least, in terms of not making a decision on the basis of technicalities, I salute the Supreme Court in Uganda and put a question mark on our Supreme Court in 2013 for making an important decision on the basis of technicalities.

I hope that when the Chief Justice writes his book, he will come out clean and clear on the troubling issue that has troubled the souls of many Kenyans since the last presidential elections. Of course, in magnanimity, we said that we do not agree with the decision but we accepted it so that the nation can move on. A few months after that election, the former Prime Minister - again in magnanimity - wrote to the President after he came back from his sabbatical leave asking him for a chance to discuss important matters that can reconcile the nation.

The Truth, Justice and Reconciliation Commission's (TJRC) Report that was chaired by Ambassador Bethwel Kiplagat is still there. This nation is burying its head in the sand like the proverbial ostrich. It is not coming to terms with the TJRC Report. That is why the soul of this nation is troubled. All these trials and tribulations are visiting us because we have refused to confront the devils in our midst and the sins of omission and commission. I pray and hope that after the elections are over we can have the truth and reconciliation process going on.

This was an important report. This nation must confront its skeletons and not bury its head in the sand like the proverbial ostrich. Otherwise, from time to time, we shall have this crisis tearing the soul of the nation because we have refused to confront those dark spots in our lives that we need to sort out.

Mr. Temporary Speaker, Sir, the resurgence of hate speech in this country is not individual; it is within a social and political context which has not sorted out some of its wrongs in the past. For the sake of national cohesion, I hope that the new Judiciary will cooperate with the rest of the arms of Government to make sure that this is done. One previous Senator spoke and said that certain decisions made by the Judiciary have been troubling citizens who require justice in courts. The judges and the Judiciary should not turn a blind eye to some of these pleas and complaints. The highest court in this land is the Supreme Court. The highest body that appoints judges is the JSC. Since these two bodies are the highest institutions in the judicial system, they should reflect on some of the issues that disturb Kenyans. I hope that they will rise to the occasion.

I beg to support.

**Sen. Musila:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this important Motion. On the onset, I support it. I take this opportunity to congratulate the Chief Justice who is retiring today. As the Senator for Kitui County, I am proud to be the Senator of this gallant Kenyan. We all remember about five years ago when the hon. (Dr.) Willy Mutunga took office because we were around.

When he took office, the Judiciary was in shambles, riddled with corruption and many ills. It had a backlog of cases, some lasting many years unheard and a closed Judiciary where no one was expected to be heard or be near a judge. All this has changed given that within a period of five years, with a rotten Judiciary as it was, certainly, things cannot be 100 per cent as of now.

Yesterday, the outgoing Chief Justice outlined what he has been able to do. I was impressed because training has been given priority within the Judiciary during his time and improved remuneration of judges and other staff of the Judiciary. I mentioned about the issue of open courts. For the first time, Justice Mutunga made it possible to have an open day for the courts where people could go and be educated on the procedures that are followed in the court system. This is history because it has never been done before.

Mr. Temporary Speaker, Sir, he mentioned the issue of reducing the backlog of cases from an estimated 1 million pending cases when he took over to over 400,000 cases. The numbers of judges that have been increased since Justice Mutunga took office are there for everyone to see. For the first time in the history of the Judiciary, people are able to access the High Court within their areas, particularly, areas that had been marginalized and which could not access a High Court judge. Today, nearly all the 47 counties have judges. Therefore, I give him credit. If we are lucky to get another Chief Justice of the same mind, in a short while, this country will be proud of its Judiciary.

There is no doubt that there have been challenges. Corruption within the Judiciary has always been there. You recall that there was the so called 'surgery' which was ordered by Sen. Murungi when he was Minister for Justice. It was a cosmetic surgery

because we know that it was ethnically based. The good judges were retired and the corrupt judges remained.

Mr. Temporary Speaker, Sir, the Judiciary has continued to suffer from corruption. As the Chief Justice leaves, he is aware and has accepted the fact that the Judiciary still remains very corrupt. It is my hope that action will be taken because that is where the public should run to. Cases have been cited here, for instance, the case of Gov. Wambora who was properly impeached by the Senate but he is still in office. Therefore, there are still challenges within the Judiciary but we must give credit to the outgoing Chief Justice because he has done his best.

One of the greatest challenges that the outgoing Chief Justice mentioned was the protection and defending of the Constitution. In his speech, the Chief Justice said:-

“The Judiciary has changed significantly in ways seen and unseen. The Judiciary has gallantly defended and protected the Constitution even when it might have been politically convenient not to do so.”

That statement is both correct and incorrect. We are talking about the basis of human rights that have been going on in this country. I do not say this because of our colleagues who are in custody. This country is progressively moving from an observation of the Constitution to anarchy. It was in this House that we were asked to approve the appointment of one Mr. Boinett, the Inspector-General of Police. I am proud that I stood on the Floor and objected to the appointment of the Inspector-General of Police because looking at his Curriculum Vitae (CV), I felt that he was not competent to lead the Kenya police force. I have been proved to be right because ever since that gentleman took over the reins of leadership of the Kenya Police, every Kenyan sees police officers and runs away because of the brutality that has been exhibited by his force. People who are just assembling are subjected to beating and teargas for no apparent reason.

Mr. Temporary Speaker, Sir, yesterday at Pangani Police Station, I was astonished and embarrassed to see ordinary *wananchi* being tear-gassed for nothing just because they were standing in front of the police station waiting in the event they are allowed to see the people being held in custody, not necessarily the Members of Parliament. I had to engage the young police officers and ask them whether they knew what they were doing and why they were tear-gassing those people. They said that they had orders to do so. It was not because the members of the public were doing anything bad or rioting.

I saw a very pregnant police officer with teargas canisters on her tummy. God forbid, those canisters did not bust on her tummy. How does that happen in a country that the Chief Justice says that he has defended and protected the Constitution? This is a serious matter and when we on this side talk about it, people dismiss us as the Opposition. The outcry of Kenyans in this Republic is that the police have become so brutal that if you see a military officer, you go and embrace him and when you see a police officer, you run away yet they are the people who are supposed to protect human rights.

Mr. Temporary Speaker, Sir, this morning, I managed to visit the cells where our colleagues are being detained. You cannot imagine that any Kenyan in a country like this one that has been independent for the last 53 years can be put in that situation. Thanks to

this House; I was informed that after our debate last evening, they rushed and gave them medicine and water. However, those people continue to be hungry and cold. Their spouses took clothes to them to change but they are not allowed to see them.

Article 51 of the Constitution is very clear on what should happen to people who are detained. Whereas, they should enjoy all their rights; they should only be denied freedom. They cannot be denied the right to a proper toilet, food, clothing or medicine. Therefore, when Senators say that we are going back to the 1980s, I say that we are going back to the colonial times. I hope that the Judiciary will take its place in the history of this country and refuse to accept the rights of Kenyans to be abused in the manner that I have seen in the last few months. I was a victim a few months ago.

Senators were referred to as statesmen and women. We started as statesmen because we voted and handled issues together. I remember that we even went to the Supreme Court together but somewhere in the middle, our friends ran away. We rejected the Audit Bill the other day. However, when we were on recess, our brothers and sisters went to State House and conspired without informing us and then they came here and passed it. That is not how statesmen and women behave. I am calling upon Senators from both sides to be statesmen and women as challenged by the hon. Chief Justice.

Mr. Temporary Speaker, Sir, we have always voted in a bipartisan manner and embraced each other, however, there are certain incidences which have happened, our brothers and sisters on the opposite side appear to depart from the peaceful statesmanship. If that continues, we will not be defending devolution which this House is mandated to do in the Constitution.

I take this opportunity to applaud the gallant son of Kitui County and wish him good retirement. I am sure that the whole world will be ready to receive his expertise because at 69 years, he is too young. He will continue serving the country and the world.

I beg to support.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, there is a lot of demand to contribute to this matter yet we still have another Motion, I urge the rest of the Senators to restrict themselves to five minutes.

Sen. Lesuuda!

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I saw the Senate Minority Leader in the House and thought he would get the Floor before me.

**The Temporary Speaker** (Sen. Mositet): I want him to hear what you will say.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, first of all, I would like to congratulate the outgoing Chief Justice and President of the Supreme Court for his excellent address yesterday. I am so happy that I was in this House when he addressed it. I listened to him very keenly and his speech affirmed something that I have always thought about. He spoke about something that I have always thought about. Even if we fight and argue whether the Senate is the “Lower House” or the “Upper House,” we have dealt with our issues in this House in a bipartisan manner as captured by the outgoing Chief Justice in his speech. He called upon us to continue to be statesmen and stateswomen of this country in our words and action. I hope we will continue to do so in this House.

Today we are celebrating the day of the African Child. We remember those children who participated in the Soweto Uprising in 1976. It is also a day marked by creating awareness about quality education of the African Child. It reminds us of the struggles the outgoing Chief Justice and others who put this country first have gone through to ensure that we enjoy some of the rights and freedoms.

It is important to go further to what he spoke about in ensuring that we build a Kenya that all of us will be proud of. I have said this in other fora and I will also say it here on this Floor because as we move closer to elections we are witnessing political temperatures rising in this country. Hate speech should not be condoned by this Senate and country.

We can only be seated in this Senate, have a President and even an opposition leader to lead this country if we have peace. In the absence of peace, we cannot transact business in this House. Anybody who incites members of the public to violence must face the full force of the law. No person is above the law. No person should be allowed to incite other Kenyans. No one has a right to evict a Kenyan from one place to another. We should continue to be united as one nation. We can compete in elections and any other thing, but ensure that we have one country that we can be proud of.

Mr. Temporary Speaker, Sir, the former Chief Justice said that the Constitution created the Supreme Court, devolution and the Senate. He went further to say that there is an inclusion of all Kenyans. When you see some of us seated in this House, it is evident that the one-thirds rule which gives women, minority and persons living with disabilities the opportunity to participate in nation building is respected. That is the country we want to build; a country where no person is left behind. We, as a nation want to move together to correct the injustices that were committed against some communities for a long time.

There are many things that we also attribute to him and his leadership. The other day, they advertised for a tender to construct a law court. They are now constructing a law court in Maralal. He said that when he took over even washrooms were an issue. We took it as a joke, but that was the situation. It is a fundamental issue. He achieved a lot. This was not a mean feat. We should be proud of cases being expedited in the Judiciary.

With those remarks, I beg to support.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I hope you will give me 10 minutes. I would have talked about Chief Justice Mutunga's failings for the next 30 minutes.

Justice Willy Mutunga was my teacher and close friend. When he was nominated to be appointed - the HANSARD will bear me out - I spoke in very positive and extravagant terms about him with great promise.

The general rule of thumb is that when you are given a job to do, you must leave the institution you head better than you found it. As I congratulate the distinguished Senator for Kitui for his county having produced two Chief Justices for this country since Independence; the late Justice Kitili Mwendwa and Justice Will Mutunga, that is where my congratulations end.

Mr. Temporary Speaker, Sir, Justice Willy Mutunga leaves the Judiciary worse than he found it. For the last five years, there is not any quotable distinctive judgement

either as *obiter* or *ratio decidendi* that you can quote of Justice Will Mutunga. You cannot compare him with greats like Justice Chunilal Madan, arguably the best Judge this country has ever had and one of the best Chief Justices.

In the reign of Justice Willy Mutunga at the Judiciary, we have seen it degenerate into an abyss; judges suing each other, something that we never heard before. Judges challenging even basics like their retirement age. These are management things he could have managed, for instance, judges abusing him and all manner of things. I have practiced law for the last 33 years in these courts. Today, I can say without any fear of contradiction that the level of corruption in the Judiciary is higher than ever before. Justice is for sale to the highest bidder at every level.

This is the legacy of Justice Willy Mutunga. He came in with a new Constitution with a new Bill of Rights, new promise and new future for the country. Everybody looked at the Judiciary as the arm of Government that has the capacity and power to check on the other two arm's excesses; for instance, excesses of Parliament, if we pass a bad law, they can strike it out.

The excesses of the Executive - if they behave the way I see my friend hon. Nkaisserly behave - can deal with them.

However, what have we seen? The Judiciary is now a helpless cheerleader of maladministration, corruption and all manner of vices that are taking this country back. For the first time in the history of the Judiciary - look at this girl called Mrs. Shollei - it is embroiled in all manner of corruption, including Kshs69 million taken from the Judiciary, ostensibly for the inauguration of the President. That was not a judicial function. How would you take Kshs69 million from the Judiciary for the inauguration of the President? This is corruption.

We have cases where Justice Willy Mutunga went to Kakamega and said: "We have a budget of Kshs320 million to build a new court." The police even surrendered land to build a new court. Within two months, he came back to Nairobi and transferred it to Kerugoya. I am sure this was political arm-twisting. If a Chief Justice can be politically arm-twisted, then he was not worth what he was supposed to be.

Mr. Temporary Speaker, Sir, looking at the structure of the constitution of the Bench and the Judicial Review Bench, there is a young gallant Judge called Mumbi Ngugi. She is courageous, brilliant and very strict with matters of rights. She kept on issuing good orders to protect people's rights in Kericho. It is not that Kericho is not a court but the biggest abuse of rights in this country is at the centre here in Nairobi. If you look at the constitution of the Bench on constitutional issues, it is the same thing. So, when Willy comes here to pontificate on his imagined successes, I feel very sad because there has been none. He claimed to have reduced the number of cases but there are more judges than before. So, one would expect that to follow as a matter of course. We want to see how the Judiciary has managed the affairs of this country.

Mr. Temporary Speaker, Sir, concerning the all important presidential petition, I was embarrassed beyond belief to see the Chief Justice, who is the President of the Supreme Court, purport to read a judgment like a man under captivity for two minutes. He stood there trembling and read a judgement - if you can call it a judgement - for two minutes. Is that the Chief Justice to laud or talk about?

Mr. Temporary Speaker, Sir, today we have been to Pangani Police Station. Now, more than ever before like Sen. Musila said, the police are trampling on people's rights with total abundance. I said that detestable as Moses Kuria is in his utterances and behaviour, he has rights that must be protected and defended. Nobody has a right in a matter of hate speech to lock up anybody, leave alone an MP, for four days ostensibly because you are investigating.

I laud the magistrate who said that Babu Owino cannot be held in custody because all the witnesses listed in the charge sheet are policemen and he is unlikely to interfere with policemen who will be witnesses against him. The case of our colleagues who are in custody is one case which the High Court, properly functioning, does not even need anybody to move it. It can go by way of case stated, place the file before a judge and review the order locking up our colleagues who are in total squalor.

Mr. Temporary Speaker, Sir, we were at Pangani Police Station for three hours but the police completely refused Hon. Raila, Hon. Kalonzo, Governor Joho, Governor Kidero and I to see our colleagues. But more importantly and fundamentally, as we were sitting there, members of the public who had come to see other remandees and ourselves were brutally teargassed and dispersed.

I saw policewomen younger than my dear colleague sitting across with belts like Rambo. They were throwing teargas as if it is a picnic. The country cannot degenerate to this level. These things happen because the Judiciary is unable to hold anybody to account, courtesy of Willy Mutunga, for the period he has been the Chief Justice.

Mr. Temporary Speaker, Sir, in the good old days, if the former President and those who ran the Judiciary did not like you as the Senator for Kajiado, they would trump up a case against you in Kajiado and send a special judge there. In those days, it used to be an Indian who would preside over the case, jail you and be transferred back to Nairobi. The same thing happened to me. He posted a judge in Bungoma to specifically hear my petition. On the day of judgement, the judge was transferred back to Nairobi. I cannot call that a coincidence and this is the Chief Justice that we are supposed to be praising.

Mr. Temporary Speaker, Sir, if you go to the Supreme Court Library, the High Court Library or any library anywhere in the Commonwealth, pick the book and look for Justice Chunilal Bhagwandas Madan, you will see great judgements by that illustrious son of this country who was not even African but Indian. I cannot say the same of Willy Mutunga.

Mr. Temporary Speaker, Sir, I am happy that you have given me an opportunity to speak. I came rushing because I was out of the country but I want to say this. Willy Mutunga has left the Judiciary in disarray, more corrupt and more anti-people than he found it. He does not support any human rights, he does not support the Bill of Rights or deal with issues of judicial review to check the Executive. He has just left the Judiciary in disarray; worse than he found it.

I wish him well where he is going to. I have heard that he is going to Maldives, a beautiful island. I have been there before and I am sure he is going to enjoy himself. Let him write his books. I hope he will have time to outline his failings as a Chief Justice.

**The Temporary Speaker** (Sen. Mositet): Order! Sen. Wetangula.

Sen. Wamatangi.

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I rise to express my appreciation for the gesture by the Chief Justice to come to this House and give the speech that he gave. I also wish to congratulate him for the achievements albeit they may not be satisfactory according to all our expectations. Let me also note that the Chief Justice has got an enviable Curriculum Vitae (CV). Yesterday, our Speaker took a good three minutes just to go through the Chief Justice's CV. That is a sign of accomplishments of a man who has ventured and tried to be somebody.

Let me say at a personal level that I have been impressed by the humility with which the Chief Justice has discharged himself, especially on the trappings of power. I remember when the Chief Justice was appointed, I saw him arrive in his office carrying a back pack. He put his books down and settled down after having alighted from a limousine.

Although we may not all be fully satisfied, he has tried to demystify the Judiciary. Moreso, we must admit that it is not impossible for him to leave that institution without some scars that he must have gotten in the quest of his venture and especially in the journey of reforms that he has tried to take the Judiciary through. Sometimes when we measure the achievements of a person, as we measure how high we expect that person to have gone, we forget to measure low that person may have brought that institution from. I think this is the case of the Chief Justice. He picked the Judiciary from an extremely low position as it has been described by most of the speakers here.

I remember one time personally visiting one of the law courts in Kibera. When somebody's phone rings, the magistrate calls the person and sends him to the cells. The magistrate does her business. She forgets that somebody had gone to receive a call. She goes home and the person stays in the cells for a whole week. When the magistrate comes back, she says that she forgot, just because the phone rang. That is the kind of judiciary we have had. We had a judiciary where judges were literally owned by individuals. You could tell that judge so and so belong to so and so.

So, I think the Chief Justice, albeit there are dissatisfactions due to the nature of litigation, has tried. Litigation is really a competition of arguments. In that competition, it is natural that you will have one side that will feel that the expectations they had in a matter of interest were not achieved or they did not get justice, because before matters go to court, they are matters of good interest.

Let me also take this opportunity to congratulate Justice Ibrahim. I see on 411 signals that he has been appointed to act as the President of the Supreme Court. I hope that this will lead us to a competitive process to replace the Chief Justice.

Mr. Temporary Speaker, Sir, we must also acknowledge that the Chief Justice fought serious cartels during his tenure. We all know that there exist serious cartels in the Judiciary which have been active to the extent that they have been trying to determine who the next Chief Justice will be. The shenanigans that we have seen from the appointments and forceful eviction of some of the judges together with dismissal of some of the appointees are signs of things to come.

As I finalise ---

**The Temporary Speaker** (Sen. Mositet): Order, Senator! You have already consumed your time.

Sen. Ong'era, you have five minutes so that we can dispose the next Motion.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to also support this Motion. From the outset, let me join my colleagues in congratulating the leadership of this House and our Speaker for inviting Dr. Willy Mutunga to give us his farewell remarks. As we all know, Dr. Mutunga has led an exemplary career in terms of the legal practice and also as a distinguished scholar in this country. He is a renowned activist who has fought for the human rights of our people in our society and for the rule of law and constitutionalism. We need to commend him on this.

I particularly want to highlight two major reforms that he carried out in the Judiciary, which are very commendable. The first one was on gender mainstreaming. The gender ratio between men and women in the Judiciary today stands at between 45 and 50 per cent. In fact, to quote from his speech, he told us yesterday that we have achieved near perfect gender parity in the Judiciary. In 2011, the Court of Appeal had no woman judge. Now, out of 25 Judges in the Court, eight are women. This is no mean achievement and he deserves great commendation on this reform.

The second reform that really touches my heart is employment of people with disabilities which increased from a ratio of 0.1 to 1.2 per cent. This is really commendable. The other achievement which I need to highlight is that during Dr. Mutunga's tenure as the Chief Justice and President of the Supreme Court, he tried very hard to lay a foundation which would make the Judicial Service a humane court. For the first time, we saw that the Judiciary was having workshops or retreats which attracted Kenyans from all walks of life.

He demystified the secrets of the High Court. This is very impressive because he brought justice closer to the people. Therefore, these are things that we cannot just rubbish or sweep under the table. However, despite all these glowing reforms, there are two grey areas during Dr. Mutunga's tenure, which I want to point out and Kenyans would remember with great loss.

*(Sen. Wako consulted Sen. (Dr.) Zani)*

Mr. Temporary Speaker, Sir, I need protection from Sen. Wako. I am losing my train of thought.

**The Temporary Speaker** (Sen. Mositet): Order, Sen. Wako!

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, thank you.

You will remember that the Chief Justice was the presiding Judge during the very dark ruling of the Presidential Petition. About 5.2 million Kenyans will remember this with great sadness that this very Chief Justice did not give an opportunity to the court to interrogate the affidavit that was presented. Although we are advocates of constitutionalism, it behooves us that where there are matters to deal with public interest and policy, the court should view them and not decide on mere whims by saying that you are barred by time. This is a great grey area. In fact, I will call it a monster in his life.

The other elephant in the room which we will not hide is the way in which the next Chief Justice will be appointed. I hope that it will not be a ridiculed exercise between two communities. These two communities are known and I need not belabour and state which ones they are. I hope it will not be a political gerrymandering. I also hope that the JSC will be allowed the opportunity to do their work right. They are capable men and women who can do this work of appointing a Chief Justice for this country. I hope there will not be orders from above like what the police are telling us in the case of where Sen. Muthama has been detained without trial or being given an opportunity to ---

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, the Senate has debated on the speech by the outgoing Chief Justice. I understand that we already have an appointed one to act as the Chief Justice. I order that the HANSARD concerning the same debate be given to the former Chief Justice, Dr. Mutunga and the Judiciary Library, so that the person who is acting and the one who will be finally appointed as the Chief Justice can always have the history to go through and see the hon. Senators' comments on his address.

We still have quite a number of Motions, but we cannot go through all of them. So, I defer Order Nos.10, 11, 12, 13, 14, 15, 16 17, 18 and 19.

ADOPTION OF REPORT OF CPAIC ON THE FINANCIAL  
OPERATIONS OF HOMA BAY COUNTY EXECUTIVE FOR  
THE FINANCIAL YEAR 2013/2014

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Homa-Bay County Executive for the Financial Year 2013/2014 laid on the Table of the House on Wednesday, 4th November, 2015.

ADOPTION OF REPORT ON THE SECURITY SITUATION  
IN MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19<sup>th</sup> January and 5<sup>th</sup> February, 2015 and laid on the Table of the House on Wednesday, 29<sup>th</sup> July, 2015.

NOTING OF REPORTS OF THE ACP-EU JOINT PARLIAMENTARY  
ASSEMBLY MEETINGS

THAT, the Senate notes the Report of the ACP Parliamentary Assembly and the 29<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held at the Grand Pacific Hotel, Suva, Fiji from 10th to 17<sup>th</sup>

June, 2015, laid on the Table of the House on Wednesday, 25<sup>th</sup> November, 2015.

INQUIRY INTO THE IMPLEMENTATION OF THE NATIONAL SPECIAL  
NEEDS EDUCATION POLICY FRAMEWORK

AWARE that Article 43(1)(f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1)(b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54(1)(b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

CREATION OF AN OFFICE TO AUDIT THE BASIC EDUCATION  
INSTITUTIONS' FUNDS

THAT, whereas Article 53 (1)(b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education; RECOGNIZING the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

APPRECIATING the gains made following the implementation of the free primary education programme in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives, include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

NOTING the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

FURTHER NOTING that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities, including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance, especially in the management of the available resources;

NOW THEREFORE, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

ADOPTION OF REPORT ON COUNTY OVERSIGHT AND  
NETWORKING ENGAGEMENT TO MIGORI, BOMET  
AND NAROK COUNTIES

THAT, the Senate adopts the Report of the Standing Committee on Information and Technology on the County Oversight and Networking Engagement (CONE) to Migori, Bomet and Narok Counties laid on the Table of the Senate on 3<sup>rd</sup> March, 2016.

ADOPTION OF REPORT OF THE NATIONAL SECURITY  
COMMITTEE ON STUDY VISIT TO RUSSIA

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia laid on the Table of the House on Tuesday, 15<sup>th</sup> March, 2016.

NOTING OF REPORT OF THE COMMONWEALTH WOMEN  
PARLIAMENTARIANS' REGIONAL CAPACITY  
BUILDING WORKSHOP

THAT, the Senate notes the Report of the Commonwealth Women Parliamentarians Regional Capacity Building Workshop held in Dar es Salaam, Tanzania on 20<sup>th</sup> - 23<sup>rd</sup> January, 2016 laid on the Table of the House on Thursday, 17<sup>th</sup> March, 2016.

NOTING OF REPORT ON THE THIRD GLOBAL  
OPEN GOVERNMENT SUMMIT

THAT, the Senate notes the Report of the 3<sup>rd</sup> Global Open Government Partnership (OGP) summit held in Mexico City, from 25<sup>th</sup> October to 1<sup>st</sup> November 2015 laid on the Table of the House on Tuesday, 19<sup>th</sup> April, 2016.

COUNTRYWIDE AUDIT ON DISTRIBUTION OF  
TEACHERS IN PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage, especially in rural and marginalized areas;

APPRECIATING efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

*(Motions deferred)*

ADJOURNMENT OF THE HOUSE PURSUANT TO THE  
APPROVED CALENDAR FOR THE 2016 SESSION

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order 28 (3), the Senate do adjourn until Tuesday, 28<sup>th</sup> June, 2016.

This is part of our calendar of events. I think the schedule has been shared and Senators are aware that we should be adjourning today and come back on 28<sup>th</sup> June, 2016. It gives us a bit of time to get more engaged with work in the committees, refresh and energise ourselves in readiness for debate when we resume.

I beg to move and request Sen. Ong'era to second.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, I rise to second the Motion. This is a fairly straight forward Motion as Sen. (Dr.) Zani has moved it. It is fair that the distinguished Senators get a reprieve of one week to take stock of what we have done. We have worked very hard for the last four or five weeks. Therefore, it is good to take a break. They say that all work and no play makes Jack a dull boy. We also need an

opportunity to visit our respective constituencies in the counties and interact with our constituents, know the development progress and monitor work progress in the counties.

With those few remarks, I support and second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Mositet): Sen. Wako, you have two minutes.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I rise to support this Motion which was ably moved by one eminent Senator who happens to be a lady in this august Assembly. This brings the leadership of ladies up in this Senate.

*(Applause)*

This Motion will help us to link up with the grassroots. I hope that Senators will bring the message of reconciliation to the grassroots and that we are not engaged in hate speech. We must bring communities together to work towards development.

In my county, I move around with everybody regardless of his or her political affiliation. They know that I am their leader and Senator. We all talk the same language of peace and development. I recommend the same to my fellow Senators.

I beg to support.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, as my colleagues have said, this is a straightforward Motion because it is in our calendar. In the past three weeks, we have repeatedly said that we have been noticing that the tolerance levels of each other are low. When we go out there, we will be busy with our communities in the counties, but we should continue with our work. I hope that we will preach messages of hope that will unite this country. If possible, we should call each other and serve the people together. The truth of the matter is as we sit in this House, we do not fight each other. This should be the same as we perform our responsibilities in the counties. We should strive to unite this nation.

I hope that the teargas and the demonstrations will go slow. I know that politicians will have more time, but I hope that we will get to an amicable solution that can unite us, as a nation.

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I rise to support this Motion. We have done good work. I also note that within the period that we have had, the Senate still has a lot of pending work. I hope that when we resume, we can get time and extend if possible, so that the pending work that we have in the Senate is done. I also hope during this time, Committees can take their time to execute and dispense off the work that is pending.

I support.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I would like to support this Motion and thank my colleague Sen. (Dr.) Zani for moving it on behalf of those of us who sit together. We will be out there to continue to do our work in the committees. We are not having a break for the sake of it. We have a lot of pending matters in our committees which we should deal with. We also want to ensure that we can use this

period to cool off a little bit. I call for the services of the Attorney-General *Emeritus*, as the senior counsel in this country, and a member of CORD, to demonstrate the leadership that we require of him, to make sure that temperatures are cooled down by political leaders across the political divide. Attorney-General *Emeritus* is not just a leader of CORD; he is a leader for both sides.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, this is a procedural Motion so I do not need to put the question. The message was clear. The people who will go to the counties should be good ambassadors and preach the unity and peace of this nation.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now 6.30 p.m.; time to adjourn the Senate. The Senate stands adjourned until Tuesday, 28<sup>th</sup> June, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.