

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 16th May, 2013

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Hon. Senators, we need to determine if we have a quorum.

The Clerk of the Senate (Mr. Nyegenye): We have 13 hon. Senators in the House. We do not have a quorum.

The Speaker (Hon. Ethuro): Ring the Division Bell.

(The Division Bell was rung)

(Hon. Senators entered the Chamber)

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir, we now have a quorum.

The Speaker (Hon. Ethuro): Stop the Bell, we now have a quorum.
Let us proceed!

PETITION

REPORT FROM THE SPEAKER: PETITION ON THE ENACTMENT OF THE LICENSING ACT, 2013

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make on a Petition that has been presented through the Clerk pursuant to Standing Order No.222(2)(b).

As hon. Senators are aware, under Article 119(1) of the Constitution, and I quote:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Standing Order No.217(1)(a) provides that:-

“A petition to the Senate shall be-

(a) Submitted to the Clerk by the petitioner and reported to the Senate by the Speaker; or”

Standing Order No.222(2)(b) further provides that:-

“When the Order “Petitions” is read, the Speaker shall-

(b) in the case of a petition presented by a Senator, direct the Senators to present the petition to the Senate or;”

Let me stop there to allow hon. Senators at the Door to enter the Chamber.

(The Speaker (Hon. Ethuro) paused as hon. Senators entered the Chamber)

Order, hon. Senators, let me now proceed.

Hon. Senators, pursuant to Standing Order No.222(2)(b), I hereby report to the Senate that a petition on the enactment of the Licensing Act, 2013 has been submitted by a Mr. Humphreys Khaunya through the Office of the Clerk.

Mr. Khaunya, the petitioner, is a citizen of Kenya and a resident of Busia County who works as a small scale business entrepreneur. In his Petition, he draws the attention of the Senate to the powers of county governments to collect and charge taxes. He argues that the parameters of these powers are not set out in law. He is, therefore, of the view that there is a possibility that Kenyans will be required to pay more for licences and fees in some counties as opposed to others and that there will be discrimination on the basis of ethnicity.

To ensure that Kenyans are not marginalized, overcharged or treated inequitably as they seek to invest in various counties, he proposes the enactment of an Act of Parliament to harmonise licensing operations throughout the Republic of Kenya which would minimize disparity in licenses and fees charged as between the national Government and county governments and as between the county governments.

He includes a draft “County Governments Licensing Bill, 2013”. The objects and purposes of the proposed Bill as stated in the Petition include:-

- (a) promoting investments in rural areas;
- (b) harmonizing the license fees and all other charges in Kenya so as to avoid disparity in the course of doing business from county to county;
- (c) curbing possible corruption in the country governments;
- (d) promoting equal investment opportunities for all Kenyans in all counties; and,
- (e) improving county service delivery, transparency and accountability in revenue collection by county governments.

The Petition is signed by the Petitioner, Mr. Humphreys Khaunya.

Hon. Senators, pursuant to Standing Order No.223, I shall now allow comments, observations or clarifications in relation to the Petition, for not more than 30 minutes.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed, you are right that you will allow us that period to make brief comments. But for our comments to be meaningful, it would have been nice if copies of the petition were circulated earlier, so that we enrich it or make relevant comments. I would like you to make a determination on this request.

The Speaker (Hon. Ethuro): That is a reasonable request by the hon. Senator for Kakamega County. I, therefore, order that copies of the Petition be circulated. We can revisit this matter on Thursday, next week.

Next Order.

NOTICES OF MOTIONS

Sen. Orendo: Mr. Speaker, Sir, I beg to give Notice of the following Motion---

The Speaker (Hon. Ethuro): Order, Sen. Orendo! You have not been invited by the Speaker.

Sen. Orendo: Sorry, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen.(Dr.) Zani caught my eye first. Let us start with her notice. Sen. Orendo, you will be next.

ENACTMENT OF LAW TO REQUIRE PAYMENT OF ROYALTIES BY INVESTORS TO COUNTIES

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I beg to give Notice of the following Motion to the Department of the National Treasury.

THAT, aware that various counties in Kenya are endowed with natural resources such as oil deposits, wildlife, minerals, among others; appreciating that the capacity to exploit and utilize the resources varies according to economic and technical potential; cognizant of the fact that under the devolved system of government, the country's role in the creation of national revenue is critical, concerned that there may be no direct and proportional share on the basis of the revenue that a county is able to generate since equitable sharing of revenue raised will be done by the national government; affirming the need for direct benefit from the proceeds of the said natural resources to the local communities, especially in marginalized counties; aware that imposition of tax by national or county government can only be by way of legislation and that only the national government can impose tax; the Senate urges the Government to take immediate steps to initiate legislation, pursuant to Article 209(2), to require investors to pay at least 20 per cent of their turn-over as royalties to the respective counties where they operate so as to enable resources of specific counties to be directly utilized in the counties, to address specific social needs and, thereby, act as an incentive for the said counties to optimize their capacity to raise revenue.

ESTABLISHMENT OF SELECT COMMITTEE TO INQUIRE INTO EXISTING
LEGISLATION AFFECTING FUNCTIONS OF COUNTY GOVERNMENTS

Sen. Orengo: Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, knowing that Section 17 of the Sixth Schedule of the Constitution requires the national government to restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under the Constitution; Noting that the provincial administration continues to operate in circumstances that have affected the exercise of certain functions and operations of the county governments; appreciating the doubts about the constitutionality of offices linked with the provincial administration, including provincial, regional and county commissioners as established and deemed to be part of the national government; the Senate resolves to establish a select committee comprising the following Senators to inquire into all existing legislation that may undermine the authority, mandate and functions of the county governments with the aim of drafting appropriate legislation by Parliament-

1. Sen. James Orengo - Chairperson
2. Sen. Beth Mugo - Vice-chair
3. Sen. Moses Wetang'ula---

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

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

Sen. Murkomen: Mr. Speaker, Sir, I had the privilege of reading the Notice of Motion. Is it in order for an hon. Senator to bring a Motion for action to be taken by a separate body, organization or entity other than the one which has expressly been given the mandate by the Standing Orders? If you read the Standing Orders, you will realize that what Sen. Orengo is proposing is a function given to the Committee on Devolved Government and partly to the Committee on Legal Affairs and Human Rights. Do you not think the Notice of Motion is in contravention of the same?

The Speaker (Hon. Ethuro): Proceed, Sen. Orengo.

Sen. Orengo: Mr. Speaker, Sir, this Motion has been approved by the Speaker. The Speaker, in his wisdom, would not approve a Motion, unless he knows it is properly before him. Before any matter comes before this House, it goes through the Rules and House Business Committee. Those objections can be raised at the time of proposal and debate of the Motion. In any case, if the hon. Senator had a look at the record of the last Parliament, he will realise that if legislations and Motions were left to particular committees, nothing would come out of it. I have just seen one proposed legislation by Sen.(Dr.) Khalwale in draft form. If he has to wait for the Committee on Legal Affairs and Human Rights to think through that particular legislation, then we will have to wait until wisdom visits that particular committee. So, I am quite within my mandate and authority to move any Motion, any time.

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

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

Sen. Hassan: Mr. Speaker, Sir, Senator Orengo referred to the fact that the proposed legislation by Sen.(Dr.) Khalwale is one which would have properly been before the Committee on Legal Affairs and Human Rights. He further makes an assertion that this can only happen when wisdom visits that Committee. Is it right for Sen. Orengo to insinuate that there is no wisdom in that Committee?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, there is urgent need for you to make a substantive ruling on this issue. If we allow the point order by Sen. Murkomen to sail through, we are forgetting the new dimension of doing business. Originally, what chairs of Departmental Committees are doing used to be done by Ministers. If you remember, in that kind of set up, there were many times we brought Bills and Motions that could have been brought by Ministers. If the Minister was so interested, he could either talk with the hon. Member or take over the hon. Member's Bill or Motion. He or she did not appeal to the Chair, for the Chair to shoot down a good effort by an hon. Member. So, I suggest that the Chair finds that Sen. Murkomen is "mixed up", he does not seem to understand that---

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

Sen. (Dr.) Khalwale: I have not even concluded my point of order---

(Laughter)

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

Sen. Murkomen: Mr. Speaker, Sir, is it in order for Sen. (Dr.) Khalwale to try to imagine that I am a "mixed up" person?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Let Sen. (Dr.) Khalwale finish and then I will grant you a chance.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker.

Sen. (Dr.) Machage: But, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Is it on the same matter?

Sen. (Dr.) Machage: Yes, Mr. Speaker, Sir. Is it in order for Sen. (Dr.) Khalwale to discuss the character of Sen. Murkomen without moving a substantive Motion?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like to withdraw the words "mixed up", so that I make my point. There are two things that Sen. Murkomen is not tying together. Today, the Chair of a Departmental Committee will basically be doing what in the old system the Minister used to do. With his permission, I was encouraging him to hold his horses and wait. When hon. Orengo moves his Motion, if it gets the necessary support and sails through, he is free to later on, away from the eyes of the Speaker, to discuss with Sen. Orengo to take over the Motion and business will just proceed. Otherwise, the Motion by Sen. Orengo is a great one. But I expect the Chairman of the---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! Although you have withdrawn the words you used on Sen. Murkomen, you want to apply them to yourself.

(Laughter)

Yes, Sen. Elachi!

Sen. Elachi: Mr. Speaker, Sir, is it in order for the hon. Senator to propose the Chair and members of the committee without going through the party rules that we have?

The Speaker (Hon. Ethuro): Actually when the first point of order was raised, I thought it was to that effect. But I will deal with the points of order at once.

Sen. G.G. Kariuki: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Yes, Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Mr. Speaker, Sir, I wish to seek your guidance. I have seen two notices of Motions this afternoon, one from my sister, Sen. (Dr.) Zani and another one by Sen. Orengo. The one by Sen. Orengo is listed on the Order Paper. The other is a notice. The practice is that we do not put a Motion on the Order Paper until a first notice is given. Why are the two different?

The Speaker (Hon. Ethuro): That is correct, Sen. G.G. Kariuki. The point of order by Sen. Murkomen is in order. As the Chair of the Committee on Devolved Government, he was wondering whether the substance of this particular Motion, being given notice by Sen. Orengo, may not be part of the mandate of his Committee. I can confirm that he is not “mixed up”. I also took a bit of time on this question before I approved the Motion. But I determined that it was necessary, at this particular point, for the Senate, through the proposed *ad hoc* committee to specifically look at the issue of the legislation and what the National Assembly may have passed for the time it was acting as the Senate. Those of us who attended the Induction Workshop in Naivasha will recall that the Commission on the Implementation of the Constitution (CIC) actually made the point that there are pieces of legislation that had been passed by the Tenth Parliament, that they feel the Senate should look. So, in terms of just auditing the devolution statutes, specifically with the legislation that was passed to that effect, I thought this *ad hoc* committee would have merit. But that is not to take away the point. It is up to the Senate, to determine during the deliberation of the Motion, whether we should proceed along these lines or this can be part of the task for the Committee on Devolved Government or even fuse as proposed by Sen.(Dr.) Khalwale. That is for you to determine. But in terms of whether it is proper for it to be before the House, I can confirm that it is.

On the other matter of discussing the conduct of an hon. Senator, I do not think Sen (Dr.) Khalwale discussed the conduct of any other hon. Senator. Definitely, it is not the conduct of the hon. Senator for Elgeyo-Marakwet County. He only tried to describe something---

Hon. Senators: Something!

(Laughter)

The Speaker (Hon. Ethuro): He has already withdrawn the remarks. That matter is not even before us because the hon. Senator for Kakamega County, being an hon. Senator, has already swallowed his own words, without causing him indigestion.

On the issue raised by Sen. G.G. Kariuki, where one notice is listed on the Order Paper and the other is not, if you notice what we have done on the orders is that we have put appendices for ease of reference and to allow all hon. Senators to have the necessary information.

Hon. Senators will also appreciate that earlier we had the issue of the petition, but because you did not have a copy, that is why we have deferred this matter to Thursday, next week. Ordinarily we should have disposed of that Petition today. But there was a legitimate request that you did not have the content of the petition. That is why we are doing it this way to improve information flow.

Sen. G.G. Kariuki, you are absolutely correct on whether a Senator can come up with a notice of motion and, at the same time, prosecute the substantive Motion. That is not the ordinary practice, except with the leave of the Speaker. The Speaker had granted that leave. That is why we can move the notice at the same sitting and proceed on to the Motion.

I hope I have attempted to address all the issues raised.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I have a further point of order.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I appreciate your ruling. But when you look at the Order Paper, the Notice of Motion by Sen. Orengo is listed twice---

Sen. Orengo: It is not listed twice. The other one is an appendix.

The Speaker (Hon. Ethuro): Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this is improper use of paper to have the Motion listed on the proper Order Paper and as an appendix!

The Speaker (Hon. Ethuro): Sen. Wetangula, you could do well with a bit of listening. I had actually explained all those issues. As you can see, this is an improved practice from the previous practice which you are aware of. But against every order we have put a listed appendix. So, the appendix on the notice of Motion was for that. The real Motion is listed as Order No.9. However, the Chair appreciates your concern on the economy of space and use of paper.

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

The Speaker (Hon. Ethuro): Yes, Sen. Musila.

Sen. Musila: Mr. Speaker, Sir, you had concluded ruling on various points of order. I think you overlooked the point of order raised by Sen.(Dr.) Zani, which is good for us to appreciate. Sen.(Dr.) Zani raised the issue of hon. Orengo putting the names the--

The Speaker (Hon. Ethuro): That was Sen. Elachi!

Sen. Musila: I beg your pardon, Mr. Speaker, Sir. I apologise to the gracious lady. Could you rule on that issue? It is quite in order because the originator of the

Motion has managed to select the members to the committee, provided that the House approves.

The Speaker (Hon. Ethuro): Thank you, Sen. Musila for reminding me of that critical point of order. First, I want to confirm that it is not usual, going by other practices, for an *ad hoc* committee in particular to be suggested and you go ahead and propose a chair and a vice-chair. If you look at the way we have adopted our committees, even in this sitting, we have always given the names and then hon. Senators go to elect the chair and the vice. The tradition has usually been that the Mover of the Motion would chair. That was an earlier understanding. This is your House; if you decide that you can simplify the work of the Clerk by calling the first meeting for purposes of electing a Chair or proposing the same at the beginning, there is really nothing against this, *per se*. However, it may not be democratic enough. But since the Motion will still be adopted by the House, I guess it is even better in the sense that the entire membership has acceded to that kind of chairmanship rather than the few hon. Senators who would have been appointed to the Committee. These are issues that can go either way.

Proceed, Sen. Orengo. I do not think you had finished moving the Notice of Motion.

Sen. Orengo: Mr. Speaker, Sir, arising out of these points of order, I need to make a full disclosure. The last time I talked to you, you said you were still looking at the Motion and that it would come at a subsequent stage. I was still in the process of consulting with hon. Senators, including Sen. Mugo, so that at the time of approval, if I had sufficient notice, probably, the membership of the committee, as proposed, would have been quite different. But I thought that is a matter we can deal with because the House lacks business.

The other position which is clear from previous practice is that a Motion like this, those days, the Government could come and say: "We like the Motion or Bill, we want to take it over or conduct it on this basis." Indeed, I hoped to talk with the Senate Majority and Minority Leaders at some stage. But I was caught up because the Senate does not have business. The only reason this Motion has appeared on today's Order Paper is because there was no business. I wish to apologise for that. But I will proceed to conclude---

The Speaker (Hon. Ethuro): Sen. Orengo, I do not think that was the only reason. There was also the sense of the need to do exactly what you are proposing on a matter of urgency.

Sen. Orengo: Mr. Speaker, Sir, if I may also be allowed to comment that, indeed, this is a matter that has been brought to my notice by some constitutional bodies. I was looking at the many laws, for example, under the Agriculture Act, there are more than 25 statutes. That function is now going to the counties. If you look at the statutes, the Governors and the county governments will not have a role. They may try to do something because the Constitution says so, but the laws say different things. If you look at the health sector, again, there are more than 15 pieces of legislation. This is supposed to be the function of counties. I thought there is need for a quick audit and a comprehensive review of all these laws.

The Speaker (Hon. Ethuro): Sen. Orengo, we will treat that as if you were on a point of order.

Sen. Orengo: Am sorry, Mr. Speaker, Sir. Let me conclude giving the notice. The penultimate sentence before I come from the list says:

The Senate resolves to establish a select committee comprising the following Senators to inquire into all existing legislation that may undermine the authority, mandate and functions of the county governments with the aim of drafting appropriate legislation by Parliament-

1. Sen. James Orengo - Chairperson
2. Sen. Beth Mugo - Vice-chair
3. Sen. Moses Wetang'ula
4. Sen. (Prof.) Kindiki Kithure
5. Sen. Murkomen Kipchumba
6. Sen. Amos Wako
7. Sen. Hassan Omar
8. Sen. Judith Sijeny
9. Sen. Kiraitu Murungi
10. Sen. Otieno Kajwang
11. Sen. (Dr.) Agnes Zani
12. Sen. Dullo Fatuma
13. Sen. David Musila
14. Sen. Lesuuda Naisula
15. Sen. (Dr.) Boni Khalwale

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

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

Sen. Murkomen: Mr. Speaker, Sir, this is just a follow up. There needs to be some direction on this issue because if we will continue like this in terms of mandates given to various committees then it will force us to be coming here to table what the committee is doing. If you look at the minutes of the last Devolution Committee meeting, and the Attorney-General emeritus is my witness, the list of one of the functions which is listed in our work plan includes reviewing those legislations. If it means that a select group of hon. Senators will always be running to the House to take over functions of the Committee, then that will force all the committees to keep tabling what they are doing after every meeting. I do not know which procedure we will use to do this. We need direction on this issue.

The Speaker (Hon. Ethuro): The directions are very---

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

The Speaker (Hon. Ethuro): Yes, Senator for Busia County.

Sen. Wako: Mr. Speaker, Sir, the purpose of this Motion has an indication that the issues being raised by this Motion are very urgent ones. We know of the relationship between the provincial administration and the county governments. The Mover has admitted that he was in the process of consulting on the membership and other issues surrounding this matter. I would suggest that before the Motion comes for debate, there

should be some further consultations, in particular, with the Sessional Committee on Devolved Government and the Committee on Legal Affairs and Human Rights, so that they can agree on how to move forward. They can then report to the Chair before the Motion comes before us. I can see there was no business for the Senate. The Mover is even surprised that the Motion is before us yet he has not concluded consultations.

The Speaker (Hon. Ethuro): Order, Sen. Wako! You do not have to be repetitive. In fact, I will not entertain further points of order. I was asked for direction and I will give it. I think the honorable Mover of this Motion who has given notice has been extremely candid and generous in the sense that he was still desirous of consulting the party leadership; that is, the Senate Majority Leader and the Senate Minority Leader, as well as the other Committees. So, I think, really, in that spirit, Sen. Murkomen, you will have an opportunity to discuss how you will proceed with these matters. I can see already you have started by being good neighbours.

On the whole, on whether the Committee should be bringing their initial work to the Floor, that is completely not necessary. I do not think it will be often that such matters would be similar. I think I see it in the context of a beginning and the need to undertake certain tasks in an urgent manner, and I think that is why this is going the way it is going. So, let us give it a bit of time for the relevant parties to consult.

I will not allow, therefore, the substantive Motion to continue today until I get a report from Sen. Orendo and the other Chairs on the way they wish to proceed on this particular Motion.

Sen. Orendo?

Sen. Orendo: Indeed, you are quite right, Mr. Speaker, Sir. At the time of the substantive Motion, I was actually going to make that request formally so that, you know, you have taken the main doubt in the right scales.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The point raised by the distinguished Senator for Elgeyo-Marakwet requires much deeper direction from the Chair. This is because I get the impression that Committees would want to curtail the freedom of Senators from bringing this list to the House.

Hon. Senators: Yeah!

The Senate Minority Leader (Sen. Wetangula): That will be very dangerous because any Senator here, provided they get the concurrence and approval of the Speaker, has the right to bring any Motion as long as it is within the ambit of the law to debate issues. Committees have every right to enjoin themselves in those Motions or even come here and oppose them, but we cannot have---

(Several hon. Senators stood up in their places)

Mr. Speaker, Sir, I am on a point of order.

The Speaker (Hon. Ethuro): Just allow Sen. Wetangula to finish on his point of order first.

The Senate Minority Leader (Sen. Wetangula): Yes.

Otherwise, Mr. Speaker, Sir, you, as the custodian of our right to debate and our right to bring issues here will be put in a difficult and, perhaps, embarrassing situation to appear to put any roadblock in the face of any Senator. For instance, only Members of the Devolution Committee know what they are doing; other Members do not. A Senator cannot go around shopping from Committee to Committee to ask whether they are discussing a particular issue before they bring a Motion here.

Hon. Senators: Yeah!

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir.

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

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

Sen. Murkomen: Mr. Speaker, Sir, I now agree with Sen. (Dr.) Khalwale that issues might have been mixed up here, without mentioning by who.

Mr. Speaker, Sir, I think I am being misunderstood and misrepresented. The argument I am having here is not on the issue. In fact, I agree with Sen. Orendo on the substance of the Motion. The only difference here is the creation of the Select Committee, but in terms of the substance of the Motion, it is commendable because it is urgent and important. But we all know that we created institutions to assist in doing that work. As I said, in terms of the Motion, I have no problem.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! I have actually directed---

Hon. Senators: Yes! Yes!

The Speaker (Hon. Ethuro): But I think it was important for Sen. Murkomen to explain that; not only ventilating, because Sen. Wetangula made a very brave assertion that Sen. Murkomen was attempting to block Senators from coming up with business. What we need to make abundantly clear is that even your own Speaker is not privy to deliberations of the Committees until they have actually finalized the matter; they have done a report and they have brought it to the Floor. That is when the entire House is seized of it. But the Plenary is a meeting point of those ideas. From the way Sen. Orendo has proceeded, he has been extremely accommodative and conscious of those other organs we have created within the Senate to facilitate our work. That is why he is proposing that he will want to do more consultations. So, let us leave it that way and proceed.

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

The Speaker (Hon. Ethuro): On the same or on a different issue?

Sen. Obure: With your indulgence---

The Speaker (Hon. Ethuro): On the same?

Proceed, Senator for Kisii County.

Sen. Obure: Thank you, Mr. Speaker, Sir. Thank you for your direction on the way forward. But I am also aware that a lot is going on right now which appears to undermine devolution. I will simply urge that the various Committees which are working on this issue need to speed up their work so that this matter can come back here and so

that this Senate can truly be allowed to perform its function of protecting the devolved system of government.

Sen. Kivuti: On a point of order, Mr. Speaker, Sir. From what is going on, is it in order to request the Chair to direct various Committees to table their work plans so that we know what they are doing? This is the only way we can bring this matter to rest and avoid conflict.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! Every Senator has a right to be heard. Sen. Kivuti will be heard. Just to dispose of that matter, you actually approved the Liaison Committee. This is a Committee of Chairs. That is a forum in which these kinds of discussions and the work plans of the various Committees are actually discussed and agreed. So, there is no need for Committees to table their work in progress in the Plenary. We will use the data by ensuring that we bring complete work. But we have a mechanism within the House where all Chairs meet with the Senate Liaison Committee where you can share that kind of information.

For the point of order by the Senator for Kisii County, indeed, I want to commend Senators because I think they have really worked with speed. Because you remember we formed Committees and we took about a week. On the second Thursday, we blocked the entire day to get the Chairs of the Committees and we got most of them, except one. That has already been concluded and they have already started working. So, really, within the timelines we have, I am happy that the Committees have actually hit the ground literally running.

(Applause)

Next Order, Senate Majority Leader.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 21ST MAY, 2013

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the following is the Statement regarding the Business of the Senate for the week commencing 21st May, 2013, pursuant to the Provisions of Standing Order No.43(2).

Hon. Senators, pursuant to the provisions of Standing Order No. 43(2), I present the Senate Business for the coming week. On Tuesday 21st May, 2013, the Rules and Business Committee will meet at 12.00 noon to schedule Business of the Senate for the week commencing Tuesday, 21st May, 2013. The Senate will continue with Business that will not have been concluded on today's Order Paper. In addition, the Senate will commence debate at Second Reading Stage of the Division of Revenue Bill, 2013.

On Wednesday, 22nd May, 2013, in the morning or during the morning sitting, the Senate will continue with Business not concluded on Tuesday, 21st May, 2013, as well as

debate a Motion on County Resources, whose notice was given this afternoon by Sen. (Dr) Zani, and embark on any other Business scheduled by the Rules and Business Committee.

In the afternoon on Wednesday, 22nd May, 2013, the Senate will continue with the Business not concluded on Tuesday and Wednesday morning and consider any other Business scheduled by the Rules and Business Committee.

On Thursday 23rd May, 2013, the Senate will continue with Business not concluded on Wednesday afternoon and consider any other Business scheduled by the Rules and Business Committee.

Mr. Speaker, Sir, I hereby lay the Statement on the Table.

Thank you, Mr. Speaker, Sir.

(Sen. (Prof) Kindiki laid the document on the Table)

BENEFITS OF THE DEPUTY PRESIDENT'S SHUTTLE DIPLOMACY TO THE NATION

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise under the provisions of Standing Order No.43(2)(c) to seek a Statement from the Chair of the Standing Committee on National Security and Foreign Relations relating to the matter of the nature of the International Criminal Court (ICC) shuttle diplomacy by the Deputy President of the Republic of Kenya, reportedly commencing today; intended to start with a trip to the Democratic Republic of Congo (DRC) then proceed to Congo Brazzaville, Gabon, Nigeria and, finally, Algeria.

In the statement I seek, I would like the Chair to make the following clarifications: One, whether this is a State or a private function. Two, if it is a State function, the Chair should tell us how much it will cost the taxpayers. Three, the Chair should clarify what benefits will accrue to the Kenyan public from this function. I would like the Chair to clarify whether he is aware that a similar effort by the former Vice President of Kenya, His Excellency Kalonzo Musyoka, in November, 2011 was declined by the United Nations Security Council. I would like him to clarify whether this is an effort in furtherance to the recent request by Kenya's Ambassador to the UN, Macharia Kamau, on the same matter.

Finally, I would like the Chair of the Committee to clarify how, in his mind he thinks the ICC will be bound by whatever the Deputy President will procure from the shuttle diplomacy.

Sen. Keter: On a point of order, Mr. Speaker, Sir. I am wondering whether I am in order or whether my colleague, Sen. (Dr.) Khalwale is in order. How does he know that the Deputy President, William Ruto is out of the country on shuttle diplomacy? How does he know that? Could he explain this to us because we do not know about it? Is he going by media reports because we should not go by the speculations in the media?

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. I wonder whether the Senator for Kakamega County is, indeed, in order, knowing that the Deputy President of this Republic is a representative of the interests of this country. Sen. (Dr.) Khalwale

expounded on the implications and details of the ICC, insinuating that he is relating the travel of the Deputy President with the ICC. He cannot seek clarification and then insinuate the reason why the Deputy President has travelled.

Is he in order to imply that?

Sen. Muthama: Mr. Speaker, Sir, the issue that was raised by Sen. (Dr.) Khalwale is not directed in any direction. He used the word “whether” and he was seeking clarification. We must behave in a manner to suggest that we are here to represent the interests of Kenyans. One of the issues we should undertake is to ask that some matters be clarified.

Mr. Speaker, Sir, you were in the Tenth Parliament when the former Vice President undertook the same mission. He was asked about the matter and even about the money he had spent on the mission. We insist and I concur with Sen. (Dr.) Khalwale that we should be told whether the diplomacy is made to serve the country or matters concerning the ICC.

(Several hon. Senators stood up in their place)

The Speaker (Hon. Ethuro): Order, hon. Senators! I will grant all of you your wishes. However, I want to make the following point. A statement has been sought by Sen. (Dr.) Khalwale, addressed to the Chair of a Committee. You can only challenge Sen. (Dr.) Khalwale’s statement on the basis of certain issues like the one that was raised by Sen. Keter on the source of the information. That is valid. However, other Senators who are coming out in defence of Sen. (Dr.) Khalwale are making other statements in addition to the current statement.

Sen. Murkomen: On a point order, Mr. Speaker, Sir. While I respect the right of the hon. Senator to ask his question, I think Sen. (Dr.) Khalwale has mixed up issues again. He has confused the trip of the Deputy President to the Hague with his official duties on behalf of the Republic of Kenya. Is it in order for an honourable Member to behave as if he wants to ask a question but at the same time as if he was at the trip’s planners’ meeting?

Sen. Abdirahman: Mr. Speaker, Sir, time and again, when we meet in this House, you have clarified that all of us are learning; whether we are old or new Members. I think when a statement is sought by a Member of this House, addressed to the Chair, it is important we realize that the Statement or Motion belongs to the House. It would be unfortunate if Members on the opposite side would want to come to the defence of an individual, be it of the Deputy President or anybody else. As a matter of procedure, probably, you need to guide us. We need to protect the interest of Kenyans; whether it is in terms of the taxes we collect or even other interests. I am not in defence of Sen. (Dr.) Khalwale. However, it is important for us to realise that if certain things will not pay dividends to this country, we need to stop them. So, can you guide us so that we deliberate on other matters? We will interrogate this Statement when the Chair of the Committee on National Security and Foreign Relations comes to explain. I think you should give us some direction.

Sen. Billow: On a point of order, Mr. Speaker, Sir. It is true that we all came here to discuss serious business of this country. We all came here in the interest of our counties and our country. However, some things belittle our common sense. Is it in order for a Member to ask about a matter like this when, indeed, the Deputy President was at the Hague a couple of days ago, affirming his commitment and cooperation with the Hague? He, at the same time, rubbished the UN application for political involvement. He said that he is not party to any political maneuvering. Why would the Deputy President travel to DRC, for heaven sake or one of those mysterious little countries to try and get support? For what, when he has already announced, at the Hague that he will go to court and that he is not interested in the UN? I think people are making political capital out of these statements. Let us not waste our time.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I want to remind the distinguished Senator for Mandera that there is no little mysterious country in Africa. We have Republics and our Standing Orders prohibit us from making such statements.

Just as a matter of procedure, I have looked at Standing Order No.43 and I have no views on what Sen. (Dr.) Khalwale is asking but as a matter of procedure. Standing Order No.43 says in part;

“Notwithstanding Standing Order No.39, (*Sequence of Proceedings*), there shall be time, to be designated Statements Hour, every Thursday, commencing not later than 3.00 p.m.

During Statements Hour-

(c) A Senator may request for a Statement from a committee Chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the Statement to be made or direct that the Statement be issued on the same day.”

That is all that comes before the House. So, what we have been doing goes contrary to the very Standing Orders that we are operating. There is no room to debate the veracity, the merit or the *bona fide* or the *mala fide* of the request. That will be at the time when the Statement is given and everybody will have an opportunity to either agree with it or rubbish it.

I am drawing you to procedure and the fact that we may be spending very valuable time pursuing something that is not provided for.

The Speaker (Hon. Ethuro): Hon. Senators, I agree entirely, with Sen. Wetangula, only that he is purporting to work for the Chair. I have read my Standing Orders and my hand was on the same Standing Order. I was trying to tell Senators to stop getting up but they wanted to continue talking.

Indeed, I want to agree that 43(c) is the operational Standing Order that Sen. (Dr.) Khalwale used. He is demanding that the Chairperson of the Committee, Sen. Haji – I want to assume that he is not ready to issue the statement today – gives an indication of when he will be ready to issue the Statement.

Hon. Senators, to add on this, Sen. (Dr.) Khalwale, you need to be fair to the Chair. The Statement you read to us was not the real Statement. You did not include other matters. That is not part of our Standing Orders. The Statement you read must be the same one that was approved by the Chair. So, for you to add more than what was

approved; for the benefit of our future, I will take a very dim view if you bring to the Floor something different from what we have agreed. We believe in full disclosure, at least, at the level of the Chair and Senators.

To reply to a point that has been made by some of you, the Statement was directed to a particular Committee, in fact, to the Chair of the Committee. So, even if you are a Member of that Committee, the Statement is not yours. When the Chairperson will be replying, that is actually an opportunity for you now to supplement, agree or disagree. But really, at this particular moment, the Statement was just being sought. Hon. Senators, so far, we have performed so well across the political divide. Let us not allow some of these things to excite us. I believe that when we elected our Chairs, we did so because we believed in their capacity to respond to some of these issues. I have no doubt that Sen. Haji, with his standing, will rise to the occasion and satisfy all of us, including Sen. Khalwale.

Let us have Sen. Haji first.

Sen. Haji: Mr. Speaker, Sir, thank you very much. With a lot of humility and great respect for my brother, Sen. Khalwale, I only hope that the Statement sought is not as a result of him losing Membership in one of the Committees. That notwithstanding, I am prepared to respond to the Statement sought, but will require---

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Indeed, it would be fair if we can endeavour and promote the culture of respect for one another. I am not a petty person. The issue that I am interrogating is a matter of grave national importance. It also has got international implications. Before I requested for this Statement, I sought the concurrence of the Speaker of the Senate of the Republic of Kenya. Therefore, it would be unfair for the Chair of the Committee to use this opportunity to impute improper motive on me, because we all know that all the people who are currently intended to appear at the International Criminal Court (ICC), are not Members of any of the Committees from which I was ejected. So, why would you draw in the name of the President, Deputy President and Sang to the Committee? Is he in order?

Sen. Haji: Mr. Speaker, Sir, I am not petty either. I am known to be a very serious gentleman and that is why I said that I am answering this with a lot of humility and great respect. I did not expect my friend to take offence.

Mr. Speaker, Sir, it is normal for the Government Ministers, including the President and Deputy President to do shuttle diplomacy. I did this with my brother---

The Speaker (Hon. Ethuro): Order! Order, Mr. Chairman! Are you responding now?

Sen. Haji: Mr. Speaker, Sir, I am coming to that.

The Speaker (Hon. Ethuro): No! No!

Sen. Haji: Mr. Speaker, Sir, I will respond to that in the next two weeks. I need two weeks from today to be able to respond appropriately and adequately.

The Speaker (Hon. Ethuro): Two weeks from today.

What is it Sen. Wamatangi?

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. With due respect to the ruling and clarification that you have given, I seek your further clarification for purposes of how we will continue to transact our business in this House; in appreciation of the fact

that we said that we are all learning. When Sen. (Dr.) Khalwale rose to seek his Statement, the Statement he sought differed from what he said here on the Floor. If at any one time any Senator is seeking a Statement or asking a question and then he or she deviates and makes insinuations, and we do not probably rise on a point of order, as we are allowed by the freedom of this House, would it not amount to gagging that freedom, such that we do not correct anything until somebody has finished making that kind of statement? I seek your clarification for further transactions of this House.

The Speaker (Hon. Ethuro): Senator for Kiambu, I think that I was very clear that while Sen. (Dr.) Khalwale may have added more than he had intimated to me, those did not substantially and materially change from the Statement he had provided to me. He just wanted more clarifications on the same matter. So, our Standing Orders are very clear, that you can amend a Motion to the extent that it is not substantially altering the meaning of that particular Motion. Given that he did that while still on the Floor, I want the rest of you to learn a lesson from him that in the future, the Chair will not entertain such. So, the notice is out there and you can only ignore it at your own peril. I had not given the same notice to Sen. (Dr.) Khalwale and he took advantage of that.

Hon. Senators, we need to make progress. Yesterday, we agreed that we were going to vote on the Motion before us, by Sen. Musila. That is the only business that is remaining and I would really encourage all of us not to leave until we have dispensed with it.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM VIHIGA COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Senators, I wish to introduce to you some visitors with us today. Arising from the inadequacy of space in our Gallery in this temporary Senate Chamber, the delegation from the Vihiga County Assembly had to divide itself into two groups; one group which we welcomed yesterday and the second and last group which we are welcoming today. I will, therefore, call out the names of the honourable County Assembly Members and staff present, and ask each member when called out, to stand and be acknowledged by the Senate in the usual warm Parliamentary tradition.

Hon. Clyde Kweya,
Hon. Noah Mwabanga,
Hon. Vincent Atsiaya,
Hon. Nathan Okila,
Hon. Francis Ukiru,
Hon. David Ogova,
Hon. Festus Girure,
Hon. Richard Muhinga, Deputy Speaker
Hon. Elizabeth Anaya,
Hon. Josephat Munayi.

Hon. Senators, they are accompanied by Mr. Josephat Musambayi, Clerk to the County Assembly and Ms. Mable Nyaleso.

Please, feel most welcome to the Senate.

Next Order!

MOTION

MEASURES TO ADDRESS ROADS DEVELOPMENT ACROSS THE COUNTIES

THAT, noting with concern the skewed infrastructural development in Kenya, particularly in the road sector; aware that without suitable roads to connect all counties the nation cannot meaningfully achieve the development goals envisaged in our Vision 2030; noting further that in his presidential speech on the occasion of the state opening of Parliament on 16th April 2013, His Excellency the President promised the nation to “improve local roads so that our people can move freely across our nation;” the Senate resolves that the national government takes immediate steps to correct the skewed roads development in Kenya and requires the Department of Transport and Infrastructure to submit to the Senate through the Senate Committee on Energy, Roads and Transportation an annual report of roads development programmes covering all counties in Kenya, beginning July 2013.

(Sen. Musila on 15.5.2013)

(Resumption of debate interrupted on 15.5.2013)

The Speaker (Hon. Ethuro): The Division Bell should be rung for eight minutes. Let us identify the tellers.

(The Division Bell was rung)

Order, hon. Senators! Let us lock the doors. The tellers are; Sen. Hassan for the Ayes, he is to my right and Sen. Melly for the Noes, to my left. Before I put the Question, I just want to remind you that this is a matter affecting counties, so we are going to vote as county delegations. Therefore, I wish to put the Question.

DIVISION

ROLL CALL VOTING

*(Question put and the Senate proceeded
to vote by County Delegations)*

(The Clerk called out the names of the hon. Senators)

The Clerk of the Senate (Mr. Nyegenye): Sen. Gideon Moi, Baringo County!

Sen. Kittony: I vote “Yes”.

Hon. Senators: She is nominated! She is in the Trans Nzoia Delegation!

The Speaker (Hon. Ethuro): Order, Sen. Kittony, our records do not indicate that you belong to Baringo Delegation.

Hon. Senators: Where do you vote?

(Laughter)

The Speaker (Hon. Ethuro): Can we hear from Sen. Kittony? You belong to Baringo County by virtue of what?

Sen. Kittony: By virtue of birth.

The Speaker (Hon. Ethuro): That may be correct but for our purposes you must be a registered voter. So, you are not a registered voter in Baringo County.

An hon. Senator: A vote is lost!

The Speaker (Hon. Ethuro): Let us proceed.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I think we are still going back to the same realm that we were in two weeks ago and I think it is imperative that it is reiterated that this is not just voting because you come from that county but because you are designated by the head of delegation to vote. That designation can only be in writing deposited with the Speaker. So, we want to know whether those two Senators who have said they are voting, whether indeed, there is a designation in writing deposited with the Speaker. That is what the Standing Orders say.

The Speaker (Hon. Ethuro): We disallowed Baringo for the reasons stated and on our admission but for Nakuru, she explained herself and acquitted herself very well. So, we accepted her vote.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. You will forgive me if I will offend the Chair. I do not want to imply---

The Speaker (Hon. Ethuro): Please do not go there.

Sen. (Dr.) Khalwale: I will not even try. A moment of comedy could be allowed during debate but when we are taking the vote, it is a very important thing, and in fact, it should be a solemn moment. It might very well become the practice that we vote casually like this until a serious matter of contention affecting the counties and of grave national importance is on the table and people will behave in the same manner. I beg that you rule firmly that if somebody is being delegated to vote, then that evidence should be deposited with you on the Table. The Deputy Speaker had made a ruling on the same. If we do not do that the Senate will start looking like a very casual place and I am sure you do not want that.

The Speaker (Hon. Ethuro): I have heard you and I have already made a ruling; we will abide by it.

In fact, I will not entertain further points of order. I was asked for direction and I will give it. In any case, Leader of Minority, for the time being, you are where you are and I am where I am.

(Laughter)

I can confirm that the Senator for Kakamega actually consulted; but as for some other Senators who claim to have consulted, I did not witness the consultations, but they were in order to vote. I also agree with Sen. (Dr.) Khalwale; there may be times when we must enforce those rules strictly, but this might not be such a matter. I think your Chair is of sound mind to assess some of these things. Trust your Chair for now.

(Applause)

Proceed!

(Hon. Senators proceeded with Roll Call Voting)

AYES: Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Abdulrahman, Wajir County; Sen. Hassan, Mombasa County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County;; Sen. Ongoro, Nairobi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Chelule, Nakuru County; Sen. Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Kagwe, Nyeri County; Sen. Muthama, Machakos County; Sen. Ndiema, Trans Nzoia County; Sen. ole Ntutu, Narok County; Sen. (Prof.) Anyang'Nyong'o, Kisumu County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County Sen. Wako, Busia County and Sen. Wetangula Bungoma County.

AYES: 36

Teller of Ayes: Sen. Hassan Omar

NOES: Nil

Teller of the Noes: Sen. Melly

ABSENTIONS: Nil

(Question carried by 36 votes to 0)

The Speaker (Hon. Ethuro): Order Senators! The ayes have it.

Sen. Keter: On a point of order, Mr. Speaker, Sir. I am wondering whether Sen. Murungi's vote is included, because he shouted "yes, it is here" from the corridor here.

We want to know so that in future, we know whether we can also be shouting from outside.

(Laughter)

The Speaker (Hon. Ethuro): I can confirm that his vote is not included, and that is the reason why we closed the doors. We also ring the bell in order to allow those ones who are away to avail themselves for the vote.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order, Senators, since we have exhausted our Business for today, the House will stand adjourned until next Tuesday, 21st May, 2013, at 2.30 p.m.

The Senate rose at 4.20 p.m.