

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 23rd 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): Order, Hon. Senators! Could we confirm if we have a quorum?

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir, we have 20 hon. Senators present in the Senate. We have a quorum

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

PETITION

PETITION ON THE ENACTMENT OF THE LICENSING ACT, 2013

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I do not know whether it is escaping your attention, but last week you had ruled that you will give us an opportunity today to ventilate on the petition from a member of the public.

The Speaker (Hon. Ethuro): The hon. Senator for Kakamega, it cannot escape the Chair's attention nor yours nor the rest of the Senate, because that is exactly why that order has been called out for petitions. So, it is an opportunity to invite you now to make a contribution to the petition I presented last Thursday.

This is your opportunity, Dr. Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is very exciting that whereas we think we are either senior or in the Upper or Lower House, members of the public seem to be ahead of us. To the best of my knowledge, neither the Lower House nor this Upper House has had an opportunity to bring a petition, but already a member of the public has brought one. So, I want to congratulate Humphrey Khaunya, but I want to point out the following.

That in the objectives of this proposed Bill, he says in Part "a" that he wants to use the proposed Bill to promote investments in rural areas to further Kenya's economic

objectives. In objective No.“j,” he says that he wants to remove all barriers to small business operations.

Mr. Speaker, Sir, if this is the case, then it is the more reason why we should not have this kind of law. It will, therefore, be---

(Sen. (Dr.) Machage stood up in his place)

The Speaker (Hon. Ethuro): What is it, Senator for Migori?

Sen. (Dr.) Machage: Mr. Speaker, Sir, will I be in order to request Sen. (Dr.) Khalwale to read the petition again so that we can understand him better as he continues with debate?

The Speaker (Hon. Ethuro): Senator for Migori, that is not for Sen. (Dr.) Khalwale to dispose; that is for the Chair. You remember the Chair read the petition to you last week, and Senators petitioned the Chair that because they had not received copies of the petition, they should be allowed more time. So, we gave a week and I am sure a week is more than enough for Senators to read the petition.

What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I do not know about my colleagues, but just this afternoon at about 2.00 p.m., is when I received a document written “Enactment of the Licensing Act” which is, I think, the one that my colleague, Sen. (Dr.) Khalwale, is talking about. I have not even had time to look at it and I hear some of the Senators say that they have not even seen it. So, if it is okay with you, then I do not think this is the opportune time for us to discuss it at all.

Hon. Senators: We have not seen it!

(The Speaker (Hon. Ethuro) consulted with an hon. Senator)

Sen. Kembi-Gitura: I am waiting for the attention of the Speaker.

The Speaker (Hon. Ethuro): Proceed.

Sen. Kembi-Gitura: Mr. Speaker, Sir, what I am saying is that I have just seen this document, and I understand that a good number of my colleagues have not seen it too, and they do not know what Dr. Khalwale is talking about. So, I do not know how he proposes to proceed if he wants us to participate in this issue because, personally, I have seen it, but I have not had time to go through it.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, that is not a valid point of order. To the best of my knowledge, I got this document at 9.30 a.m. in the morning from---

The Speaker (Hon. Ethuro): Where did you get it from?

Sen. (Dr.) Khalwale: From the Office of the Clerk; not from the actual office, but from the girl who seats at the reception where we pick documents---

The Speaker (Hon. Ethuro): From Room 105?

Sen. (Dr.) Khalwale: Yes, from Room 105; that is where I picked my document. And I did so because I was aware that today was meant for this business. So, if you make a ruling, I will proceed.

The Speaker (Hon. Ethuro): Before I do so, let me have an indication of those ones who have not seen the document.

(Several hon. Senators stood up in their places)

That is the entire House!

You may be seated, hon. Senators.

The question from the Chair was quite specific. Since it is a new House, I will allow for another one week, because petitions come on Thursdays, except with this rider; for ease of reference, every time a document is tabled on the Floor of the House, it is transmitted immediately thereafter to Room 105, unless it is being utilized within the House at that particular time. So, you should be able to access whatever document that has been tabled on the Floor from Room 105, and you do not need any further prompting or any communication. That should be the standard procedure.

Ordinarily, I would not have extended this, but because, as the opening remarks of Dr. Khalwale himself indicate, that neither House has received a petition and so, perhaps, Senators do not know where to look for the petition itself. But any document that is tabled in the House, you should be able to get it from Room 105 at the Senate.

Next order.

The Senate Minority Leader (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. May I request very humbly that when such a document is tabled, because we are not many and we have enough staff here, that on a day of sitting like this, could they just distribute the document or attach it to the Order Paper of the day and give to every Senator? It makes it a lot easier. This will be in addition to having the documents in Room 105, of course.

The Speaker (Hon. Ethuro): Sen. Wetangula, that sounds like a good recommendation, but I would not allow it for one simple reason; those Senators who will be present in the House at that particular time might get it, but those ones who might not be present might not get it. Two, the last time we had different sets of documents and it confused some Senators in terms of which is the Order Paper and which is which. Three, since it is now made abundantly clear where to get the document – Room 105 is not too far from our premises; it is within the building – so, everybody should know that you can get the document from Room 105. So, let us leave it that way.

(Petition deferred)

Next Order.

The Speaker (Hon. Ethuro): Order! Order! I thought there was a document to be tabled; the Joint Report.

Yes, Sen. Billow?

PAPER LAID**JOINT REPORT ON THE DIVISION OF REVENUE BILL,
(NATIONAL ASSEMBLY BILL NO.1 OF 2013)**

The Chairman of the Committee on Finance, Commerce and Economic Affairs (Sen. Billow): Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Joint Report of the Standing Committee on Finance, Commerce and Economic Affairs and the Sessional Committee on Devolved Government on the Division of Revenue Bill (National Assembly Bill No.1 of 2013).

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order.

NOTICES OF MOTIONS**ESTABLISHMENT OF LEVEL FIVE HOSPITALS
IN ALL 47 COUNTIES**

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that in the last 50 years, the best equipped public hospitals were established in certain regions in Kenya to the exclusion of other regions; appreciating that the introduction of the devolved system of Government through the Constitution of Kenya, 2010, was aimed at equalisation of development across the country; concerned about the high maternal, infant and child mortality rates in Kenya mainly caused by lack of primary and secondary health services, the Senate resolves that the Government establishes a Level Five Hospital in each of the 47 counties and a Level Four Hospital in every sub-county before the expiry of the term of the current Government, and provides annual reports on the development of the hospitals to the Senate through the Senate Standing Committee on Health, Labour and Social Welfare.

The Speaker (Hon. Ethuro): Sen. Mukite?

ESTABLISHMENT OF GRADUATE ENTERPRISE FUND

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

THAT, aware that the level of unemployment among the youth in Kenya is over 70 per cent and is rising; concerned that the formal sector is unable to generate sufficient formal employment for college graduates resulting in far reaching ramifications to the economy and societies across all counties in Kenya; noting that the youth are unable to venture into private enterprises because of lack of access to affordable credit, the Senate urges the Government to take urgent and immediate steps to ensure

legislation is enacted to provide for the establishment of a graduate enterprise fund to offer revolving, interest free loans to unemployed graduates in all the 47 counties.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

ROLE OF THE NEWLY CREATED DEPARTMENT OF DEVOLUTION

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I stand under Standing Order No.43(2)(c) to request for a Statement from the Chairperson of the Sessional Committee on Devolved Government on the role of the newly created Department of Devolution. I would like him to clarify the following issues. One, what is the relevance of this department in view of the fact that the national and county levels of government are two distinct and interdependent only to the extent provided for in Article 6(2) of the Constitution? Two, I would like him to clarify whether the Department is to be used, misused or abused by the national Government in an attempt to control our county governments. Finally, I would like him to clarify what the connection is between the Department on Devolution and the County Commissioners, who are currently in office despite a High Court ruling declaring them illegal.

Thank you, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Ethuro): Chairman of the Committee?

Sen. Murkomen: Mr. Speaker, Sir, I want to thank my colleague for that very important question. I can answer it today, if need be.

The Speaker (Hon. Ethuro): Proceed.

Sen. Murkomen: Mr. Speaker, Sir, if you look at what they call Circular No.1, which the President issued in so far as the Department of Devolution is concerned – actually it is what is called the Ministry of Devolution and Planning – you would easily say that the title is misleading, because if you look at the contents of that Ministry, the larger percentage of the Ministry is involved in matters of planning, and planning is a function of national Government.

This Ministry is an amalgamation of about six Ministries; first there is what used to be the Ministry of Planning. So, even if you look at the budget, you will realize that the highest function is planning. Two, it also includes the Ministry which used to be for youth. So, you will find that, inside there, there is the Youth Enterprise Fund. Three, it also includes what used to be the Ministry of Gender. You will find there also the functions that relate to gender issues. Lastly, in the Ministry, there is provision of matters of inter-governmental relations. If you look at the Inter-Governmental Relations Act, it talks about the facilitation by the Cabinet Secretary in charge of Devolution on issues related to inter-governmental relations. If you go to the Inter-Governmental Relations Act, there are three institutions which have been created there; one is the Tribunal, two is

the Council of Governors, and three is the Summit. Now, the coming together of the Summit, which brings together the President and the Governors, needs a department at the national level that will facilitate that relationship.

Two, the Constitution in the Sixth Schedule provides that the function of the national Government is to ensure that capacity of the county governments is built in the first three years of the transition period. So, that Ministry will be in charge of co-ordination of capacity building by national Government during the transitional period to the counties. We have discussed in this House that counties are lacking capacity to deal with matters such as budgeting and creating office infrastructure at the local level. So, that is the function of that Ministry for the short time. If you look at the budget, you could almost say that, that function of inter-governmental relations that is going to be dealt with that Ministry is about 5 per cent of the budget allocation to that Ministry.

Mr. Speaker Sir, there is the question of; does it have anything to do with co-ordination of county governments? That Ministry has nothing to do with the co-ordination of national government administration. Indeed, the office that will do that co-ordination are the county commissioners. The work that the county commissioners are dealing with is basically the Ministry of Interior and co-ordination of national Government; I take notice that the President has just nominated the Cabinet Secretary to be vetted for that Ministry.

For that reason, Mr. Speaker, Sir, the Ministry of Devolution has nothing to do with the county commissioners. There is no correlation. The question of these county commissioners being in office illegally even after the courts have made a decision that they should not be in place does not arise because the decision that was made by the courts was rectified when the National Assembly and the Senator who has asked the question, Sen. (Dr.) – and I must emphasize the part of “Doctor” – Khalwale plus the Leader of Minority, among others, sat and passed a legislation called “National Government Co-ordination Act” that regularized the creation of the offices of county commissioners that are co-ordinating functions of the national government at the county level. This House has a Motion which is pending, and that Motion is going to re-look at the Act itself *vis-a-vis* whether it is going to affect the relationship between the national and county governments, and whether it has any interferences. When that time comes, we will – all of us as a House – have an opportunity to relook at that legislation. We must remember that the National Assembly – I almost said the Lower House – had decided at that time that there were various legislations that they had passed which may have effect on the Constitution. In fact, there is a question of the constitutionality of legislation that were passed by the National Assembly, and the constitutionality is this; the Constitution in the Schedule says that the National Assembly can sit as a Senate for purpose of passing certain legislations. But the question we need to ask ourselves is: Did the National Assembly at that time consciously sit down and say “today, we are sitting as Senate and, therefore, when we vote, we must vote as delegations that represent the various counties” so that every county has a vote? So, we have questions that this House is going to re-look at various legislations of the National Assembly. At that point in time, my friend, Sen. (Dr.) Khalwale and myself, among others will be raising questions – whether on the Public Finance Management Act, the Intergovernmental Relations Act, the County

Governments Act, the Transition to County Governments Act – on whether they are compliant to the requirements that counties require.

So, Mr. Speaker, Sir, I think that question has fairly been answered to the best of my knowledge. I must note, Mr. Speaker, Sir, that the same concerns that the Senator has raised, I had them and I have had a prior meeting with the Cabinet Secretary for Devolution. You know, this is my department, so I must consult everybody who is dealing with matters of devolution.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): The Chair appreciates your submissions, especially when you make reference to constitutionality, but then it escapes you that the same Constitution in transition, Clause 11, indicated about the role of the National Assembly when it serves as the assembly before the Senate, which I think is quite important to appreciate.

Yes, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like to thank him for the immediate response, but wish to seek the following further clarifications. From his answer, he has made it very clear that this department will mainly or principally be for planning and, probably, with gender issues. Could he come and confirm that, now that he has made that clear, that at no time will the Cabinet Secretary in charge of this Ministry or her agent approach any governor in a matter pertaining to the running of a county; or question any decision that has been taken by any county government in the way they are going to run their counties?

The second point which I would like you to clarify, Sen. Murkomen, is that Article 6(2) of the Constitution is specific that this interdependence must be with mutual consultation and co-operation. Can you come and confirm; and give us actual dates of the days when the President or the Deputy President consulted either our governors or the Senators, or the county assemblies to seek our concurrence for the need for us to have some structure that is likely to cause confusion or bring in interference?

Finally, Mr. Speaker, Sir---

Mr. Murkomen: Please, repeat the second question.

Sen. (Dr.) Khalwale: I am talking about Article 6(2) of the Constitution. The question is; can you come and confirm; and give us actual dates of the days when the President, the Deputy President or their agents consulted or sat with either the governors, members of the county assemblies or the Senators to do consultations so as to seek co-operation through mutual consent for us to have this particular body that, to me, is likely to cause confusion or bring in interference?

My last point on clarification arises from what you have said. You pointed to the Senate Minority Leader and myself, that we were there when we created the National Government Co-ordination Act. It is true; we did it. But as you know, the law is not a dead entity; it is dynamic, and we were responding to a specific need. The specific need was that other departments of Government--- let me give you the example of the Department of Education, which had already posted heads to the counties. We have a guy there called County Education Director. So, there was need to have somebody who would

then co-ordinate issues of security, in view of the fact that some of the assets of the former county councils were now at risk.

Mr. Speaker, Sir, So, we were thinking that you have this guy on a transitional basis, as we wait for the Government to arrive, he will take care of this urgent security issue. Could you, therefore, confirm that you will approach the House with an amendment Bill that will completely remove the County Commissioner now that the real custodian, the Chief Executive Officer (CEO) has come?

The Speaker (Hon. Ethuro): Hon. Senators, I allowed Sen. (Dr.) Khalwale because he is the one who sought the Statement. I will not take more than two clarifications from the rest of you.

Sen. Haji: Mr. Speaker, Sir, it is erroneous to say that County Commissioners are there illegally. It is good to note that the court never made an order, it just---

The Speaker (Hon. Ethuro): Order, Sen. Haji! What is your clarification? That sounds like a point of order!

Sen. Haji: It is not, Mr. Speaker, Sir. I am trying to---

The Speaker (Hon. Ethuro): Order, Sen. Haji! You are now getting to more dangerous ground---

Sen. Haji: Okay, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): It is up to the Chair to determine what is or is not a point of order!

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

The Speaker (Hon. Ethuro): Yes, Senator from Migori County.

Sen. (Dr.) Machage: Mr. Speaker, Sir, in the former Government, the Prime Minister's office, which was in charge of co-ordination of all Ministries had a budget of Kshs3 billion only. We understand this Ministry has been allocated Kshs68 billion. From the description of the Chair of the Committee on Devolved Government, I find it an amorphous Ministry with no function at all; actually it is a misnomer. Could he confirm that the title given to the Ministry is a misnomer because it has no role in the name it has adopted?

The Speaker (Hon. Ethuro): Sen. Moses Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, could the Chairman also clarify the following:-

One, whether it is true that the High Court ruled that the presence of County Commissioners was illegal and that position was confirmed by none other than the Attorney-General of the Republic of Kenya?

Two, the functions that he has purported to list here within that Ministry are largely vested in the activities of the county governments. These are devolved activities such as matters of youth and women. If you look at the Constitution, even counties are vested with authority to do their own planning. The planning at the national level is very minor. Why should we have a Ministry of Devolution other than the confirmation of the reluctance of the Jubilee Government to fully embrace devolution? They want to continue interfering with devolved units from the centre through the creation of a Ministry that looks completely out of place within the devolved structure and the structures of the new Constitution.

The Speaker (Hon. Ethuro): Finally, Senator Murungi.

Sen. Murungi: Mr. Speaker, Sir, I wish to congratulate the Chairman of the Committee on Devolved Government for doing his homework in advance, and even talking to the Minister, so that he could respond to Sen. (Dr.) Khalwale's Statement in the manner in which he has done. However, we need a clarification. Since he has a chance to chat with this Minister, and it is the duty of the Minister under the Constitution to advise the President, what did the Minister say she will advise the President on regarding the implementation of the constitutional mandate of devolution? This mandate binds all state organs, including the Presidency, to implement devolution. What ideas did the Minister express to the Chairman regarding implementation of the mandate in the Constitution by the Executive to make devolution work?

The Speaker (Hon. Ethuro): Chairman of the Committee on Devolved Government.

Sen. Murkomen: Mr. Speaker, Sir, first, I really thank my colleagues for the very good questions. There is a misunderstanding in this country and in many countries in the world on matters of devolution. The word "devolution" in the Constitution does not refer to counties. If you read Article 6(3) of the Constitution, you will realise one very important provision. It says that:-

"A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service."

This refers to a national government organ, not a county government organ. If you move on to Article 174 of the Constitution---

The Speaker (Hon. Ethuro): Sen. Murkomen, which Article did you just read out?

Sen. Murkomen: Mr. Speaker, Sir, Article 6(3) requires that all National Government state organs should ensure that there is reasonable access to its services in all parts of the Republic.

If you read Article 174(h), it says:-

"The objects of the devolution of government are-
(h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and---"

Devolution is not all about counties. In fact, some people claim that if you want to read about devolution, go to Chapter 11. This Chapter is basically titled "Devolved Governments." It discusses the county executive and legislature. But both the National Government and County Governments must respond to devolution in the manner in which they operate. That is why we have, for example, County Education Director, a Teachers Service Commission (TSC) Director at the County level and so on. That is why the Immigration Department and the Ethics and Anti Corruption Commission, for example, are expected to decentralize to every county. Article 6(3) explains that such bodies are supposed to have offices in every county. That is why there is a Motion that an hon. Senator will be introducing, to ensure there are hospitals in every county. The objective is to ensure that devolution takes services closer to the people, whether as a function of the National Government or county governments. So, you cannot tell us that

if you name a Ministry as in charge of Devolution, you are interfering with counties. That is far from it. In fact, Sen. Murungi has even put it better. It is the duty of every organ of Government, the National and County governments, to implement devolution.

Let me refer hon. Senators to Article 10(2)(a), which is very important. It says:-

“The national values and principles of governance include-

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;”

Therefore, the National Government must not run away from devolution, even for functions which under Schedule Four, Part I are functions of the National Government, they must ensure that they are devolving those functions and powers to the local level. So, having a Ministry of Devolution, under the National Government is perfect. In fact, the question should be: “Has that Ministry been given enough resources to ensure that all National Government organs take their services closer to the people? They have the responsibility to take---

Hon. Senators: Ahhhh!

Sen. Murkomen: They have the responsibility to take those functions to the local level. When we came to this House, we said that we are all learning. Am suggesting that--

(Loud consultations)

Mr. Speaker, Sir, if you could protect me from the noise---

An hon. Senator: Who is making noise? Loud consultations!

Sen. Murkomen: Sorry, the loud consultations.

An hon. Senator: Sit down, Sen. Murkomen! *Wewe unapigana na* Devolution?

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, you have heard the Chairman of the Committee on Devolved Government admit that he is on the learning curve. My question is not meant to test continuous learning or otherwise!

(Laughter)

The country, the governors and the county assemblies are waiting for a firm answer. Therefore, if the Chairman is not ready, because he is still learning, let him prepare and come after two days, two weeks or even some months and give us a concrete answer!

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! In all fairness to the Chairman of the Committee on Devolved Government, he was referring to what we had said that we are all learning. He has not even completed what he wanted to say, so that we can know whether he has learnt or not!

Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, we have labeled ourselves as the “House of Wisdom”. As a Chair of the Committee on Devolved Government, I suggest that at an opportune time, we all take some time and go through the subject of devolution, so that we can serve the people of Kenya better.

It is important to understand from the outset that when we talk about devolution, it is not a confine of any level of government. The Constitution has made it very clear that it is a responsibility for everybody, including this House and the public or state officers to ensure that, whatever they do, under Article 6(3), that service is taken closer to the people. That is why we have seen very many Motions being moved by hon. Senators who want various services to be taken closer to counties because that is the spirit of the Constitution in terms of devolution.

Secondly, I have been asked to confirm if the Minister is planning to interfere with devolution. We discussed that matter and she said that she is instead planning to advise the President to ensure that devolution is achieved and implemented. Indeed, Article 6(2) of the Constitution is very important. Even if she attempted or dared to interfere with the work of governors or county assemblies, she will be violating the provisions of Article 6(2) which says:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and co-operation.”

There are two important principles listed there. The first principle is that of distinction. I can speak about it for an hour. But the most important thing is to ensure that two levels of government are doing their functions as distinct levels. If you check the Fourth Schedule, you will realise that there are functions that are fully National Government functions and others that are fully county functions. But there is also the principle of interdependence. In the Fourth Schedule, you will realise that Article 1 of the Constitution talks about policy making, for example, the agricultural policy and the county government implementation of that policy. This means that there is a relationship between the national and county governments. They need to operate together and relate. In fact, there are certain functions that are called concurrent functions in the Fourth Schedule. For example, in Part I, on functions of the National Government, there are functions as such disaster management, energy policy including electricity and gas reticulation and energy regulation. The same functions appear in Part II of the Fourth Schedule on the functions of County Governments. That means there are situations where certain functions will overlap. That is why the Constitution talks about consultation and co-operation. None will take orders from the other. If any governor takes orders from the Minister, he will be acting illegally because the Constitution has already talked about co-operation between the two levels of Government.

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

The Speaker (Hon. Ethuro): What is it, Sen. Hassan Omar? Hon. Senators, I would like to remind you that this is not a Motion, but a Statement. We have already utilized more than 15 minutes already.

Sen. Hassan: Mr. Speaker, Sir, I have just consulted Sen. (Dr.) Khalwale. I recognise that Sen. Murkomen is the Chair of a Committee that I belong to. I do not know whether Sen. Murkomen is making a statement on behalf of the Committee, which is not properly seized of this matter. Is he just responding on his own volition?

Sen. Murkomen: Mr. Speaker, Sir, as I said, we are all learning. Sen. Hassan is also learning. I am responding on behalf of the Minister, not on behalf of the Committee.

An. hon. Senator: Which Minister?

Sen. Murkomen: Mr. Speaker, Sir, I am perfectly in order.

The Speaker (Hon. Ethuro): The Chair is satisfied that Sen. (Dr.) Khalwale sought a Statement from the Chairman. Sen. Hassan has just confirmed he is only but a Member of the Committee.!

Proceed, Chairman!

Sen. Murkomen: Mr. Speaker, Sir, I will proceed to answer the remaining questions very quickly. Consultations and co-operation will continue. That is why Parliament passed the Inter-Governmental Relations Act. The objective was to ensure that consultations and co-operation is maintained. That is why there is a tribunal, a council of governors, a summit and the Senate. This House must not forget that its main objective is to facilitate counties. This is where the main consultations, on behalf of all counties of Kenya, are taking place. Should anything happen to counties, this House has the necessary constitutional powers to look into various issues.

Mr. Speaker, Sir, on the question about departments like education, as a House, we should not forget that the Fourth Schedule has left out about 24 functions. They have listed about 35 functions, but they can be more because some of them are lumped together. There are functions such as Tourism Policy and Development, National Betting, Casinos and other forms of gambling, Public Investment, Health Policy and so on. When performing these functions at a local level, the National Government needs to have a co-ordinating officer, whether you call him a county commissioner or whichever title you give him, they need one person who will bring together all Ministries of Government and co-ordinate on behalf of the National Government.

Sen. Haji: On a point of information, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, I am willing to be informed.

The Speaker (Hon. Ethuro): Proceed, Sen. Haji!

Sen. Haji: Mr. Speaker, Sir, my point of information is that I do not think the county commissioners are illegally in office. It is good to understand the beginning of the story behind their appointment. In the first place, there was no order. There was a just a judgment without a court order. That judgment was misdirected because the Permanent Secretary, Office of the President did not sign the gazette notice which established the county commissioners. It was signed by His Excellency the President. Therefore, it was erroneous. That is why the Permanent Secretary decided to go to court.

Sen. Murkomen: Thank you, Sen. Haji, for the information. Thirdly, is the question of the amount allocated to the counties. The point is that the National Government will have to create its own administrative structure at the local level whether the officer there is called a County Commissioner or Director of Administration at the County. They need to organize themselves in a manner that will allow them to deliver services to the people. As I said, if there is any question as to any legislation, this House has the power to introduce amendments. I have been asked whether I am planning to bring amendments. We have not reached there because we have not audited these legislations. Our Committee and the committee that has been formed to look into this issue, will have the opportunity to audit all legislations. Indeed, any hon. Senator can

come and introduce any amendment if they so wish. When the time comes, we will discuss that matter.

On the question of the finances, I need to point out that all the money that is--- I see the Senate Minority Leader is armed with the breakdown of the budget. If you have a look at that budget, Kshs22 billion has been set aside for the Constituencies Development Fund (CDF). This House pronounced itself on the matter of the CDF in one way or the other. The CDF has been allocated a lot of money. There is about Kshs25 billion that has been set aside for the Youth Enterprise Fund (YEF). This Government committed itself to ensuring that all the youth across the country are given resources to do business. That means the process of wealth creation, which is perfectly a function of the National Government - There is also Kshs12 billion set aside for rural planning. There is no money allocated for interference with county government, there is none. As I said earlier, looking at the Ministry, the name "Devolution" looks scary. It looks as if it is branding the Ministry as that of the former Ministry of Local Authorities. But if you look at this critically, the resources are not allocated following that function. The resources are more focused on matters of youth, Arid and Semi Arid Lands (ASAL), which used to fall under the mandate of the former Ministry of Northern Kenya and Arid Lands Development. There are also resources towards women, the CDF and a small co-ordination amount on matters of devolution. The truth is that it is misleading to imagine that, that Ministry has any problem in that issue.

Lastly, Sen. Murungi had asked what the Minister, in our discussion, said about advising the President. The Minister was very clear in her mind that she will continuously advise the President to ensure that devolution works. In fact, in future, I will be asking her position, as to what the National Government thinks in certain matters that may be related to this House, for example, the Division of Revenue Bill. The House can demand to know the position on the public discussions of the Division of Revenue Bill and so forth. She is willing and ready to assist counties to move forward. The President has publicly said that our responsibility is to ensure that devolution works. The critics of the Jubilee Government were hoping that they would falter when it comes to putting resources and facilitating counties. In fact, the President met the governors and discussed with them matters of interest to counties. He is planning to meet Senators. Senators are at will to see him or not. But what is important is that this Government and the Minister are committed to ensuring that devolution works.

Thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Ethuro): Order! I think we have ventilated enough on that matter.

Let us have the next Statement. Senate Majority Leader!

The Senate Minority Leader (Sen. Wetangula): But Mr. Speaker, Sir, I have additional information.

The Speaker (Hon. Ethuro): Hon. Senators, there is a Committee chaired by Senator Murkomen. There is also a Motion already before this House on all these matters.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, but he is misleading us!

The Speaker (Hon. Ethuro): Sen. Wetangula, if he is misleading the House, you know what to do! You rise on a point of order.

The Senate Minority Leader (Sen. Wetangula): That is what I have done, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Not after submissions!

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, there was additional information I wanted to point out to him.

The Speaker (Hon. Ethuro): Proceed, Senate Majority Leader!

STATEMENT HOUR

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 27TH MAY, 2013

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir, I rise under Standing Order No.43 (2) to make the following short Statement.

(Loud consultations)

Mr. Speaker, Sir, protect me from the loud consultations.

The Speaker (Hon. Ethuro): Order Senators! Indeed, the consultations are too loud. Let us hear the Senate Leader of Majority.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I stand under Standing 43 (2), to make the following short Statement. The Order Paper today contains amongst other things a Motion of Adjournment of the Senate until Tuesday 4th June, 2013 which I will be moving later in the course of business today.

Any business that will be outstanding at the close of business today, if the Motion of Adjournment is carried, will be prioritized by the Rules and Business Committee and scheduled for consideration when the Senate resumes. I take this opportunity to thank the Senators for their co-operation and commitment to work.

Thank you.

CONSIDERED RULING

THE ROLE OF THE SENATE WITH REGARD TO THE
DIVISION OF REVENUE BILL, 2013

The Speaker (Hon. Ethuro): Hon. Senators, my attention has been drawn to a Communication made by the Speaker of the National Assembly at a sitting of the Assembly held on Wednesday 22nd May, 2013 on the matter of the Division of Revenue Bill, 2013. Arising from this Communication, some anxiety may have arisen among the public and in the minds of the county governments in the manner which this Bill is to be

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disposed off by the Senate. It has, therefore, become necessary that I make a Communication on the disposal of the Division of Revenue Bill, 2013 by the Senate for purposes of the record.

Hon. Senators, let me at the outset state that in keeping with the provisions of Standing Order No.88 (5), which is replicated in the National Assembly Standing Orders as Standing Order No.87 (5), this Communication is not intended to criticize or to call to question the proceedings of the National Assembly or indeed, the Communication made by my colleague, the Speaker of the National Assembly. That is for a good reason expressly prohibited in the Standing Orders. This Communication is, therefore, intended only to clarify the role of the Senate with regard to the Division of Revenue Bill, 2013 so as to ensure the smooth transaction of the business of the Senate in accordance with its constitutional mandate and, particularly because we are going to the Committee of the Whole for the same Bill.

The Communication made by the Speaker of the National Assembly on the Division of Revenue Bill, 2013 has been understood to mean that the Division of Revenue Bill, 2013 which is currently before the Senate, having been forwarded to the Senate by the Clerk of the National Assembly by a letter dated 13th May, 2013, to which was annexed a message by the Speaker of the National Assembly seeking the concurrence of the Senate on the Bill as proposed by the National Assembly; that it is not properly before the Senate and that the Bill should have been processed and disposed off only by the National Assembly to the exclusion of the Senate.

Hon. Senators, by way of elucidation, simply put, a Division of Revenue Bill is a Bill that seeks to allocate monies or rather to divide the monies before the national and county levels of Government. The enactment of a Division of Revenue Bill then sets the stage for publication by the Senate of the County Allocation of Revenue Bill which, when passed, allocates the monies as between the counties. That is what the Chairman of the Commission on Revenue Allocation (CRA) usually calls the vertical and horizontal allocations. You need to deal with the vertical before the horizontal. With this background in mind, the essence of the position advanced on this matter, is that while the Senate can allocate monies as between the counties, it has no say or no role whatsoever in the determination of the amount of money that will be available for such allocation.

Stretched to its limits, this interpretation would mean that the Senate must merely wait for the National Assembly to determine in a particular year the amount due to the counties, which amount could very well be set at nil despite the provisions of Article 203 (2) of the Constitution. The Senate would then, once the Bill allocating nil to the counties has been published, embark on the allocation of this zero figure as between the counties.

Hon. Senators, this analogy, though rather extremist is intended to illustrate the important role and place of the Senate in the disposal of a Division of Revenue Bill. A Division of Revenue Bill is at the heart of the devolved government system and it is the first and probably the most important test of fidelity by Parliament and all other institutions of Government to the Constitution as a whole and devolution in particular. Whatever else devolution may be about, it is principally about sharing of financial resources. Indeed, it is arguments surrounding the question of the nature and design of the

devolved government structure that were in very large measure responsible for the protracted constitution making process that Kenyans had to endure for over two decades.

Hon. Senators, against this background, it is therefore important that I clarify a number of issues, among them:-

1. The effect of a determination in one House on the role and mandate of another House.
2. The meaning of a Money Bill and whether or not a Division of Revenue Bill is a Money Bill.
3. The meaning of a Bill concerning county government, and whether or not a Division of Revenue Bill is a Bill concerning county government.
4. The consequence of a disagreement between the two Houses on their roles particularly with regard to Bills.
5. The process for disposal of a Bill once the Senate has concluded its consideration of the Bill.

It is a bit long and since I know the Attorney-General *emeritus* may have a lot of interest in this, I will allow him to enter the Chamber.

(Sen. Wako walked into the Chamber)

On the first issue, which is the effect of a determination in one House on the role and mandate of another House, I need to explain that the hallmark of a legislature is the running of its own affairs. It matters not whether the legislature is one established at the national level or at the county level. A legislature conducts its business in terms of the Constitution and the law, free of the control or direction of any other person or organ. The effect of this is that a legislature determines for itself its own understanding of its role and mandate.

While one House may be entitled to comment or hold a view on the role of another House, that opinion is of little consequence in the other House. This position is as true of the Senate as it is of the National Assembly. The Senate claims for itself the right to determine the scope and extent of its role and mandate on any matter, including Bills, not least of all a Division of Revenue Bill.

Honourable Senators, this brings me to the second issue which is the meaning of a money Bill and whether or not a Division of Revenue Bill is a money Bill. A Money Bill is defined in Article 114 of the Constitution. It is important to observe that in this definition, the Constitution, for good reason, is careful to exclude from the ambit of a money Bill, a Division of Revenue Bill and a County Allocation of Revenue Bill by stating expressly at Article 114(3) that a 'Money Bill' means a Bill, other than a Bill specified in Article 218 of the Constitution. By this provision, a Division of Revenue Bill as well as an Allocation of Revenue Bill are both excluded from being the preserve only of the National Assembly.

I will allow Senator Orengo to walk into the Chamber.

(Sen. Orengo walked into the Chamber)

On the third issue, which is the meaning of a Bill concerning county government and whether or not a Division of Revenue Bill is a Bill concerning county government, this is a particularly important issue because only if a Bill concerns county government does the Senate become seized of it. It is possible that although a Bill is not a Money Bill in terms of Article 114 of the Constitution, the Bill does not concern county government. Article 110(1) (c) of the Constitution provides that a Bill concerning county government means “a Bill referred to in Chapter 12 affecting the finances of county governments”. It is clear from this provision of the Constitution that a Division of Revenue Bill is a Bill concerning county government because it is a Bill referred to in Chapter 12 of the Constitution and it is arguably the one Bill in Chapter 12 that most affects county governments.

Having found that a Division of Revenue Bill is a Bill concerning county governments, it is now important to further determine whether it is a Special or Ordinary Bill for purposes of setting out the procedure for its disposal. In terms of Article 110(2) of the Constitution, a Division of Revenue Bill is an ordinary Bill as opposed to a County Allocation of Revenue Bill which is a Special Bill. Thus, in the case of a County Allocation of Revenue Bill that has been passed by the Senate, the National Assembly may only amend or veto such a Bill by a resolution supported by at least two-thirds of the Members of the Assembly. For a Division of Revenue Bill, a simple majority suffices.

I will allow the Minority Whip the opportunity to participate.

(Sen. Muthama walked into the Chamber)

Honourable Senators, it may, therefore, be useful to observe, that by the Constitution and the Standing Orders of both Houses, a Division of Revenue Bill may commence in either House of Parliament. The Constitution is clear on this point and the Senate Standing Orders at Part XX and those of the National Assembly at Part XXIV are similarly clear on this matter and set out procedures by which a Division of Revenue Bill may originate in either House. Thus, while in this year the Division of Revenue Bill, 2013 commenced in the National Assembly, it may very well have commenced in the Senate.

Honourable Senators, on the question of the consequence of a disagreement between the two Houses on their roles particularly with regard to Bills, I emphasize that the defining character of a legislature is the capacity by right to run its own affairs. I, therefore, find and rule that while the National Assembly may be entitled to comment or hold a view on the role of the Senate, that opinion is of no legal consequence on the other House.

That is why, Honourable Senators, the Constitution establishes a Mediation Committee at Article 113 of the Constitution, which is appointed by the Speakers of both Houses, consisting of equal numbers of Members of each House, to attempt to develop a version of a Bill that both Houses will pass. The mediation process may conclude in, either an agreeable version of the Bill being developed which is subsequently approved by both Houses, or may end in the death of the Bill where the committee is unable to

agree on a version of the Bill within 30 days or where the version that is agreed on is rejected by either House.

The argument that the prospect of a defeat of a Division of Revenue Bill at a Mediation Committee is evidence that it is not intended to be disposed of by both Houses is therefore incorrect. An important and unwritten principle on which the Constitution is predicated is that there shall be good faith in the disposal of public business by Parliament. That Parliament would not be so unwise as to fail to agree on a matter so important as the monies to be made available to the national and county levels of government with the prospect that no monies are therefore made available by legislation--

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This argument which is based on the prospect of failure of a mediation process, should, if it is to be applied to a Division of Revenue Bill, also be applied to a County Allocation of Revenue Bill, yet the Constitution is clear that both Bills are to be considered in both Houses.

Notably, this argument would apply even if a Bill was to be disposed of by one House because even then, that House can still defeat the Bill. Ultimately, the Constitution is based on the assumption and belief that the two Houses will agree one way or the other.

This is also the case in reference to Article 110(3). It says:-

“Before each House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or ordinary Bill.”

The question could very well be asked: What happens if the two Speakers do not agree as to whether a Bill concerns counties and whether or not it is an ordinary or a special Bill? The bottom line is that the Constitution is predicated on the *bona fides* of both Houses.

Hon. Senators, for the avoidance of doubt concerning the Division of Revenue Bill, 2013, in a letter dated 3rd May, 2013, the Speaker of the National Assembly informed the Speaker of the Senate that the Division of Revenue Bill was a Bill concerning County Governments and that it was an ordinary Bill. Subsequently, vide a letter dated 9th May, 2013, the Speaker of the Senate concurred with the finding of the Speaker of the National Assembly.

Hon. Senators: Yes, indeed!

The Speaker (Hon. Ethuro): And rightfully so, if I may add.

Hon. Senators, having stated that the Bill is properly before the Senate, I will now proceed to the final issue which is the process for disposal of the Division of Revenue Bill, 2013, once the Senate has concluded its consideration of the Bill which is as follows.

On conclusion of consideration of the Bill by the Senate, the procedure is provided under Standing Order 147. It says:-

“When a Bill which originated in the National Assembly has been read a Third Time in the Senate, the Clerk shall either-

(a) return the Bill with a message to the National Assembly, “That the Senate has agreed to the..... Bill without amendments”;

(b) return the Bill with a message to the National Assembly “That the Senate has rejected the Bill and the Bill has been referred to a mediation committee; or

(c) cause any amendment or amendments that may have been made to the Bill in the Senate to be entered in the Bill received from the National Assembly, and an amended copy of the Bill, signed by the Clerk and endorsed by the Speaker shall then be returned to the National Assembly with a message desiring the concurrence of the National Assembly to the amendment or amendments made by the Senate.”

Where the Senate amends a Bill, Standing Order No.145 of the National Assembly Standing Orders requires the National Assembly to consider the amendments from the Senate in Committee of the Whole House on such day as the House Business Committee of the National Assembly shall appoint.

Hon. Senators, each amendment will either be agreed to or rejected by the National Assembly.

Standing Order 148 of the National Assembly provides that where the National Assembly agrees to pass the Bill as amended, the Bill shall then be referred to the President for assent in terms of Article 115 of the Constitution. Where the National Assembly rejects the Bill as amended, the Speaker of the National Assembly shall refer the Bill to a mediation committee.

Hon. Senators, having explained all this, I need to call the attention of the Senate and the country at large to the significance of this matter.

Article 259(1) of the Constitution provides that the Constitution shall be interpreted in a manner that;

1) This Constitution shall be interpreted in a manner that—

(a) promotes its purposes, values and principles;

(b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

(c) permits the development of the law; and

(d) contributes to good governance.

Hon. Senators, nothing would depart more from the letter and spirit of Article 259 of the Constitution, to my mind, than to interpret the Constitution to mean that the people of Kenya, having established an elaborate system of devolved government, complete with a Chamber of Parliament dedicated to representing and protecting the interests of devolved government, intended that this representation and protection should not extend to the process of determination of the sharing of finances between the national and county levels of government.

It cannot have been the intention of the people of Kenya that the Senate and county governments would be entirely at the mercy of the National Assembly, a majoritarian House, to determine the amounts of monies, if any, that would be shared by the counties.

The Senate Minority Leader (Sen. Wetangula): *Ume respond sasa!*

The Speaker (Hon. Ethuro): Hon. Senators, such a finding would herald the death of the devolved government system and with it, a core pillar on which the Constitution is founded. Happily, the Constitution has gone to great lengths - I think the

Chair of the Devolution Committee has also expounded this in his earlier answer to the statement - as I have illustrated, to show that this is not so. The devolved system of government is alive and well. This Senate is determined to see to it that this remains the case.

Finally, hon. Senators, I rule that in accordance with this Communication, the Senate shall proceed with the disposal of the Division of Revenue Bill, 2013, in the manner provided for in the Constitution and the Laws of the Republic. In the disposal of this Bill, I must further remind you that while any Senator is free to discuss our role and that of the National Assembly, I will strictly enforce the provisions of standing order 88(5) which do not allow criticism or adverse reference to the proceedings of the National Assembly or the Ruling of the Speaker of the National Assembly.

I want to add that we agreed on that yesterday in the *Kamukunji* and we must maintain what we resolved amongst ourselves. We can only demonstrate it in the words of the Senator for Meru, that you do not pronounce yourself to be a lion. You just arrive and others run away.

(Laughter)

(Sen. (Dr.) Khalwale stood at his place)

Bearing in mind Standing Order No. 88(5), proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Indeed, I must congratulate you for the communication you have just made, especially in the presence of Sen. Orenge, Kenyans will remember that during the time we were in the trenches, during the second liberation---

An hon. Senator: Where were you, were you not very young?

Sen. (Dr.) Khalwale: I was there with hon. Orenge, ask him. I am not your age mate. Even Sen. Omar Hassan was there in *Mageuzi*.

We used to advance the frontier of democracy on the streets using demonstrations and street language. However, now that we have got the new Constitution, the frontier of democracy in this country will be advanced through engagement of great minds.

I am, therefore, very delighted that you have engaged your mind and I want to urge you, with tremendous respect, to the Speaker of the Lower House that you continue engaging as great minds. Remember one cardinal thing that any ruling you will be giving us is not meant to impress us; impress Kenyans, but to be done in the best interest of the law. Therefore, listening to a Speaker of the National Assembly speaking, I take it that he is speaking as the institution of the Office of the Speaker. So, this puts to question some of the experts we might have hired at various levels now that some rulings or directions from the Chair are wanting to that extent.

I beg to request that we continue engaging.

The Speaker (Hon. Ethuro): I am glad, hon. Senators, that you have started self regulation.

Again, observe Standing Order No.88(5).

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I rise on a point of order to say that I am a very proud Kenyan today having listened to an extremely useful and sobering ruling from the Chair because we had reached a point where many Kenyans were getting worried. When you have such powerful institutions like the two Chambers of Parliament engaging in some altercation, you are setting the country towards a constitutional crisis. I just want to say that I am very humbled and proud to be a Member of this distinguished House because it appears as if going forward, we will be the voice that will sober up our country. I have listened to the ruling and every statement that you have made has been backed by authority, facts and points of law. That is the direction we want to take so that we move our country from a country governed by the rule of men to a country governed by the rule of law.

Without much ado, I commend you for that ruling.

Sen. (Prof.) Anyang'Nyong'o: On a point of order, Mr. Speaker, Sir. Given the importance of the ruling you have given, would I be in order to ask your office to get space in the newspapers and publish the ruling?

(Applause)

The Speaker (Hon. Ethuro): It shall be so ordered!

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I also wish to go on record in congratulating you and the institution of the Senate for that precedent-setting ruling founded on law, facts, reason, devoid of emotion and devoid of irrational thinking. I urge that we keep that level of operation. We must continue showing the country the difference and the reason we are not just the Senate, but the Upper House.

Thank you.

(Laughter)

An hon. Senator: The lion of Meru.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. I am not the “lion of Meru” but the “king of Meru.”

I am very proud of you this afternoon. That is what we expect of a Speaker of the Upper House. As a lawyer, I was very much impressed by the interpretation of the Constitutional provisions which were in accordance with Article 259 of the Constitution. I want to support the proposal by hon. Anyang'-Nyong'o that this being a landmark ruling in this House, it be published, not only in one newspaper, but in the three major dailies in this country as soon as possible, so that every Kenyan can read and see that this is, indeed, the House of reason; the House that is promoting devolution and the rule of law.

Sen. Orendo: On a point of order, Mr. Speaker, Sir. On the footsteps of the “lion king of Meru” I must congratulate you because as I walked in, I knew that the words of wisdom were flowing from that Chair. I can now truly say that in our wisdom you were elected to be the Speaker of the Senate. As you know, rulings by Speakers are not only precedent-setting for our country. I am sure that one of these fine days, not just in the

Commonwealth, but everywhere there is a bicameral system of Government, this ruling will feature in some Legislatures of the world.

It is important to know how to interpret the Constitution. One of the principles that are contained in the Constitution is to advance the rule of law, so that if you are a public officer or an institution, you cannot be allowed to make a decision today and tomorrow, you wake up and say: "I have changed my mind." That is not the spirit of the law, because you can appear before a magistrate or Judge and he makes a decision, and then the next day he says: "Recall that gentleman. I have slept over this matter and have a different ruling." In law, once you make a ruling, your powers are spent. You are *functus officio* and have no further business dealing with that matter.

Mr. Speaker, Sir, therefore, this is a great day for this Senate. For these three weeks that we have sat, nothing other than wisdom has come from this House. Truly speaking, if one had to decide which is the Lower or Upper House, it need not be stated. I think it is obvious which the Upper House is.

Thank you, Mr. Speaker, Sir.

Sen. Kittony: Mr. Speaker, Sir, I wish you knew how difficult it is to sit on those seats, stand and sit down again, but I think that I have tried. Thank you for seeing me.

Mr. Speaker, Sir, I want to say that you have made us proud this afternoon. I am feeling very confident. When there is a mob, you do not understand how the wind blows. That other House is very huge and the wind was almost blowing us. I want to congratulate and assure you that we will support you. I am sure that my vote was not wasted. We have a true Speaker that will protect us.

Mr. Speaker, Sir, I want to tell my colleagues, the Senators, the Constitution that we have, truly should govern us. If we truly take it as our Bible, read and understand it, then the Senate will never go wrong.

Mr. Speaker, Sir, I congratulate you.

Sen. Hassan: Mr. Speaker, Sir, thank you for this opportunity. Over the last two days we have demonstrated something that I learnt, called the art of generalship. The art of generalship is that, where you are ready to give a shoot-to-kill order, but compassionate enough to be able to pardon those who are able to face the noose.

Mr. Speaker, Sir, yesterday, young Senators in this House had decided that they were going to defend the integrity and leadership of this House. In fact, Sen. Sonko had told me that they had appointed me at that point to speak in the Press Conference. I had put my sound bites in order so that we could speak in defence of this Senate. But out of Mr. Speaker's wisdom and leadership, we decided to return to the base and we did so. Further to that, even despite further attempt towards provocation and acrimony, the Speaker has still demonstrated wisdom. In fact, he has taught us law and asserted the authority of this House. I must commend him because this is his first landmark ruling. In this ruling, we have seen wisdom, intellect and etiquette in terms of the rule of law. As a young Senator in this House, I want to appreciate the fact that I am properly in this House and hope to learn from the broader diversity.

Mr. Speaker, Sir, your ruling, as Sen. Orengo has said, will go into history. I do believe that we will make reference to it in future. I want the Speaker of the other House and county assemblies, to borrow a cue from the Speaker of the Senate, who has

demonstrated that rather than confrontation, we shall opt for compromise. We shall opt for tranquility rather than acrimony.

Mr. Speaker, Sir, I commend this House. I am a proud Member of this House.

The Speaker (Hon. Ethuro): Let us be brief, hon. Senators.

Yes, Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, having stood on a point of order, I will make this very brief and to the point.

Mr. Speaker, Sir, first, I join my colleagues in congratulating you and thanking the spirit of Marende in you. This continues the Marende tradition of respecting the law, being erudite and always seeking to enlighten legislators on what the Constitution and Standing Orders are; and what needs to be done.

Mr. Speaker, Sir, the reason I have come here just to appeal to my fellow Senators is because we are likely to face such bumps in the future. My appeal is that it is better to err on the side of caution rather than be engaged in heady excitement in upheaval. So, I would caution ourselves, although Sen. Omar Hassan said that they were likely to go to a Press Conference, that it is better to consult under such circumstances and take reasoned decisions, like the Speaker has done, rather than engage in combat that may be more destructive than constructive. So, I do hope that this sets a precedent for facing such bumps in the future; with a reasoned approach and always seeking to solve problems through constructive engagement, rather than combat.

Thank you, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, I will also be very brief. I want to congratulate you for such a wonderful ruling. I think that the nation has been asking: "Where is Solomon of 2013?" I think that today the Speaker of the Upper House has demonstrated Solomonic wisdom, keeping into the law. That was a well researched ruling that delved into the jurisprudence of our Constitution. I think that you have upheld the spirit of constitutionalism. I commend you for that.

Mr. Speaker, Sir, like Sen. Anyang'-Nyong'o had said, I think that this House should buy space and publish this ruling in its entirety because it is important for the nation to understand the role and functions of this House when it comes to matters such as this.

Mr. Speaker, Sir, secondly, I would request you to also give us Senators a soft copy of that ruling, so that I can put it on my Facebook page and circulate it using Twitter, because it is important that this ruling is, not only read here, but all over the world. Many of my followers live in various countries in Africa, Europe and the United States. It is important that they continue reading and circulating this ruling, so that others can learn from it. I think that this is the best decision. In future, like Sen. Anyang'-Nyong'o has said, we should continue answering from the perspective of our job, rather than spending more time on sideshows in the media and any other place. We must just answer them by doing our job.

Thank you, Mr. Speaker, Sir.

Sen. Wako: Mr. Speaker, Sir, I, too, wish to sincerely congratulate you, first, on providing leadership to the Senate when we were under attack, but even more importantly now, delivering a first class ruling, which will be the pride of any of the highest courts in

any county in the world. This is because in your ruling, each statement was supported by a Section of the Constitution. We are only two Senior Counsels in this House, My other Senior Counsel also concurs that, really, this was the best ruling that we could have.

Mr. Speaker, Sir, we, as the Senate; the Upper House, are supposed, to provide guidance to the nation. By your ruling you have enabled us, as the Senate, to provide guidance to this nation on a matter which could easily have gone out of hand and undermined the new Constitution. I do concur that this should be published in all the newspapers. I do not know whether it is late, but I have been involved in the newspaper industry and know that the Friday publication is normally the widest possible circulation that one can have in a week, maybe apart from Sunday. So, if it is possible for this statement to be properly published in tomorrow's newspapers, let it be, so that everybody gets it. If it is at all possible, we could have a translation into Kiswahili, because we have *Taifa Leo*, so that the ordinary person also reads it in Kiswahili Language.

Mr. Speaker, Sir, apart from the publication, I was just wondering, because we are now in the final stages on the Division of Revenue Bill and are about to hand over this to the National Assembly. The Speaker of the National Assembly has made a ruling. Therefore, it does appear to me that we should find a way of communicating this ruling officially to the Speaker of the National Assembly. He is a lawyer and may very well be persuaded by your very persuasive ruling that you have made this afternoon. It may not be necessary to go into mediation and all those other matters, because we, lawyers, also can see a correct interpretation when it comes. So, I would urge you to send the ruling properly to the Speaker of the Lower House, particularly reminding him that he had actually come to the same conclusion as the one that you have arrived at, at this ruling and that is why he wrote to you and sent his opinion, that this was a Bill that concerns counties. It is not a Special Bill, but an Ordinary Bill. So, in a sense, you are agreeing with what he had already initially agreed. So, it may be easy for you to persuade him otherwise, so that we do not go into the lengthy process of mediation and other things that may, again, unnecessarily delay this very important Bill. This is because we really must move on as quickly as possible. In fact, we are very late. We want to see our counties start functioning. I hope that common sense will now prevail in the Lower House and that they will now recognize that we are the Upper House because we are guiding the nation and them on issues of law and interpretation of the Constitution.

Thank you, Mr. Speaker, Sir.

Sen. Wamatangi: Mr. Speaker, Sir, according to our traditions in the old days when there was any dispute in the local communities, the wise old men would sit with the chairman to resolve the dispute. If the chairman came up with a wise decision, the women of the village would come with fresh milk and pour it on the wise counsel of the chairman until he was soaked in it. I know we have ladies in the House, but there is no milk. Suffice it to say, if we had the milk, you would be soaked in it now. Mine is to congratulate you too and to say just like my colleagues have said that, indeed, this matter needed to be resolved, once and for all. We required this kind of ruling so that the people of this country can stabilize because they expect the work of these two Houses to be done in accordance with the law. I congratulate you. As one of my colleagues said, you were, indeed, elected as the Speaker on merit. If we continue in that way, I am sure the disputes

and the disagreements on the areas that seem to be grey will, not only be settled, but I am sure the distinction will be made. We will continue to stick to that ruling and respect Standing Order No.88 (5). We will always be and we shall remain the Upper House.

The Deputy Speaker (Hon. Ethuro): The last one was Sen. Haji, but I am not seeing him. So, I will give the chance to Sen. G. G. Kariuki and maybe one last chance for gender purposes, to Sen. (Prof.) Zani.

Sen. G.G. Kariuki: Mr. Speaker, Sir, I want to join my colleagues in thanking you for this very good ruling. It is good and it came at the right time. We nearly lost the battle until you came up---

(Loud consultations)

Let me air my views. You came up and made your ruling which is very important for this nation. We will praise you here in the House. I must assure you that the whole country will be on your side and will respect the decision that you have taken. Also the country will see that they still have some elders who come at the right time to make decisions which are going to cool down the tempers of our people.

Mr. Speaker, Sir, you have a responsibility and even the other Speaker has a responsibility to make sure that these two Houses work in harmony. If we dare try to use our muscles either through numbers of majority or experience we will not go anywhere. We trust that with your knowledge and experience you will be able to drive this country to the right place. Let us all agree that in this country we have many enemies who will never want this country to be what we want to see. The Press and many other hidden quiet enemies are ready to complicate any issue. Like this one, you just got it before it went out of our hands. I think through this ruling you have stabilized our people. Hon. Senators and other Kenyans will see that there was need for you and the other Speaker to agree on making a ruling of this kind. I do not think I need to say a lot, but I want to say that having been a Member of Parliament for quite some time and also having been in Kenyan politics for a long time, we must be careful of those who are out to make sure that we shall never have peace in this country. We have worked against them all the time.

Therefore, I beg to support you. I wish you luck so that you can make good decisions like the one you have just made.

God bless you.

The Deputy Speaker (Hon. Ethuro): Finally, Sen. (Prof.) Zani.

Sen. (Dr.) Zani: Mr. Speaker, Sir, Kenya and, indeed, the whole world is watching to see how the Parliament of Kenya is conducting itself. They are watching to see how hon. Members in both the National Assembly and the Senate are conducting themselves. I think it came as a shock to many Kenyans to watch the arguments which, unfortunately, were in public. This created a level of shock. People were wondering how the future will be. What is going to be the future for the implementation of this Constitution and the devolution? I would like to congratulate you for stepping in to make sure that we work amicably with the other House. I would like to congratulate you, especially for the restraint that you have exercised. We saw more restraint from this House, especially from you than we did from the National Assembly. Also, the level of

consistency stood out. We must congratulate you for that guidance because it gives us confidence as the Senate that we can make resolutions and be able to adhere to them. We hope that as we move into the future, we will get to a point where there is going to be more convergence. We want to engage in more consultations and avoid disappointing Kenyans. We should have a proud Parliament of Kenya.

Thank you very much.

The Deputy Speaker (Hon. Ethuro): Hon. Senators, thank you for your kind words. We now want to bring that to a close. If you look at the Supplementary Order Paper, we are on Motion No.8. The Mover has been generous to us, so we will skip that Order to another day because we must conclude this business because this is the ninth day on the Division of Revenue Bill. We would like to move on to Order No.9.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Chairperson (Sen. Kembi-Gitura) took the Chair]

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.1 OF 2013)

The Chairperson (Sen. Kembi-Gitura): Order, hon. Senators! We are now in the Committee of the Whole. We are going to go through the Bill that we have been discussing and which the Speaker has made a good ruling on. So, we are now in the Committee of the Whole and the Clerk is going to take us through, then we shall go clause by clause as we do the amendments, as is the normal practice. As you know today is the last day so we have to finish it. The voting shall be by delegations because this has to do with counties. That has come out very clearly from the ruling of the Speaker. So, the voting on each of the clauses shall be by delegations, but we shall have to agree on the way forward on that issue.

We can now proceed.

Clause 3

Sen. Mwakulegwa: On a point of order, Mr. Chairman, Sir. I heard you propose that we go clause by clause as we vote. We are of the opinion that we should go through the report and if it is approved, we vote at once instead of voting clause by clause because that will take a very long time and yet we have other business that we would want to undertake.

The Chairperson (Sen. Kembi-Gitura): Thank you very much, Senator. What we want to do is what our Standing Orders say regarding Bills that have to do with counties.

We must look at each amendment and even where there is no amendment we still have to indicate by counties. However, we will try and see how we can marry the two positions so that we can move on faster because we have to finish today.

I have already proposed that Clause 3 be part of the Bill.

Sen. Billow: On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. Billow?

Sen. Billow: Mr. Chairman, Sir, I heard you call out Clause 3, but we have proposed amendments on Clause 2.

The Chairperson (Sen. Kembi-Gitura): We shall come to it. I want to refer you to Standing Order No.134 on the sequence of going through the Bill at the Committee Stage. We will come to that one at the end when we are dealing with the title, Clause 1 and then Clause 2.

Sen. Billow: Mr. Chairman, Sir, I beg to move an amendment on Clause 3.

I beg to move:-

THAT, Clause 3 of the Bill be amended in paragraph (c) by deleting the word “ongoing” appearing after the words “continuation of”.

Mr. Chairman, Sir, the reasons for that proposed amendment is that if you read that clause you will find that it reads:-

“The object and purpose of this Act is to provide for-

(c) the financing and continuation of ongoing services in accordance with Article 187(2) and 203(1)(d) of the Constitution.”

Mr. Chairman, Sir, our joint Committee on Finance, Commerce and Economic Affairs and the Committee on Devolved Government are of the view that the word “ongoing” is superfluous or irrelevant. What is required here is that the purpose of this Act should be financing and continuation of services in accordance with those articles, not necessary for ongoing services only. It means all the services that have been devolved to the counties have to be provided for in terms of finances.

(Question of the amendment proposed)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, let me make a proposal before we deal with what Sen. Billow has said. When you look at your Order Paper, you will find that we have four proposed amendments and we do not know whether there will be amendments on amendments. If we ring the Division Bell on each of this, it means that there will be four divisions and we shall never finish. This is a test because this is the first time that we are in the Committee of the Whole. I want you to listen to me carefully because it will be for your adoption so that if you agree we proceed in that manner. Sen. Billow has moved an amendment to Clause 3. What we should do under the Standing Order, since this is a matter to do with counties under Standing Order No.69, we shall have to ring the Division Bell and then we call you by counties. We will do that to this one and then go to the next. That means by 8.00 p.m. or midnight, we shall still be here. So, I am proposing that we deal with all the four proposed amendments, debate all of them, then once we have finished, we shall ring one Division Bell. There will be a roll call on each of the amendments, because that is what the law requires. We cannot do a

guillotine. At the end, we will do a roll call on each of the proposed amended clauses. Now, if there is no Article where there is no proposed amendment, again, I will propose that we reserve them and then we do only one Division. We go through all these issues together and be done with them. If you agree, then that is the proposal I am making as the Chairman of the Committee of the Whole.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, I was commending you that you are very clever. That is something I was about to recommend.

The Chairperson (Sen. Kembi-Gitura): Do we have any other views on this? Once we adopt this, that is how we will be proceeding in the Committee of the Whole when considering Bills.

Sen. G.G. Kariuki: Mr. Chairman, Sir, what I am trying to seek from you is whether we are doing it from the advice of the Chair. How would that advice been seen in future in terms of the Standing Orders? What do our Standing Orders say? They anticipated this situation to arise. We cannot rush the business of this House because it will take too long. We have to go by what the Standing Orders say. If there is nothing in the Standing Orders, then we will resort to doing it *kienyeji*.

The Chairperson (Sen. Kembi-Gitura): I do not know whether *kienyeji* is a parliamentary word, but we shall not be in breach of any Standing Order because there shall be voting by delegations and a roll call on each of the proposed amendments. We should be practical because this is a very small Bill. There are only four items to deal with. There are six sections in all. What of a Bill which has 100 sections with 20 to 50 proposed amendments? It would take us more than a week to finish a Bill. We have only today to finish with this Bill and return it to the National Assembly.

Sen. Wetangula: Mr. Chairman, Sir, the only rider to that is in the event there is any amendment on the amendment. Then we must dispose of it first. But if there is no amendment on the amendment---

An hon. Senator: He said that!

The Senate Minority Leader (Sen. Wetangula): Then I did not hear him well.

The Chairperson (Sen. Kembi-Gitura): That is clear in the law. So, Sen. Billow has moved his amendment to Clause 3. If there is no debate, then we proceed to the next?

Clause 4

Sen. Billow: Mr. Chairman, Sir, I beg to move that Clause 4 be amended –

- (a) By renaming the present Clause as sub-clause 1.
- (b) Inserting the following new sub-clause immediately after Clause 1

—
“Where the allocation of monies to a county reserves in a county being allocated, an amount that is less than the amount commensurate to the cost of functions devolved to the county, the national Government shall provide to such counties an allocation amounting to the difference between the cost of functions devolved to the county and the allocated amount”.

Mr. Chairman, Sir, the basis for this new clause that the joint Committee looked at is because of the fact that we are in a transition period, where the Transition Authority (TA) was required to carry out the functional assessment of the functions which have been devolved and the Treasury was to also carry out a costing of those functions, because this is a transitional period, there is a likelihood that, that exercise may not have been completed well. So, the risk is that the money that is being provided may be inadequate to the counties to provide for the services that have been devolved to ensure that, that problem does not arise and to ensure that there is no disruption to the services being provided. We have decided to put this in this Clause in order to protect the counties and to ensure that they have money for providing the services.

(Question of the amendment proposed)

Clause 5

Mr. Billow: Mr. Chairman, Sir, I beg to move that Clause 5 be amended as follows:-

(a) In sub-clause 1 by deleting the words, “to the extent of the threshold prescribed in the regulations by the Cabinet Secretary”, appearing immediately after the words “national government”, and deleting sub-clause 2.

The reason why as a joint committee we have proposed this is that, if you read Clause 5 (1) it reads:-

“If the actual revenue raised nationally in a financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government to the extent of the threshold prescribed in the regulations by the Cabinet Secretary”.

Our concern is that the provision that, “to the extent of the threshold and this threshold will be prescribed by the Cabinet Secretary in charge of Treasury at a later date”. So, we have a risk, that long after the money for the county government has been approved, the Treasury Secretary can actually come up with a threshold that would make it difficult for us to work as a county. What would happen is that the threshold could easily be lowered. So, you remove that aspect of it.

We simply want to say that if the actual revenue raised in a financial year falls short, that shortfall should be borne by the national Government. It should not be the burden of the county governments.

(b) By deleting section 2 of Clause 5 which also reads:-

“If the shortfall in revenue referred to in sub-section 1 exceeds the threshold prescribed by the Cabinet Secretary, the shortfall in excess of that threshold shall be apportioned”.

This Section becomes irrelevant after the amendment we made in Clause 1.

(Question of the amendment proposed)

Clauses 6 and 7

The Chairperson (Sen. Kembi-Gitura): Now, this qualifies my earlier communication. If you look at the Order Paper, you will see that, that takes us to the Schedule. So, I will now put the Question so that we can go on Division. The reason for putting the Question is for expediency. There is an amendment to the amendment proposed in the Schedule. Therefore, we will not be able to proceed. It would be better to deal with the two situations. So, I will now put the Question which is that Clauses 3 be part of the Bill.

So, I ask that the Division Bell be rung so that we go to the Division.

Hon. Senators, let us take our seats and complete this Business. We still have Business after this. We are now proceeding to roll call voting. You are all aware of how we should vote. You can either vote yes, no, or abstain. There is no other vote.

I will now put the question as proposed by the Finance, Commerce and Economic Affairs Committee Chairman on each of the clauses.

(Hon. Senators proceeded to vote)

Sen. Kajwang: The Homa Bay Delegation votes “yes” for all the clauses.

The Chairperson (Sen. Kembi-Gitura): For purposes of the HANSARD, hon. Sen. Kajwang has voted for Clause 3.

(Hon. Senators proceeded to vote)

Sen. Kipchumba: On behalf of the Leader of the Delegation, I vote yes.

An hon. Senator: Do you have the powers?

The Chairperson (Sen. Kembi-Gitura): I want to reiterate this, as the Chairman of the Committee of the Whole, that this thing about delegated power is important. I could take it that you have the power, but you have nothing to show for it. I think I should make that clear. I have said this before. This should be done after a communication has been received at the Speaker’s Office through the Clerk’s Office. When you are voting, there should also be a record here to show. I must say that I have not seen it myself.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I was available when it was deposited at the Speaker’s Office. Therefore, I am a witness.

The Chairperson (Sen. Kembi-Gitura): Let me put it this way, I know that we have the numbers, but as I have said before, we cannot afford to be casual about voting because that is why we vote as a Delegation. I have nothing on record to show that, Senator, you have that authority.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I agree with you, fully, but the Chair must be consistent. The other day, the Speaker was seated there and people were voting casually. We raised this issue, but there was no response. We agree with you, fully, that we want you to be consistent. Either, there must be a written authority or you exercise your discretion.

The Chairperson (Sen. Kembi-Gitura): I am afraid that as long as I am seated on this Chair, my discretion on the ruling is simple. We cannot afford to be casual about voting by counties. That is my ruling and we will proceed on that. If you have any proof that you have the designation, I will allow you to vote. If you do not have that right, I will not allow you to vote.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. I was going to make a suggestion in line with what you have said. When the Division Bell is rung, you should give instructions to the Clerks-at-the-Table to check in the Speaker's office whether there is any vote consigned to a particular person or a Delegation. To make it better, that announcement should be made just before the Division Bell is rung so that we are aware.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. Anyang'-Nyong'o. We have done that very many times and all I am saying is that I have no doubt in my mind that what Sen. Kipchumba is saying is true. I am not doubting him, but saying that we cannot proceed otherwise. It was not enough for a Senator to stand and say that he was a witness.

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I want to agree with you fully that the suggestion by the Professor is not sufficient. Voting is by Delegation. It goes on record to show how a delegation has voted and through who. Therefore, other than processing the authority of the Speaker, the Head of that Delegation should come with that authority before the House, so that if there is a matter, it is put to debate. This is to ensure that a big delegation like that one from Baringo--- The other time, it was joined by the Delegation from Trans Nzoia, it brings no confusion.

Clause 3

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang', Homa Bay County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema,

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Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda

Teller of the Noes: Sen. Hassan

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results are in for Clause 3. They are as follows:-

AYES: 34

NOES: Nil

ABSENTIONS: Nil

(Question carried by 34 votes to 0)

*(Question that the word to be left be left out,
be left out, put and agreed to)*

(Clause 3 as amended agreed to)

The Chairperson (Sen. Kembi-Gitura): Now we shall proceed to the roll call on Clause 4.

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairman, Sir. You did give direction on how to proceed and we all agreed to it. But having agreed that we are all in a learning process and so on, I am just wondering what Standing Order we are breaking, if we said that we are voting for Clause 2 as amended and Clause 3 as amended, especially in situations where we already know that during the debate there was no opposition to it. Why would we not---

The Chairperson (Sen. Kembi-Gitura): I have understood you, Sen. Karue. Sen. Murkomen.

Sen. Murkomen: Mr. Chairman, Sir, I am of the same opinion with an addition that everytime someone should stand to say that he or she is voting "yes" for Clause 2, Clause 3, Clause 4, for purposes of clarity and then we move on. Let us combine them.

The Chairperson (Sen. Kembi-Gitura): I am inclined to agree with Sen. Muriuki, but I am waiting for a direction from the Clerk on that issue. I would take that position myself. I want us to be clear, because as Sen. G.G. Kariuki said, we want to be sure that we are not doing anything *kienyeji*. Just one minute, please. Bear with us. If we agree, we will save a lot of time. So, give us a moment to consult on the Standing Orders and proceed.

(The Chairperson consulted with the Clerk-at-the-Table)

I think that we have a way out now. This is not so much a question of learning, but that the Standing Orders are a bit confusing on this issue. I will refer you to Standing Order Nos.72, 73 and 74 and also the Constitution, Article 123. That is the position I will take and how we will proceed. I agree with Sen. Muriuki and Murkomen, that is the way

to go. I would like to know whether any other person has a different view before we adopt that position. We would better spend a little more time here, do it correctly and make a precedent on this issue.

What I am proposing is that when your delegation is called, you vote as follows:

“I vote yes, no or abstain on Clause 4, 5 and 6.”

If you have a contrary view or want to vote different, then that will be noted.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, if you vote that you are voting “yes” on Clauses 4 and 5, it means that it is a collective vote.

The Chairperson (Sen. Kembi-Gitura): No! I vote “yes” on Clauses 4 and 5 and “no” on Clause 6.

The Senate Minority Leader (Sen. Wetangula): That is not what you said earlier. Now you are right.

The Chairperson (Sen. Kembi-Gitura): Well, it is a question of semantics if you think about it. I want us to agree on how we are going to proceed.

Sen. Orendo!

Sen. Orendo: Mr. Chairman, Sir, just to be clear on how the Committee of the House handles a Bill, I will refer to Standing Order No.134. The Bill has now been committed to the Committee of the Whole, as required under Standing Order No.133. Then, Standing Order No.134 says:-

“In considering a Bill in Committee, the various parts thereof shall be considered in the following sequence –

(a) clauses as printed, excluding the clause providing for the citation of the Bill, the commencement, if any, and the interpretation;

(b) new clauses;

(c) schedules;

(d) new schedules;

(e) interpretation

(f) preamble, if any;

(g) title;

(h) the clause providing for the citation of the Bill”

But, that again is linked to Standing Order No.136 (1) which says:-

“The Clerk shall call severally each part of the Bill in the sequence specified in Standing Order 134 (*Sequence to be observed on a Bill in committee*) and if no amendment is proposed or when all proposed amendments have been disposed of, the Chairperson shall propose the question “That, (as amended) stand part of the Bill” and, when Senators who wish to speak have spoken, the Chairperson shall put that question to the Committee for decision.”

Mr. Chairman, Sir, so we cannot do it in an omnibus manner. We have got to do them sequentially and severally, in accordance with Standing Order No.134. That means that you can call each part sequentially, but severally without taking the vote, and then, vote at the end of calling each part, in the terms of Standing Order No.134, which already you have been doing.

Mr. Chairman, Sir, I also wanted to point out that in the tradition of the House, normally each clause must be read for purposes of legislation. For it to go on record that

each clause was actually enacted by Parliament or Senate, there should be a record that each clause was actually voted on by the House. I think that Sen. Judith Sijeny remembers when proceedings in the House were subjected to litigation in Arusha. The East African Court of Justice wanted to know what the decision of the House was on each clause and not the Bill as a whole. So, that may be the tradition of Parliament, but we do not have to stick with it.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. Orengo. But you notice that we have already dealt with Standing Order No.136. We already went through clause by clause, when we were debating and amending them. We are now at the Roll Call Division. Am I correct?

Sen. Orengo: Mr. Chairman, Sir, I was just saying that there is a tradition. That is why I was referring to these proceedings. But I agree that there is no rule which ties---

The Chairperson (Sen. Kembi-Gitura): Sen. Orengo, what I wanted us to agree on is: Are we doing it the right way, by voting “yes” on Clause 4 and “yes” on Clause 5? Is that agreed?

Senators: Yes!

The Chairperson (Sen. Kembi-Gitura): That is still sequential.

Sen. Kajwang: Mr. Chairman, Sir, the Clerk can help us. When I stand as the head of the delegation from Homa Bay, you can ask: “How do you vote on this?” I will say: “Yes” or “No”. You will then ask: “How do you vote on Clause 3?” I will say: “Yes” or “No”. This is because we may not know whether it is Clauses 4, 5 or 6.

The Chairperson (Sen. Kembi-Gitura): Okay. Actually we are in the Committee of the Whole and the rules are less stringent and that is why we are discussing freely. I have given guidelines, but we will adopt what Sen. Kajwang has said as the final position. That is the one that I would like to adopt.

Let us go to the Roll Call. This has to do with Clauses 4, 5, 6 and 7.

Clause 4

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang’, Homa Bay County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang’a County; Sen. Khaniri, Vihiga County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangopuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana

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County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda.

Teller of the Noes: Sen. Hassan.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows.

AYES: 34

NOES: Nil

ABSENTIONS: Nil

(Question carried by 34 votes to 0)

(Question, that the words to be added, be added, put and agreed to)

(Question, that the words to be inserted, be inserted, put and agreed to)

(Clause 4 as amended agreed to)

Clause 5

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang', Homa Bay County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangopuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County;

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Sen. Wako, Busia County Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda.

Teller of the Noes: Sen. Hassan

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows.

AYES: 34

NOES: Nil

ABSENTIONS: Nil

(Question carried by 34 votes to 0)

*(Question, that the words to be left out, be left out
put and agreed to)*

(Clause 5 as amended agreed to)

Clause 6

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang', Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Khaniri, Vihiga County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda.

Teller of the Noes: Sen. Hassan.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

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AYES: 34

NOES: Nil

ABSENTIONS: Nil

(Question carried by 34 votes to 0)

(Clause 6 agreed to)

Clause 7

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang', Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Khaniri, Vihiga County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda.

Teller of the Noes: Sen. Hassan.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows.

AYES: 34

NOES: Nil

ABSENTIONS: Nil

(Question carried by 34 votes to 0)

(Clause 7 agreed to)

(Loud consultations)

The Chairperson (Sen. Kembi-Gitura): Order, Senators! If you must move out, do so quietly, please. But remember we are still voting and we need your vote. We are now on the Schedule.

Schedule

Sen. Billow: Mr. Chairman, Sir, I rise again to move that the Bill be amended by deleting the Schedule and substituting thereof, the following new Schedule:-

SCHEDULE

REVENUE ALLOCATIONS BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR 2013/2014

TYPE/LEVEL OF GOVERNMENT ALLOCATION	REVENUE ALLOCATION	PER CENTAGE OF LAST AUDITED REVENUE (KSHS.608.1 BILLION)
	Kenya Shillings	%
National Government Allocation	662,375,441,286	108.9
Of which Equilisation Fund	3,400,000,000	0.6
County Governments Allocation	258,000,000,000	42.4
Of which conditional grants	20,000,000,000	3.3
Of which sharable by formula	238,000,000,000	39.1
Total Shareable Revenue	920,375,441,286	151.4

(Figures are in Kshs. unless otherwise indicated)

Mr. Chairman, Sir, I want to explain that in the Schedule, you will find that the National Government allocation is Kshs662,375,445,286 representing 108 per cent of the last audited revenue of 2010/2011. That amount includes Kshs3.4 billion of the Equalisation Fund. The county government's allocation is Kshs258 billion. That is made up of conditional grants – Kshs20 billion and shareable revenue as per the formula approved by Parliament and the CRA amounting to Kshs238 billion. That brings the total shareable revenue to Kshs920, 375,441,286.

Mr. Chairman, Sir, I want to briefly explain why the Joint Committee on Finance, Commerce and Economic Affairs and the Devolved Government is making this proposal to amend the figures. The import of the amendment is that the shareable revenue that goes to the county governments will increase from Kshs190 billion provided for in the Bill, to Kshs238 billion. When we obtained the analysis prepared by the Parliamentary Budget Office and also based on presentations we received from the Chairman of the Council of Governors and from the public hearings that we conducted, it became very

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apparent that Kshs190 billion shared out across the 47 counties would be inadequate to cover the cost of the functions which have been devolved or which will be devolved, effective from 1st July. The effect of it again was very clear. Up to 18 counties will actually suffer a deficit of over Kshs28 billion. In other words, some of the counties will actually have deficits. We have examples; Nyeri County would have a deficit of up to Kshs3.5 billion if we were to share out Kshs190 billion across the 47 counties using that formula. What that means, therefore, is that, 18 counties would not be able to provide services or to pay for the services that have been devolved to the county governments. That would mean that we are actually going to set up the counties for failure. For that reason, it has been decided that indeed, after consultations; we have had sittings with the Treasury Secretary and it is our feeling that there is no way Kshs190 billion can sustain the counties and that is why we increased that figure by Kshs48 billion to bring it to Kshs238 billion.

Mr. Chairman, Sir, we have decided to leave the figure for conditional grants as it is in the Bill. The Kshs20 billion is a grant that is being given conditionally by the Treasury to some counties, specifically, Kshs3.2 billion or Kshs3.4 billion which will actually be money that will be used for the Level Five hospitals in some of the counties and the balance of slightly over Kshs16 billion is money that will be for donor funded projects that must continue to be financed by the national government. That is the basis for the amendment. This is an increase of Kshs48 billion. That would bring the county allocation to 42.4 per cent.

Again, it is clear that it is the Jubilee Government's commitment; a pledge that has been made by this Government that it will raise the county allocation not at the minimum of 15 per cent but to 40 per cent--- This is a clear indication that 42.4 per cent is indeed higher than the 40 per cent we pledged.

Thank you.

Sen. Murkomen: Thank you, Mr. Chairman, Sir. Two issues need to be clarified. One is that although the percentage indicated here is 42.4 - which is very ambitious - we should not forget that this revenue is based on the audited revenue of 2010/2011. So, we were cognizant of the fact that the national government would not be deprived of resources because already they are likely to raise more resources in the Financial Year 2013/2014. So, no one should say that we have deprived the national government of resources because the resources which are expected will be higher than what you can see here.

Secondly, the Chair of the Council of Governors, who appeared before us, put it very clear that if we give them the Kshs258 billion which is Kshs238 billion plus the grant, they would operate at the basic. In future, we should raise these resources higher than this. Therefore, as a Co-Chair of that committee and as the Chair of the Devolved Governments Committee, I support the amendment.

The Chairperson (Sen. Kembi-Gitura): I will now propose the question that the Schedule as proposed by the Co-Chairs form part of the Bill.

(Question of the amendment proposed)

Clause 2

Sen. Billow: Mr. Chairman, I beg to move:-

THAT, Clause 2 be amended in the definition of the term “conditional allocations” by deleting the words “conditional allocations” appearing at the commencement of the definition and substituting therefor with the words “conditional grants.”

The rationale is simple. The Constitution refers to conditional grants. These are grants which are given whether conditional or unconditional by the national government. They are conditional grants and not conditional allocations. So, we thought that should be amended.

The Chairperson (Sen. Kembi-Gitura): Does the Co-Chair wish to say anything?

(Question, of the amendment proposed)

(Title proposed)

(Clause 1 proposed)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, this is again a matter that is affecting counties. So, when the time comes after the Division Bell is rung, we shall vote by counties.

I now put the Question that the Schedule as amended be part of the Bill, that Clause 2 as amended be part of the Bill, that the title be part of the Bill and Clause 1 be part of the Bill.

Since there is no debate, we will ring the Division Bell for eight minutes and then we proceed to vote.

(The Division Bell was rung)

Senators Muthama and Elachi, please, designate the tellers.

Order, Senators! Order! Where is the teller for Ayes? Okay; we are now going to proceed on the next vote. We are going to proceed in the same manner, and the only thing I am going to request of you, colleagues, is that; we have three more votes to do – I think four – because after I have reported to the Speaker, we still have to put the question again. So, my request is this; that this is a very important Bill – all Bills are important – so, please be around. I have been asked to say that by the two whips.

Okay, now, we shall vote in the same manner. Now we have the Schedule, Clause 2, Title and Clause 1. You have them before you. So, we are voting in the same manner. Shall we go on now? So, I am putting the question, that the Schedule, as amended by the Co-Chairs; Clause 2 as amended by the co-Chairs, the Title and Clause 1 of the Bill be part of the Bill.

Schedule

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Hassan, Mombasa County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County;; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi

Teller of the Noes: Sen. (Dr.) Khalwale

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results for the Schedule as amended by the Co-Chairs are in and are follows:-

AYES: 33

NOES: Nil

ABSENTIONS: Nil

(Question carried by 33 votes to 0)

(Question, that the words to be left out, be left out put and agreed to)

*(Question, that the words to be inserted in place
thereof, be inserted, put and agreed to)*

(Schedule as amended agreed to)

Clause 2

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Hassan, Mombasa County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi

Teller of the Noes: Sen. (Dr.) Khalwale

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results for Clause 2 as amended by the Co-Chairs are in and are follows:

AYES: 33

NOES: Nil

ABSENTIONS: Nil

(Question carried by 33 votes to 0)

(Question, that the words to be left out, be left out put and agreed to)

*(Question, that the words to be inserted in place thereof,
be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

Clause 1

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Hassan, Mombasa County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi

Teller of the Noes: Sen. (Dr.) Khalwale

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results for Clause 1 are as follows:

AYES: 33

NOES: Nil

ABSENTIONS: Nil

(Question carried by 33 votes to 0)

(Clause 1 agreed to)

Title

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Hassan, Mombasa County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen.

Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi

Teller of the Noes: Sen. (Dr.) Khalwale

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results for the vote on the Title are as follows:

AYES: 33

NOES: Nil

ABSENTIONS: Nil

(Question carried by 33 votes to 0)

(Title agreed to)

*(Sen. Elachi and Sen. (Dr) Khalwale
resumed their seats)*

Could the Chairman, please, come and move what you have done?

Sen. Billow: Mr. Chairman, Sir, I beg to move that the Committee doth report to the Senate its consideration of The Division of Revenue Bill (National Assembly Bill No.1 of 2013) and its approval thereof with amendments.

(Question proposed)

The Chairperson (Sen. Kembi-Gitura): There has to be a Roll Call Division on that. So, we have to ring the bell now.

Sen. (Dr.) Khalwale: On a point of order, Mr. Chairman, Sir. In the interest of time, before you ring the bell, could you defer the vote until you read the next one then we vote at once because it is procedural.

The Chairperson (Sen. Kembi-Gitura): We are reporting to you as Senate. Now I am a reporting to you as Senate and after that the Speaker will come in and we report to the Speaker. So, I do not see any short-cut in this, Sen. (Dr.) Khalwale.

Ring the Bell, please.

Sen. (Dr.) Khalwale: Mr. Chairman, Sir---

The Chairperson (Sen. Kembi-Gitura): Maybe when you change the Standing Orders.

Ring the Division Bell. We are not in session, the bell is ringing.

(The Division Bell was rung)

The Chairperson (Sen. Kembi-Gitura): Who are the tellers? Can I have the tellers for Ayes and for Noes, please?

(Loud consultations)

Order, Senators! Sen. Wetangula, we are running out of time and we still have a Motion of Adjournment. Could we, please, take our seats?

Hon. Senators, I would put the Question, which is that the Committee doth report to the Senate its consideration of the Division of Revenue Bill (National Assembly Bill, No.1 of 2013) and its approval thereof with amendments.

Could we have the roll call please?

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. (Prof) Kindiki, Tharaka-Nithi County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangopuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi.

Teller of the Noes: Sen. Hargura.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

AYES: 31

NOES: Nil

ABSENTIONS: Nil

(Question carried by 31 votes to 0)

(The House resumed)

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Members. The House is now back to a full session.

MOTION

EXTENSION OF SITTING TIME UNDER STANDING ORDER No.30(3)(A)

Sen. Elachi: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the Senate extends its Sitting Time today, Thursday, 23rd May, 2013, until the conclusion of Business appearing on the Supplementary Order Paper.

(Question proposed)

(Question put and agreed to)

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.1 OF 2013)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole has considered the Division of Revenue Bill, (National Assembly Bill No.1 of 2013) and approved the same with amendments.

Sen. Billow: Mr. Deputy Speaker, Sir, I second.

An hon. Senator: That has already been proposed.

The Deputy Speaker (Sen. Kembi-Gitura): What did Sen. Murkomen propose?

Order, hon. Senators! What has happened has been reported to the Speaker. Sen. Billow Kerrow has moved that the Senate do agree with the Committee on the said Report.

A Report on what the Committee of the Whole has done has been reported to me. The Senator who sponsored the Bill who in this case is, Sen. Billow Kerrow, has moved that the Senate do agree with the said Report.

Let us do it in the right way so that we get done with it.

Sen. Billow: Mr. Chairman, Sir, I beg to move the Senate doth agree with the Committee in the said Report.

Sen. Wako seconded.

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before I put the Question, I need to explain, once again, under Standing Order No.69, that this is a matter affecting counties. Therefore, the vote shall, again, be by delegations.

Sen. Billow: On a point of order, Mr. Chairman, Sir. In view of the fact that we have just extended the time and there is another voting again when the Bill will be read the Third Time, would it be in order if I suggest that the Roll Call for this particular question that you have put be deferred, so that it comes together with the Third Reading?

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Senators! I will decline that point of order and we shall proceed to Division. Ring the Division Bell.

(The Division Bell was rung)

The Deputy Speaker (Sen. Kembi-Gitura): Order Senators! Order Sen. Wetangula! Can we have the names of the tellers; the Ayes and the Noes?

Now let us move on to the roll call. Who is the teller for Noes? Yes, it is Sen. Hassan and it is Sen. Elachi for Ayes. Let us now move on to the roll call.

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County, Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller for Ayes: Sen. Elachi.

Teller for Noes: Sen. Hassan.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the results of the Division on the Question that the Senate do agree with the Committee on the report is as follows:-

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AYES: 33

NOES: Nil

ABSENTIONS: Nil

(Question carried by 33 votes to 0)

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to move that the Division of Revenue Bill (The National Assembly Bill, No.1 of 2013) be now read the Third Time.

The Deputy Speaker (Sen. Kembi-Gitura): Who is seconding the Motion?

Sen. Obure is seconding the Motion.

Sen. Obure: Mr. Deputy Speaker, Sir, what we have done here today represents a significant step towards ensuring that devolution and the county system of government becomes a reality in the lives of Kenyans. I want to take this opportunity to thank the Committee on Finance, Commerce and Economic Affairs and the Committee on Devolved Government for an excellent job done. The various amendments that we have initiated here which have received the approval of the Senate have been excellent because as you realize, they have provided additional funds to the counties to enable them meet their mandate. It has been a tremendous and great day. I want to thank all the Senators for this excellent job.

Thank you.

(Question proposed)

Hon. Senators: Put the Question!

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Musila.

Sen. Musila: Mr. Deputy Speaker, Sir, I know we are pressed for time, but I want to thank you for giving me this opportunity. I cannot miss the opportunity to congratulate the joint committees for the work that they have done. I particularly want to go on record and urge them that next time round, we do not want to hear this conditional funding. We want it to be scrapped, so that we will be allocating money properly without deductions being made.

I support.

Hon. Senators: *Tosha! Tosha!*

The Deputy Speaker (Sen. Kembi-Gitura): It is not in my place to lock out Members. Sen. Wako!

Sen. Wako: Mr. Deputy Speaker, Sir, first of all, I just want to thank the joint committees for a job well done. But what we were told by the Chairman of the Council of Governors is that, even with the amount we have allocated today, and that is why we have increased, it will just be enough or slightly less than enough to keep the services going the way they were going in the local authorities. In the next Budget, we shall have the timelines for that. We shall go into everything and we may have to go for a big amount because of they are now counties.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, seeing that there are no other Senators interested in contributing to the debate, I will put the Question. But

before I do so, I want to remind you, once again, that this is a Bill to do with counties. Under Standing Order No.69, we shall, again, go to Division and vote by County Delegations.

(The Division Bell was rung)

The Deputy Speaker (Sen. Kembi-Gitura): Can we have the tellers, please?

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Sen. Billow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County, Sen. Harguara, Marsabit County, Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Kisumu County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Elachi

Teller of the Noes: Sen.(Dr.) Khalwale

The Deputy Speaker (Sen. Kembi-Gituraro): Hon. Senators, I wish to announce the results as follows.

AYES: 32

NOES: Nil

ABSENTIONS: Nil

(Question carried by 32 votes to 0)

(The Bill was read a Third Time and passed)

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.31(1)**ADJOURNMENT TO A DAY OTHER THAN THE NEXT NORMAL SITTING DAY**

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, next we will have the Motion for Adjournment. You will remember that we extended time, so that we sit until we complete the Business for today. The Motion has a maximum of two hours.

Sen. Elachi: Mr. Deputy Speaker, Sir, I beg to move:-

That, pursuant to Standing Order 31(1), the Senate resolves to adjourn until Tuesday, 4th June, 2013.

The Senate has been sitting since we were sworn-in. I know that it is time, after this very important Debate and function that we have done today, to go back to the counties and give updates in terms of what is happening at the national level and what the Senate has done to protect and ensure that counties continue with their duties.

I know that we have had a very tough time, but I believe that the Senate has managed and handled itself with decorum. Kenyans are proud of what they are seeing in this House today. Therefore, I believe, as we adjourn that we will go out there to continue steering devolution and to ensure that it works in this country.

I beg to move.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second. This is engraved in the Calendar of the Senate, and indeed, the Calendar of Parliament. We have done a tremendous job given what we have passed this evening. The ingenuity of the two committees, the Committee for Devolution and the Committee for Finance, Commerce and Economic Affairs in going through the Revenue Allocation Bill and amending it the way we have done is something worth Senators going back to their counties to talk with the electorate. In seconding, I also want to note that we have just formed our committees which need induction. Induction cannot be done when the House is in session. This is, therefore, an opportunity for committee inductions to take place.

Thirdly and lastly, I wish each and every Senator, as they go back to their constituencies, to fraternise with the electorate and remember that they have a duty to guard devolution and to talk to their county representatives and even their Governors. They also have a duty to maintain the sobriety, dignity and admiration that we are enjoying from the public.

I beg to second.

(Question proposed)

Sen. Orengo: Mr. Speaker, Sir, with your permission, I request to move an amendment to the Motion. I beg to move that the Motion be amended as follows:-

By deleting the word “4th” after the word “Tuesday” and inserting therein the word “11th.” So that, in effect, what the Motion proposes to do is to extend the period of adjournment and recess with another one week.

Mr. Speaker, Sir, this Motion is informed by the fact that ever since we started our sittings, it is necessary – just as the Chief Whip, the Mover, has indicated – that we go back to the people and explain ourselves of the wonderful work we have done. But there

is another component of our work which requires that we have a full week in which the Committees of the House – the Sessional and Standing Committees – can undertake some of the pending work, including inductions. We have discovered that the various Committees are competing for weekends to carry out their inductions. So, with this extra week, it is now going to be possible for the Committees to do their work and feed this into the general agenda of the Senate.

Therefore, Mr. Speaker, Sir, because I do not really need to say more than what I have said. I beg to move this amendment and ask Sen. Chiaba to second.

Sen. Chiaba seconded.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. Murkomen) took the Chair]

(Loud consultations)

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators!

(Question of the amendment proposed)

Hon. Senators: Put the Question! Put the Question!

The Temporary Speaker (Sen. Murkomen): I put the Question?

Hon. Senators: Yes, proceed and put the Question.

The Temporary Speaker (Sen. Murkomen): Okay.

*(Question, that the words to be left out be
left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Question of the Motion as amended proposed)

(Question of the Motion as amended, put and agreed to)

Resolved accordingly:-

THAT, pursuant to Standing Order No.31(1), the Senate resolves to adjourn until Tuesday, 11th June, 2013.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators! It is now time for interruption of the Business of the Senate. The Senate is, therefore, adjourned to Tuesday, 11th June, 2013, at 2.30 p.m.

The Senate rose at 7.00 p.m.