

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 31<sup>st</sup> July, 2014

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

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

### POINT OF ORDER

#### TABLING OF THE CASH DISBURSEMENT SCHEDULE TO COUNTIES

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. I rise on a point of order under this Order on Papers to seek your guidance. Once we dispose of the County Allocation of Revenue Bill which is on the Order Paper, we are required under the Public Finance Management Act to discuss and pass the cash disbursement schedule without which the Controller of Budget will not be able to disburse money. Since we are going on recess, from what I hear, I would like your guidance because the documents have not been forwarded to us for tabling. I know the Treasury has sent the cash disbursement schedule; it is with the Clerk's office.

**The Speaker** (Hon. Ethuro): We will hold the consultations. I am sure before the end of the day, you will have been guided.

Next Order!

### STATEMENTS

**Sen. Haji:** Mr. Speaker, Sir, I have three statements to issue this afternoon.

#### IMPENDING MASSACRE IN TURKANA COUNTY

On 16<sup>th</sup> July, 2014, Sen. Munyes of Turkana County requested for a statement regarding an alleged impending massacre in the county. The hon. Senator sought to be informed on:-

One, whether the---

**The Speaker** (Hon. Ethuro): Order, Chairperson! I do not see Sen. Munyes around.

**Sen. Haji:** Mr. Speaker, Sir, Sen. Munyes was with us when we summoned the Cabinet Secretary. He travelled with the Inspector General to Turkana County. Whether he is here or not, I am sure he will be satisfied with the statement that I will give. But if you direct otherwise---

**The Speaker** (Hon. Ethuro): Our practice so far as been that at least we allow the Member one opportunity to be present. If the Member is persistently absent, then the statement can be issued in his absence. Given that we have a bit of heavy business today, you can try that next time.

**Sen. Haji:** Obligated, Mr. Speaker, Sir.

*(Statement deferred)*

ALLEGED IRREGULARITIES IN RECRUITMENT  
OF POLICE OFFICERS

Mr. Speaker, Sir, the other statement was requested by Sen. Daisy Kanainza on the recent recruitment by the National Police Service Commission (NPSC). She sought to be informed---

**The Speaker** (Hon. Ethuro): Order, Chairperson! Neither is she around.

**Sen. Haji:** Mr. Speaker, Sir, I am told that yesterday she said this Committee is very inefficient. It is very sad if she is not here. It will be morally wrong.

**The Speaker** (Hon. Ethuro): Order, Senator! We are just less than ten minutes into business. She might be on her way. I agree with you those sentiments were expressed yesterday. However, that does not mean you should express it the same way.

**Sen. Haji:** It is all right, Mr. Speaker, Sir. I look forward to meeting her this afternoon!

*(Laughter)*

CUSTOM BARRIERS AND RESTRICTIONS  
AT NADAPAL BORDER POST

Mr. Speaker, Sir, the other statement is on custom problems at Nadapal-Kenya-Southern Sudan Border.

**The Speaker** (Hon. Ethuro): Who sought that statement?

**Sen. Haji:** Mr. Speaker, Sir, unfortunately, I do not have the name here. There is a Senator who requested for this statement. We will look for the Questioner, then I will answer the question sought.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. I was concerned about the question by Sen. Kanainza because it was even alleged that she was weeping because she wanted that statement given so quickly and it was so important. We have been anticipating it, particularly in view of the fact that she was weeping, can we get an opportunity to hear this statement?

**The Speaker** (Hon. Ethuro): Order, Sen. Musila! I appreciate your sentiments. You may be right, but I have said we are into our business for less than ten minutes. Let us give her time.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. You did not see me earlier on. I wanted to---

**The Speaker** (Hon. Ethuro): Order, Senator! In fact, I saw you, but I had seen Sen. Musila earlier than you.

**Sen. Abdirahman:** Mr. Speaker, Sir, mine was in relation to the manner in which the hon. Chairperson for the Committee on National Security and Foreign Relations referred to the matter in question because we do not act on hearsay in this House, we act on what we see. The fact that somebody might have told him that the Committee was referred as inefficient---

**An hon. Member:** But it is in the HANSARD!

**Sen. Abdirahman:** But it is still hearsay. He was not in the House. I am wondering if he is in order.

**The Speaker** (Hon. Ethuro): Order, Sen. Abdirahman! In fact, before you accuse another Senator, you must check your own record. Some of those issues are on HANSARD. I was also not in the House, but I followed the proceedings.

**Sen. Abdirahman:** Mr. Speaker, Sir, but is it really necessary that you make reference when we are in another---

**The Speaker** (Hon. Ethuro): Order! The statement was postponed to today. So, it carries the entire baggage.

**Sen. Abdirahman:** But he can as well---

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

Sen. Haji, you do not need to respond to that. The Chair has responded on your behalf.

Sen. Khaniri.

**Sen. Khaniri:** I do not have my card.

**The Speaker** (Hon. Ethuro): You know what to do, you can be assisted.

#### SLOW CONSTRUCTION OF THE KISUMU-KAKAMEGA ROAD

**Sen. Khaniri:** Mr. Speaker, Sir, just before we move out of the Order on Statements, about a month ago, four or five weeks ago, I requested for a statement on the progress of construction of Kisumu-Kakamega Road. This statement was supposed to be delivered in two weeks, which is about three weeks ago. The Committee responsible sought for an additional two more weeks. It was supposed to be delivered last week. We are breaking off today and we have not received this statement.

**The Speaker** (Hon. Ethuro): Mr. Chairperson, what do you have to say? Who is Temporary No.3?

**Sen. Obure:** Mr. Speaker, Sir, it is true this statement was to be delivered, but it is not scheduled on the Order Paper. But with your indulgence, I could respond on behalf of the Chairperson.

**The Speaker** (Hon. Ethuro): First, let me get an indication of how many statements are ready.

*(The Speaker consulted the Clerk-at-the-Table)*

On that basis, Sen. Khaniri can have his statement.

Sen. Obure, you may respond.

**Sen. Obure:** Mr. Speaker, Sir, on 3<sup>rd</sup> July, 2014, my friend the Senator for Vihiga County, Sen. Khaniri requested for a statement from the Chairperson of the Standing Committee on Roads and Transportation regarding the slow construction of the Kisumu-Kakamega Road. In that statement, he specifically sought to be informed of the following:-

- (1) The status of the construction works.
- (2) The reasons for the long diversions, especially between Mbale and Majengo.
- (3) The timeframe for the completion and subsequent commissioning of the road.
- (4) How much the road construction was estimated to cost.
- (5) How much money has been disbursed and spent so far.

Mr. Speaker, Sir, I wish to respond as follows:-

- (1) The construction works are ongoing and are at 24 per cent completion.
  - (2) The road traverses a hilly terrain between Mbale and Majengo, but fortunately, that particular section has now been opened for by motorist and the general public.
  - (3) The project commenced on 5<sup>th</sup> January, 2013 and the time for completion is 24 months. Therefore, the project is due for completion on 4<sup>th</sup> January, 2015.
  - (4) The contract sum is Kshs4,452,053,438.
  - (5) The amount already paid for the works is Kshs1,059,953,738.
- Mr. Speaker, Sir, I beg to submit this statement and lay it on the Table.

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

**Sen. Khaniri:** Mr. Speaker, Sir, with a lot of respect for my good friend, the Senator for Kisii County, Sen. Obure, I must say that this is the most unfortunate answer I have ever listened to in this House. From the way this project has been treated and many other projects in the western region where I come from, it is clear that the Jubilee Government has decided to sideline the former Western Province when it comes to development. This project was first launched by former President Mwai Kibaki. The other day, I saw the President purporting to launch a road that was launched 19 months ago by the former President. We wondered; are there no new projects the President can launch in Western Province? Must it be what the former President started?

The contract was supposed to take 24 months. So far, it has taken 18 months and they have only done 24 per cent of the project. How possible is it that the remaining 76 per cent of the works will be done in the five months that are remaining? Is it possible? Can the Chairperson tell us why the project has been under funded because the money that has been paid, so far, was paid during the former regime? The project has not received any money in this regime. Could the Chairperson explain why?

**The Speaker** (Hon. Ethuro): Mr. Chairperson, before you respond, I see Sen. (Dr.) Khalwale has an intervention.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Government must stop playing games with tax payers. The money that is being used to do this road is not from anybody's pocket. We pay taxes and we demand services. Could the Chairperson tell us why the work has been delayed? He has only confirmed that the work has been delayed. Why is this the case? Is it because of the contractor or the Government?

**Sen. Obure:** Mr. Speaker, Sir, I agree that the work has been delayed. In fact, it is behind schedule by eight months. The contractor attributes the delay to delayed payments. We know that because of the transition arrangements, there were delays which affected a lot infrastructure projects, not just in former Western Kenya, but everywhere else in the country.

The funds are now available. In fact, this is a project which is jointly funded by the World Bank and the Kenya Government---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Is the Chairperson in order to mislead the House that the reason there was a delay is because of challenges of transition, when we know that we transited from the Kibaki Government to the Uhuru Government smoothly at Kasarani Stadium? So, what are these transition challenges that were there? The Treasury was working, Mr. Njiraini was collecting money through the Kenya Revenue Authority (KRA) and all the donors were committed to their contracts. What is it that you were talking about? Why are you misleading us? Tell us that you do not want to give roads to Luhyas!

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You have made your case. Unless you want to answer your own questions!

Chairperson, proceed.

**An hon. Senator:** Economic sabotage!

**Sen. Obure:** Mr. Speaker, Sir, we know that there were delays. This is a matter which is very well documented. In fact, it has been debated in this House and we have also received assurances that the money is now available. In fact, most of these projects will proceed as initially planned.

Mr. Speaker, Sir, this particular contractor was at one point owed more than Kshs140 million and, therefore, could not proceed. However, I am glad that he is now back at work and we hope to see progress on this particular project.

Mr. Speaker, Sir, one of the measures being initiated to recover lost time is to sub-contract some of the earthworks in that area and to allow additional support to this particular contractor. He has been asked specifically to work longer hours, including weekends. He has brought in additional crushers to help him raise some of the materials required and we expect concrete work to proceed.

**Sen. Musila:** Mr. Speaker, Sir, it is only yesterday that the President launched an ambitious programme of road construction and talked about 10,000 kilometers in say three years to come. Now, you have heard the Chairperson say that a road that was

contracted to be finished in January, this year, has only achieved 24 per cent completion. Now, the question I am asking my friend, the Chairperson, and unfortunately, he is the one to answer it, is: At this rate, does he think that this Government will deliver on this programme which we think is just hoodwinking Kenyans that roads are coming and yet they will never come?

**The Speaker** (Hon. Ethuro): Mr. Chairperson, just take a few more interventions.

**Sen. Muthama:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, I can see you; you are listed.

**Sen. Muthama:** Mr. Speaker, Sir, Government funds need to be protected. If you look at the contract sum, it is Kshs4.4 billion. However, in every payment that is made by the Government, 10 per cent must be retained. With simple mathematics, 24 per cent of Kshs4.4 billion is just about Kshs900 million. If you deduct 10 per cent, the amount that is supposed to be paid to the contractor with that 24 per cent work is about Kshs800 million. Is the Chairperson not aware in this process the Government is losing money? What is he doing to arrest this situation?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do hope that the Chairperson of the Committee responding to this statement has the capacity to deal with these issues on behalf of this Government.

Mr. Speaker, Sir, in addition to the Kakamega-Kisumu Road, that has got so many irritating diversions and has virtually stalled, can the Chairperson tell this House why the following roads in western Kenya have stalled; Kamukuywa-Mt. Elgon-Chwele-Lwakhakha, which he himself, when he was Minister, visited and toured more than five years ago? Sigalagala-Butere Road; stalled! Kakamega-Webuye Road; stalled!

*(Applause)*

Chavakali-Kapsabet-Eldoret Road; stalled! Webuye-Eldoret Road; stalled!

Mr. Speaker, Sir, the road like Kamukuywa-Mt. Elgon-Chwele-Lwakhakha was started two years earlier than the Thika Superhighway. Its cost was Kshs1.2 billion, but it did not go half way. Thika Superhighway was constructed and completed at Kshs38 billion. In the just beginning financial year, there is an allocation of Kshs1.2 billion on Thika Superhighway for maintenance of a brand new road when other roads are stalled. I have not mentioned the road from Kitale-Kapenguria-Lokichar-Lodwar-Nadapal; that is not a road! The Jinja-Bumala-Port Victoria Road is stalled. Virtually every road in western Kenya is stalled. What is the Government programme for the improvement of roads in our region?

**Sen. Obure:** Mr. Speaker, Sir, let me respond as follows. Regarding the promise for more road network, I like to say that within the country, there is capacity to fulfill what the President promised. There is adequate technical capacity in terms of equipment and contractors. That is available within the country.

Mr. Speaker, Sir, there is also the assurance that the funds will be made available. I am sure that even based on my experience, if there is capacity and adequate funding, I have no doubt in my mind that the various undertakings made will be fulfilled.

Mr. Speaker, Sir, regarding the question raised by my leader, the Senate Minority Leader, about a number of road projects in western Kenya which have stalled, the Committee which I represent, the Committee on Roads and Transportation, has actually discussed this matter with the Ministry, the Cabinet Secretary (CS) and all the relevant officers and we have requested for a report. In fact, this report has been made available to us. We were due to meet today to discuss this report, but unfortunately, because of the direction we got from the Chair, the meeting was postponed to another date.

Mr. Speaker, Sir, we have a full report about all the stalled road projects and the action that is being taken to ensure resumption of works on those projects.

Thank you, Mr. Speaker, Sir.

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Chairperson has avoided to answer the question by Sen. Wetangula on why Kshs1.2 billion has been put for maintenance of a brand new road and yet the road to Lwakhakha, which also required Kshs1.2 billion, has been abandoned; not to mention Butere.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You are being unfair to the Chairperson; that was not the question posted by Sen. Wetangula. Sen. Wetangula was just comparing why certain roads seem to be getting more money than others which had even limited funding and were not completed. I think he has said here that there is a report which the Committee has received and it will be discussed with the rest of the House. To me, that seems a more appropriate place to do it.

Let us conclude this matter; it is straight forward so that we can proceed to the next statement. Where is the Senate Majority Leader?

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

**The Speaker** (Hon. Ethuro): On the same or another one? Sen. (Dr.) Machage, what is your point of order?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the same Committee did promise to give us a statement I requested for today, 31<sup>st</sup> July, 2014, on the situation of Migori Roads E166 and C13. Would I, therefore, be in order to request that the Chairperson, who has just read a statement for the other question, do the same for my roads in Migori, which happen to be in Western Kenya too?

**Hon. Senators:** Yes!

**The Speaker** (Hon. Ethuro): Chairperson?

**Sen. Obure:** Mr. Speaker, Sir, I wish to confirm to the House that we, in fact, do have the report on that road, together with many other roads that were requested. This is due to be discussed at our Committee. As I indicated earlier, we will bring the report here for discussion so that it can be interrogated properly by all the Senators.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, it is on the issue of roads, because I think this is a very important issue. When my colleague, Sen. Wetangula, says that roads have stalled in their region and it is reiterated by Sen. (Dr.) Khalwale, I think it is important to tell this House that as the Chairperson has said, roads have stalled everywhere in this

country. I can quote more than 10 roads in my county that have stalled or in the whole of that region.

Mr. Speaker, Sir, I believe that what we had agreed last time when this matter came up; it was that the Chairperson of that Committee or that Committee would request the CS to come before a full Committee of the Senate with a list of all stalled roads in the country and not in any region, so that we are able to interrogate it and know why. We can keep on asking this question because it appears there are always some regions where roads have stalled. I am on record on HANSARD as having said the same. So, we need to have a clear picture of what is going on in the country. I think this is unfair when it is made to appear like it is only some certain regions where roads are not being built.

*(Several Senators stood up in their places)*

**The Speaker** (Hon. Ethuro): Order, Senators! I am not going to allow debate on this matter. I think the Deputy Speaker has made a very good observation; let the Chairperson tell us when he is going to avail that report for the rest of the House to interrogate it. This is a matter we have canvassed here time and again.

**Sen. Obure:** Mr. Speaker, Sir, I did confirm that the issue of stalled road projects affects every part of the country. I did say so. In fact, the issue arose when we were discussing the question of the stalled projects in the Meru area, a statement which had been sought by the Senator for Meru, hon. Kiraitu Murungi; and also in respect to the airport project at Isiolo.

Mr. Speaker, Sir, we did summon the CS and his senior officials to appear before the Committee and we had long discussions. We requested for specific reports on each of the road projects. This has been availed to us. As requested by the Deputy Speaker, the Senator for Murang'a County; if we wish, as a House, to interrogate the CS, I submit to you that it will have to be a direction to be issued by yourself. Under your directions, I am sure he will be obligated to come and discuss the matter with the Senators.

**The Speaker** (Hon. Ethuro): It is so directed because I remember a few weeks ago there was a similar matter. We made reference to a Motion that this House had passed, sponsored by your good neighbour Sen. Musila, where the CS was supposed to make an annual report on the status of roads to the Committee. Now that we have received that report, I direct that you liaise with the office and convene a meeting for all the Senators.

**Sen. Billow:** Mr. Speaker, Sir, I seek your guidance. Yesterday the President and the Ministry launched 10,000 kilometres of roads that are to be done. I would appreciate if in the discussions, the Committee is going to have with the CS, they do not only discuss that 10,000 kilometres, but also table it for the House to have an opportunity to interrogate that list because it is the first time that 10,000 kilometres across the 47 counties will be done. We want to see how equitably distributed those roads are. We would appreciate if we can also have that tabled for discussion.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me to comment on what the Deputy Speaker said, because when I listed the number of stalled roads in western Kenya, at no point did I say that there are no road constructions stalled



elsewhere. I simply pointed out roads in western Kenya. For him to jump up and say that I created an impression that roads are good elsewhere simply means that he is confirming my worst fears that, indeed, we are marginalized. Be that as it may, the Chairperson of the Committee has avoided telling this House the rationale and wisdom in putting Kshs1.2 billion maintenance sum on a brand new road when there are roads that are stalled with much less budgetary requirements.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I also would like to set the record straight. Our cry that roads in the western region have been neglected is because all the entry points into western region are impenetrable. If you approach from Kisumu, there is no road, Kisumu to Busia, there is no road, Maili Tisa to Kitale, there is no road and Ainabkoi to Kapsabet, there is no road. We have no way of entering the former Western Province for real.

Now, when the Deputy Speaker then attempts to compare that situation with what obtains in his place, he should also inform the public that whereas we are talking about trunk roads, he is talking about feeder roads that connect villages and markets in their place. All the trunk roads in his place have been done.

**The Speaker** (Hon. Ethuro): Order! I will allow the Deputy Speaker at some stage, not now, to have a bite at it. Let us allow Sen. (Prof.) Lonyangapuo to make his intervention.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am wondering what my colleague Sen. (Dr.) Khalwale is lamenting about. He is lamenting about roads which are supposed to be redone; that is, Kitale-Kakamega-Kisumu Road or the Eldoret-Webuye-Bungoma-Busia Road. Indeed, they are being redone. However, I am surprised because some of us do not have anything anywhere near a road.

*(Laughter)*

So, it seriously defeats logic that instead of saying when it can be done, I conclude by concurring with what Sen. Obure the Chairperson said; that nearly all the projects that Sen. Obure and others commissioned when they were in Government at that time stalled for a year in the whole country. I was his Permanent Secretary then. I hope that this year, money will be availed so that a number of stalled roads can be done, including those ones from our region.

**The Speaker** (Hon. Ethuro): Let me then allow Sen. Kembi-Gitura and then, finally, the Chairman, but let me just add that I thought really Sen. Kembi-Gitura did not tell Sen. Wetangula that the roads are not being done. In fact he was confirming your point and saying that it is not only there, but all over the place. I think that is why in the wisdom of this House, we decided to get a comprehensive report from the Ministry. I think some of these issues will be dealt with at that time when the full comprehensive report will be tabled. We will allow everybody to have an opportunity to make the necessary interventions.

Proceed, Sen. Kembi-Gitura.

**Sen. Kembi-Gitura:** Thank you, Mr. Deputy Speaker, Sir, for substantially dealing with the situation, though I wanted to deal with it. I want to take issue with my

colleague Sen. (Dr.) Khalwale, and to some small extent, my colleague the Senate Minority Leader for trivializing an otherwise very serious issue. It is not right to be reading out roads that have stalled in their region alone, because we could also read out roads that have stalled in our region. That is why when Sen. (Dr.) Khalwale says that they are talking about trunk roads and while I am talking about rural access roads, it is insulting. That is why I am grateful that you have made the ruling that the Chairperson of that Committee gives us a comprehensive report in which each one of us can then interrogate and look at and identify, as a House and a nation, which roads have been made and which ones have not been made.

**Sen. Obure:** Mr. Speaker, Sir, first of all, I want to concur with the direction you have given and confirm that, indeed, we will communicate with the CS about the need for him to come to the House and meet with the Senators so that they can seek clarification on all the various issues pertaining to roads. Lastly, I also want to confirm because of the reorganization that we carried out, the funds were not immediately available to be able to carry out the various projects that were being undertaken. As a result, some of them temporarily stalled because the contractors had not been paid their dues. I want to confirm that this has now been done, contractors are back on site on a number of these projects. We hope to see tangible progress going forward.

Mr. Speaker, Sir, many questions that have been raised will be answered during the session with the CS when a lot of these issues will be clarified. I know the Senate Minority Leader is very keen to know the wisdom behind allocating Kshs1.2 billion for road maintenance. We are talking about the Thika Superhighway which is not an ordinary road. I would rather leave this for the CS to deal with it when he meets with us.

**The Speaker** (Hon. Ethuro): I will give you one and a maximum two weeks to make that arrangement with adequate notice to the Senators.

That should be the end of Statement Time with the exception that the Senate Majority Leader will make his Statement a while later.

**Sen. Kanainza:** On a point of order, Mr. Speaker, Sir. I am sorry for walking in late. Before we end the Statement Time, I had sought a statement last week on Wednesday and I wish to receive the answer.

**The Speaker** (Hon. Ethuro): Sen. Kanainza, you should have cared to find out what happened in the House before you arrived so that you can tender an appropriate apology. Failure to do so, I am inclined to---

**Sen. Kanainza:** Mr. Speaker, Sir, I strongly apologize for coming late. I was injured in the field and the "Senate girls" made the Senate the Upper House.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I beg that you allow the statement to be given to the Senator because after she cried here following this matter, she had to fall to my wife to comfort her because my wife is the agemate of her mother. So, please, help us because we do not want to continue having her at our house.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! The only reason that I am entertaining your point of order is the fact that the Chairperson is eager to give the statement. Secondly, in a way I can corroborate the fact that as part of the activities of the Parliament Week, we had very good games between the Senate and the National

Assembly where I participated and we put up a very good show. So, if she has any injuries, it is on our collective responsibility.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I am really sorry that I cannot give the statement because I gave her the statement to go and photocopy and she has not brought it back up to now.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Did you hear the statement from the Chairperson of the Committee? Earlier on he was anxious and angry that he wanted to issue the statement and now he says that he cannot issue it.

**Sen. Haji:** Mr. Speaker, Sir, I think Sen. Wetangula should listen to people when they are talking. What I said is that I do not have the statement here with me because it was taken by Sen. Kanainza and she has to give it back to me. So, he should apologize for being inattentive.

**The Speaker** (Hon. Ethuro): It is true because even Sen. Kanainza said that she had taken the copy of the report. So, let us be fair to Chairperson.

Proceed Sen. Haji!

#### ALLEGED IRREGULARITIES IN RECRUITMENT OF POLICE OFFICERS

**Sen. Haji:** Mr. Speaker, Sir, on 23<sup>rd</sup> July, 2014, Sen. Kanainza requested for a Statement on the recent recruitment by the NPSC. She has asked more than ten questions that if I have to go through them I think I will be wasting the time of the House. Let me go straight to answer for each of the questions that she raised.

Following the Government directive that 10,000 persons be recruited into the NPSC to address security concerns facing the country, the Commission, pursuant to Section 13 of the National Police Service Commission Act, 2011, established committees at the national and sub-county level to manage the recruitment process. Further, in accordance to Section 10(3)(a) of the same Act, the Commission developed guidelines to be followed by all parties involved in the recruitment process. I wish to table a copy of the guidelines.

The recruitment was carried out on 14<sup>th</sup> July, 2014, however, the Commission has received various allegations of corruption to which it has responded by asking the members of the public and other stakeholders to raise their concerns formally so that appropriate investigations are instituted. Observers and other independent organizations have also been asked to give reports to the Commission on any irregularities, iniquities and or inequalities they may have noted, for the Commission's action. The Commission has constituted a broad based inter-agency committee which was intended for transparency and accountability to fast track the audit exercise with a view to investigating all reported malpractices and report back to the Commission. The outcome of this investigation will inform the Commission on the next course of action, which may include cancellation of the results and a repeat of the exercise in centres where there is adequate proof that the exercise was not above board.

In addition, those officers found to have been involved in malpractices and corruption will be disciplined or prosecuted in accordance with the law. The intervening period between the recruitment dates that is, 14<sup>th</sup> July, 2014 and 3<sup>rd</sup> October, 2014, will afford the Commission the opportunity to audit and vet all the results and/or reports from the 289 recruitment centres and also, review all concerns from the stakeholders and members of the public regarding the recruitment exercise. I wish also to table a list of the number of complaints that the Commission has received per county.

Mr. Speaker, Sir, the Commission recruited the officers as per the schedule of slots of allocations to the 42 Kenyan tribes, based on 289 sub-counties after a brief by the Inspector General (IG) on the current status or numbers and their distribution in the service. I wish to table a matrix that shows the distribution of the recruits as per their tribe. According to the aforementioned guidelines, all the candidates were required to meet the following minimum requirements:-

1. Be a Kenyan citizen.
2. Hold a Kenyan National Identity Card or passport.
3. Possess a minimum grade of D Plus in the Kenya Certificate of Secondary Education (KCSE).
4. Be aged between 18 and 28 for Kenya Certificate of Primary Education (KCPE) holders and up to 30 years for Diploma and University degree holders.
5. Be physically, mentally and medically fit.
6. Have no criminal record or pending criminal charge.

Section E161J of the guidelines clearly states that in preparing the shortlist of candidates, the sub-county committee shall be guided by:-

1. Quotas of vacancies allocated to the sub-county.
2. Regional and ethnic representation of the sub-county.
3. Gender.

Further, the Commission is required to take into consideration Article 56(a), (b) and (c) and Article 232 (h) and (i) of the Constitution of Kenya, 2010, in the recruitment process. However, a person cannot be recruited into the police service, unless he/she is medically fit, which includes the examination of the teeth. The advert for recruitment was very clear on the required qualifications, a copy of which I hereby table. Any person who had other certificates had the responsibility of getting certification from a competent authority that, that certificate was the equivalent of the required qualification.

The recruitment exercise was largely delegated to the Inspector General who has an independent direct command of the service structures. Initially, the Commission had planned that the recruits will report to the college on 5<sup>th</sup> September, 2012. However, it became apparent that the college needed to make urgent arrangement for additional capacity for accommodation for the additional 3,000 recruits. The Commission, therefore, rescheduled the reporting date to 3<sup>rd</sup> October, 2014.

Mr. Speaker, Sir, lastly, the police training curriculum has been revised to take into account all forms of modern security threats. Specialized courses are undertaken and the recruits receive training on current terrorism and combating cyber crime.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I had you talk of tabling the documents.

**Sen. Haji:** Mr. Speaker, Sir, I have them.

**The Speaker** (Hon. Ethuro): Let us take Sen. Kanainza, Sen. (Prof.) Anyang'-Nyong'o, and Sen. Musila.

**Sen. Kanainza:** Mr. Speaker, Sir, my first concern was the irregularities, including favouritism, nepotism and corruption. The Chairperson of the Committee has not responded directly to those concerns.

I also raised the issue of flat or straight legs. I needed to hear something about it. The Chairperson has only talked about examination of teeth, but he has not indicated whether brown teeth are also allowed. He has also not been able to point out why the recruitment was not based on academic qualifications. The attachment to his statement shows that there are some complaints that some people were being carried on motorbikes, dropped off near the finishing line and cleared as the first ones.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, this is a very serious matter. Ordinary Kenyans were really abused during this exercise. I am not worried about the details of brown teeth and so on. I am much more worried about the very principle of recruiting people into the police force on a completely false premise that there is fairness in the recruitment. All over the Republic, there have been letters to the Press and talks on *FM stations*, demonstrating very well that Kenyans were completely fed up by this exercise.

In my own County, for example, I know of a young man aged 22 who is a university graduate. He went for recruitment and did everything perfectly. For all intents and purposes, he was number two in the whole exercise. They had to wait until 6.00 p.m. when the people who were doing the so-called recruiting came out and read names of people who, for all intents and purposes, had not passed. During the recruitment exercise, the young man's parent was asked for Kshs50,000 if the boy was going to be taken. I have the names, qualifications, addresses and details of two young people in my own county.

This story can be replicated everywhere in Kenya. The best thing that can happen in this country today is to nullify the whole exercise and start it anew. The wrong people to recruit people into the police force are the police themselves. We have the NPSC which can get hold of the counties. Within the counties there are people who know about recruitment of human resources – the county service boards. Provided that they have the guidelines on what to do, they can do this recruitment independently. I would recommend, for example, that the county service board of Kisumu County should go to Kiambu and recruit people there and those from the county service board of Kiambu should go to Kisumu, so that we have objectivity and fairness. At this rate we are perpetuating corruption, nepotism and abuse of power in the police force.

Mr. Speaker, Sir, I beg to request the Chairperson to tell the Chairman of the NPSC to cancel this whole exercise.

**Sen. Musila:** Mr. Speaker, Sir, I really want to emphasize what Sen. (Prof.) Anyang'-Nyong'o has said. The fact that they are showing that some counties did not complain or there were one or two complaints does not mean that people in those counties were satisfied. We can narrate here cases of corruption and unfairness. There were cases of people who ran and become number one. However, in the evening, they

were told that they did not qualify, simply because they were unable to part with money that was being demanded. Therefore, to do justice to Kenyans, the Government should cancel this exercise all together, go back to the drawing board and ensure that fairness and transparency is exercised in the future recruitment exercises.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, what has just happened in the police recruitment is, probably, one of the most scandalous and embarrassing exercises that have ever been undertaken in this country. You may have seen in the newspapers that one recruitment centre in my county, Kimilili, bribes were being demanded at as high as Kshs300,000 for one recruit. People were selling land out of desperation to buy slots to get jobs. These are jobs that are public and supposed to be free and accessed by all eligible Kenyans.

Mr. Speaker, Sir, the fairest that can be done, even as they investigate, through the Ethics and Anti-Corruption Commission (EACC) and other State agencies, is to nullify this recruitment and have an independent body. In some recruitment centres bribes were being deposited at the District Commissioner's office before people go to the recruitment centres. The NPSC should hire even a manpower company, without any vested interest, which will go round and recruit with a criteria set for those who are eligible to join the police service. Otherwise, at this rate, any recruit who pays Kshs300,000 will join the police service knowing that he is going to be corrupt in order to recoup that money. What kind of a police force are we trying to create? Could the Chairperson assure this House that he will convey the sentiments of this House to the NPSC; that it is the wish of this House that represents counties of this country and, therefore, all the people of this country, that this exercise be nullified, repeated and be more transparent, equitable and corruption-free?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, looking at the table of response in terms of figures, I want to thank the Chairperson for the transparency. In this answer, Kakamega County, the biggest rural county in Kenya, with a population of two million people, has returned the highest number of complaints after Nairobi. Nairobi has 52 and Kakamega has 44. They are closely followed by Bungoma which is also the third-largest in population, which has 34 complaints.

The intention of the recruitment was to attempt to correct the imbalance within the police force as per ethnicity and, therefore, this answer. Could the Chairperson tell us what the current percentages are as per the ethnic communities of Kenya within the police force that you are now correcting?

Mr. Speaker, Sir, more importantly, these statistics are a big statement on the Inspector General (IG) of the Police. This is because in this list, they have decided to hoodwink this Senate by not telling us how many Kalenjins have been recruited. The highest is 13.95 per cent from the Kikuyu community, followed by Kambas at 7.9 per cent and Luhyas at 7.6 per cent. That is very well. However, the one of Kalenjins, Kimaiyo has broken it down and given us the Nandi, Kipsigis, Tugen, Keiyo, Marakwet and Sabaot. When you now make the cumulative of these Kalenjin sub-tribes, you will find that the Kalenjins got a whopping 17.02 per cent. What is more, the Kikuyus and Kalenjins who are leading everybody are hogging an entire 30.1 per cent of the recruits of the Republic of Kenya. Could the Chairperson tell us what the Government is going to

do, as a disciplinary measure against the IG, for ensuring that a whopping 17 per cent went only to his community, not even caring that Mr. Kavuludi who is the Chairman comes from the Luhya community and did not try to hawk any percentage? This list must be cancelled. You people want to destroy the nation that we call Kenya. If you are building Kenya, you cannot do what you are doing.

**The Speaker** (Hon. Ethuro): Order!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, among the requirements for this recruitment was citizens and so on. First, if you go to number five which is physically, mentally and medically fit, of what medical qualifications were the police officers who initially check medical fitness of the candidates? Secondly, height is one of the issues that were being checked. We know genetically some communities in this country have a shorter height than other communities. Is it not a way of discrimination that some communities were left out just because of height when we know that in other countries, including the United States of America (USA) and Britain, height has never been an issue for recruitment in the army and the police force?

Thirdly, Mr. Speaker, Sir, the Constitution clearly says there has to be inclusiveness in the employment of the physically challenged and other marginalized groups of this country. Being a member of the police force does not necessarily mean you have to be out running to catch criminals; there are other departments like telephone operations, kitchen and so on. Why were the physically challenged people in this country discriminated in this exercise totally?

**The Speaker** (Hon. Ethuro): Order, Members! I see there is a lot of interest, but let me just allow the last one from Sen. Wako, Sen. Obure, Sen. (Prof.) Lonyangapuo and then Sen. Sang.

**Sen. Wako:** Mr. Speaker, Sir, it really saddens me that the law enforcement or the security forces in this country are being interfered with. It appears as if tribalism is coming into it particularly during recruitment whereas the Constitution is very clear when it comes to defence forces. They must reflect the face of Kenya. For example, you cannot take a place like Trans Nzoia where 68 per cent of the community is Luhyas and you recruit 90 per cent from another community. Luhyas are now named as others in Trans Nzoia. It cannot be that way. I think that the only solution, if the reform process that we begun and which is envisaged in our Constitution succeeds to the very end, the only credible thing is for the entire recruitment exercise to be cancelled, be done afresh.

We should look into how these anomalies can be addressed. On this list, they say they have ten complaints from Busia County. However, I received more than that over the same issues. Police officers were asking for Kshs30,000 or Kshs50,000 so that people could be recruited in the police force. I said that it might not be true, but when I checked I found out that it was true. So, I said that since I am a man of integrity, I could not pay even a single cent for the recruitment of somebody. Somebody must be recruited on merit and that is what I stood by. Therefore, my plea is that let them not insist on this list. Let them start afresh and continue.

**Sen. Obure:** Mr. Speaker, Sir, I have no doubt in my mind that this police recruitment exercise was a sham and a national shame. I am also very sure that this negatively impacts on the performance of the police service. I agree with those who have

proposed that the exercise should be revoked. In fact, it should be revoked to pave way for a fresh and transparent exercise.

Mr. Speaker, Sir, I want to seek clarification from the Chairperson on the role of the provincial commissioners, the district commissioners and so on at the recruitment centres. This is because from the complaints I received, they contributed a lot to the manipulations that went on at the centres. I want also to know how those who were examining them were identified, in the first place, because a lot of the-would-be successful candidates were actually disqualified at that point maliciously. I would like to know how they were recruited.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, first, I have heard of people talking of a tribe called Kalenjin. It is important that we speak facts and get the data right. There is no tribe called Kalenjin. Out of the 42 tribes in Kenya, there is no tribe called Kalenjin. There is no tribe called GEMA. We have Kikuyu, Meru, Pokot, Nandi and so on. Let us speak facts as such.

Secondly, we were supposed to recruit people per county and sub-county in the whole Republic. That was done, but many of the issues raised by Senators here are malpractices. In my county, for example, issues were also raised where parents were being told to produce an “envelope” before a child was recruited. Those are the issues that we should be investigating, but not to talk about other issues.

Lastly, at the moment, we have security concerns in Kenya. There are some people among the pastoralists who are good in security and love working in the security department---

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

**Sen. (Prof.) Lonyangapuo:** I have the Floor.

**The Speaker** (Hon. Ethuro): You have the Floor, but you seem to be attracting many points of order.

What is it Sen. Wako?

**Sen. Wako:** My point of order is simple. If there is no tribe called Kalenjin and what you have are Nandi and other groups listed here, then there no tribe called Luhya. They should have listed groups like Maragoli, Bukusu, Isukha, Bukhayo, Abamarachi, Abasamia, Abanyore, Abedakho and so on. We have 26 dialects in Luhya land.

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

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. To my knowledge, Sen. (Prof.) Lonyangapuo is not the Chair answering to this statement. If you have noticed, he is actually debating over issues that may not even be related. Is he in order?

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, you seem to have a tendency to debate rather than seek clarifications. Please, conclude.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am very much in order because we have 42 tribes in Kenya, but there is no tribe called Kalenjin. Period!

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. Please, do not go that way.

**Sen. Sang:** Mr. Speaker, Sir, my clarification is similar to what Sen. (Prof.) Lonyangapuo has said. My clarification is whether there exists an ethnic community called Kalenjin. If it exists, why was it not captured in the mathematics or statistics? I am



a Nandi. I have no idea if there is an ethnic community called Kalenjin. Sen. Keter is a Kipsigis. Could the Chairperson confirm whether there exists an ethnic community called Kalenjin?

**Sen. Haji:** Mr. Speaker, Sir, I wish to start with the questions raised by Sen. Kanainza as to whether investigations have been done. When I was reading the statement, I mentioned that the alleged malpractices and corruption have been brought to the attention of the Commission and they have already started investigations by appointing a task force to investigate and report. It went further to say that if this is proven the whole exercise will be repeated. It will only be fair for the House to give this commission which is investigating this matter time to work and come up with findings. She also raised the question of teeth being brown. Whatever it is, if the teeth do not satisfy the examiner, then it is so. We do not talk about brown and white. We are talking about bad teeth.

Regarding academic qualifications, I also read a statement about mean Grade of D plus, a diploma and if you have any other certified certificate, you had the right to appear before the recruiting team and be interviewed accordingly.

As to the number of complainants raised by Sen. (Dr.) Khalwale, he talked about Bungoma, Kakamega and Nairobi counties. If you look at the statistics, they are higher because the population in those areas is also higher than in Garissa County. Therefore, the complaints will be more than the less populated areas. It is just common sense.

As to the question raised by Sen. (Dr.) Machage about height, this has been with us, it is in the army, it is with KWS, the police, the prisons and so on. These are some of the things we inherited from the colonial system. I am sure if there would be need to review, the matter should be looked into. I do agree with him because if you go to Lamu County, there is this small tribe called Boni. When I was a Provincial Commissioner, I tried to recruit them into the Administration Police, but I was told that they are less than 5.4" in height. I insisted and I remember they were recruited accordingly.

Regarding the request for cancellation, many Senators have spoken about it. I will make sure that we transmit the discussions from the House here to the Chairman, Mr. Kavuludi whom I know to be a forthright person. I am sure he will look into it. Let me say that we, as leaders, are the ones who are encouraging corruption. I am saying so because Sen. Wako said that people came to him asking for Kshs5,000, but because he is an upright person he could not give the money. He should have given them the Kshs5,000 taken note of the serial number of the currency notes, called the Criminal Investigation Department (CID) officers. It is not fair to make such allegations here. If leaders do their job, we will fight corruption. However, if we fold our hands, corruption will continue. As to the question raised by Sen. Obure with regard to the role of administrators and about medical examinations at hospitals; these examinations are done at the hospitals. The people at the hospitals are qualified.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, is it in order for the distinguished Senator for Garissa and the Chairman of the Committee to make reference to the distinguished Senator for Busia as a miser when Sen. Amos Wako's public selfless service is well known? His generosity is well known. Is he in order? He has to withdraw and apologise. Sen. Wako said that he did not give any money because he is a man of integrity and not because he is a miser.

**The Speaker** (Hon. Ethuro): Hon. Chairman, did you make such reference?

**Sen. Haji:** Mr. Speaker, Sir, the hon. Senator should declare his interest.

**The Speaker** (Hon. Ethuro): What words did you utter?

**Sen. Haji:** Mr. Speaker, Sir, I said that leaders should not be misers. They should not resist giving out money. I said that the Senator, instead of becoming a miser, should have given out money.

*(Laughter)*

I withdraw and apologise and salute you.

**The Speaker** (Hon. Ethuro): Just a minute, Mr. Chairperson. You made a very good observation about leaders stopping corruption. Sen. Amos Wako was really supporting you. You gave a way forward that they could help the police. However, making such references is not fair. Since you have apologised, Sen. Amos is a very satisfied man now.

**Sen. Haji:** Mr. Speaker, Sir, if I were dealing with Sen. Khalwale, I would not have made that remark. However, he is my friend and that is with a light touch. With regard to questions raised by hon. Sen. Obure, according to the recruitment regulations, religious leaders, administrators and community leaders were supposed to assist in the recruitment. As to what role they have played, that is difficult for me to say. As to the medical examinations, they are referred to health centres and hospitals where we certify their age or ailments.

With regard to the question raised by Sen. Khalwale about Kalenjins, I know that the recruitment exercise was addressing counties. We know Busia, Kakamega, Nandi and Kericho counties. Therefore, the question of Kalenjins does not arise as far as this exercise is concerned.

**The Speaker** (Hon. Ethuro): Order, hon. Members. We have to make progress. You are invited to make presentations to the chairman of the Police Oversight Commission. I am sure that the Chairperson, on our behalf, will actively follow these proceedings including getting a copy of the HANSARD today so that he can make the presentations as Members have requested. This is definitely a serious matter. That is why we have allowed more time than usual for statements. Let us make progress.

## BILL

### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.9 OF 2014)

*(Sen. Bill on 30.7.2014)*

*(Resumption of Debate interrupted on 30.7.2014)*

**The Speaker** (Hon. Ethuro): Who was on the Floor? Where is Sen. Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I support this Bill. This Bill has been with us for a while and there was a general consensus yesterday that this is the direction to go. In any case, the figures that each county is getting are determined by a formula which most Senators think – I agree with them – we will need to relook at. Perhaps this is the time to review after the initial three years. Having said so and noting that we have a heavy afternoon, considering that some Senators are travelling in a short while and that we have to pass this Bill today, I plead with Senators who have not contributed to do so in the context of the Third Reading.

I support and request that the Mover replies then we vote.

**The Speaker** (Hon. Ethuro): Order, hon. Members. Standing Order No.98 talks about closure of debate. I will, therefore, put the question that the Mover be called upon to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move.

**The Speaker** (Hon. Ethuro): Order, hon. Senators. I think we have a problem there. You may have to get someone else to bow.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the Deputy Speaker, Sen. Kembi-Gitura has not spoken. Probably he could reply.

**Sen. Kembi-Gitura**: Thank you very much Mr. Speaker, Sir. This is a debate that has generated a lot of interest. Hon. Senators were in consensus that the right thing was done in terms of the allocations. Obviously, at a better time, the Senate will sit and come up with a new formula of allocation to counties. However, the most important thing is that we agreed on the provision of Level 5 Hospitals. We said that they cannot be the sole responsibility of the counties because they serve more than one county.

Taking into account the contributions that have come from Senators, I beg to reply.

*(The Division Bell was rung)*

**The Speaker** (Hon. Ethuro): The bell will be rung for one minute.

*(The Division Bell stopped)*

Let the Bell be rung for another one minute.

**The Speaker** (Hon. Ethuro): Order, Senators! I hope everybody is ready to vote. Assisted voters will always be considered after the vote anyway; so, they can mill around the Clerks-at-the-Table for now.

Order, Senators! Let us take a vote for another 30 seconds. Prepare to vote on Order No.9.

Order, Senators! We have the results for Order No.8 but I would wish to announce the results at the same time with the results of Order No.9. This Second Reading had been exhausted; it was just the Division which was remaining. Again, assisted voters, approach the Clerks-at-the-Table. Can we commence the voting?

### DIVISION

#### ELECTRONIC VOTING

#### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.9 OF 2014)

*(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. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Nyandarua County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Marsabit County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**NOES:** Sen. Hassan, Mombasa County

**The Speaker** (Hon. Ethuro): Order, Senators! I now have the results of the divisions, starting with the County Allocation of Revenue Bill (Senate Bill No.9 of 2014), which is as follows. There were 22 Senators who voted electronically while five Senators were assisted to vote.

**AYES:** 26

**NOES:** 1

**ABSTENTIONS:** Nil.

*(Question carried by 26 votes to 1)*

*(Applause)*

*(The Bill was read a Second Time and committed  
to a Committee of the Whole today)*

## DIVISION

## ELECTRONIC VOTING

THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.31 OF 2013)

*(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. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Nyandarua County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Marsabit County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Order, Senators! I now have the results of the Division for the Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No.31 of 2013), which is as follows. There were 24 Senators who voted electronically while five Senators were assisted to vote.

**AYES:** 29

**NOES:** Nil

**ABSTENTIONS:** Nil.

*(Question carried by 29 votes to Nil)*

*(The Bill was read a Second Time and committed  
to a Committee of the Whole today)*

**The Speaker:** (Hon. Ethuro): Order, Senators! I wanted to bring to your attention that we are already into the Supplementary Order Paper. So, we have concluded Orders 8 and 9. There is a slight variation in terms of Order No.11, which will now become Order No.10 so that we dispose of this matter of the County Allocation of Revenue Bill at the Committee of the Whole. The second Bill there was the one by Sen. (Dr.) Khalwale, who has graciously allowed us to postpone it to next week so that we can manage time, because we still need to deal with the other Orders, Orders No.10 and 12, as reflected on the Supplementary Order Paper; which we must all conclude today.

**BILL***Second Reading***THE COUNTY GOVERNMENTS (AMENDMENTS) BILL,  
(SENATE BILL NO.1 OF 2014)***(Bill deferred)*

Before we now move on to that Order No.11 which has now become Order No.10, I have a Communication to make on the Motion that will be coming after that. It is a bit long. Can I allow the Senators to enter?

**COMMUNICATION FROM THE CHAIR****APPROVAL OF MOTION BY THE COUNTY ASSEMBLY OF MACHAKOS  
FOR THE REMOVAL FROM OFFICE BY IMPEACHMENT OF THE DEPUTY  
GOVERNOR OF MACHAKOS COUNTY**

**The Speaker** (Hon. Ethuro): Hon. Senators, I have the following communication to make.

By a letter received in the Office of the Speaker of the Senate on Friday, 25<sup>th</sup> July, 2014, the Speaker of the County Assembly of Machakos informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Machakos for the removal, from office, by impeachment, of the Deputy Governor of Machakos County.

In terms of Article 181 of the Constitution, section 33(3) (a) of the County Governments Act, 2012 and Standing Order No. 68(1) (a) of the Senate Standing Orders, the Speaker of the Senate is required:

“Within seven days after receiving notice of a resolution from the speaker of a county assembly, to convene a meeting of the Senate to hear charges against the Governor.”

Hon. Senators, for the avoidance of doubt, Article 181 of the Constitution, Section 33(3) (a) of the County Governments Act, 2012 and Standing Order No.68 (1) (a) of the Senate Standing Orders apply to the proposed removal from office, by impeachment, of a Governor as well as the proposed removal from office, by impeachment, of a Deputy Governor.

Hon. Senators, pursuant to section 33(3) of the County Governments Act, 2012 and Standing Order No.68 (1) (a) of the Senate Standing Orders, I hereby proceed to read the charges against Bernard Kiala, the Deputy Governor of Machakos County.

You will recall that in the last business, Members petitioned this procedure and just to confirm, the Speaker listens and that is why we are doing it.

**Ground 1: Gross Violation of the Provisions of the Constitution**

The particulars are that on various dates between 5<sup>th</sup> March, 2013 and 7<sup>th</sup> July, 2014, the Deputy Governor committed the following acts in gross violation of the specified provisions of the Constitution of Kenya-

- (1) THAT the Deputy Governor conducted himself in a manner that undermined his position as a member of the Machakos County Executive by antagonizing the Governor, Members of the Machakos County Executive Committee and other members of the County Government thereby undermining the collective responsibility of the County Executive as contemplated under Article 179(4), (5) and (6) of the Constitution;
- (2) THAT the Deputy Governor failed to disclose that he had a pending criminal case in a court of law, contrary to Article 10 and Chapter 6 of the Constitution;
- (3) THAT the Deputy Governor committed acts which exhibited bias in the appointment of officers within his docket and attempted to influence appointments of members of his extended family contrary to Article 73(2)(b) of the Constitution;
- (4) THAT the Deputy Governor solicited for money from members of the public to award contracts and for jobs in the County Government contrary to Article 73 of the Constitution; and
- (5) THAT the Deputy Governor failed to adhere to the values and principles of public service contrary to Article 232 of the Constitution.

**Ground 2: Gross violation of the provisions of various Acts of Parliament****1. The County Governments Act, No. 17 of 2012**

The particulars are that on various dates, the Deputy Governor committed acts that were in gross violation of the County Governments Act. In particular, that the Deputy Governor failed to supervise the progress of county projects contrary to sections 30 and 32 of the County Governments Act.

**2. The Public Officer Ethics Act, Cap. 183**

The particulars are that on various dates the Deputy Governor committed the following acts which were in gross violation of the Public Officer Ethics Act, among other provisions-

- (1) THAT the Deputy Governor influenced or attempted to influence the employment of relatives in dockets under him or in other county institutions contrary to section 17 of the Public Officer Ethics Act;
- (2) THAT on 7<sup>th</sup> July, 2014, the Deputy Governor intentionally and willfully mislead members of the public that his official car had been withdrawn, information which the Deputy Governor knew was not true, contrary to section 19 of the Public Officer Ethics Act; and

- (3) THAT on various instances, the Deputy Governor conducted himself in a manner that did not maintain public confidence in the integrity of the Office of the Deputy Governor contrary to section 9 of the Public Officer Ethics Act.

### **3. The National Cohesion and Integration Act, No. 12 of 2008**

The particulars are that on various dates the Deputy Governor committed the following acts which were in gross violation of the specified provisions of the Leadership and Integrity Act, No. 19 of 2012, among other provisions-

- (1) THAT the Deputy Governor called Dr. Sunil Kumal Dhall, the County Executive Committee member for Trade, Economic Planning and Industrialization, a “*mhindi*”;
- (2) THAT the Deputy Governor used derogatory language against people from outside of Machakos County;
- (3) THAT the Deputy Governor caused inflammatory leaflets to be printed;
- (4) THAT the Deputy Governor made inflammatory remarks on social media; and,
- (5) THAT the Deputy Governor uttered ethnically and regionally divisive and defamatory words during public rallies.

### **4. The Leadership and Integrity Act, No. 19 of 2012**

The particulars are that on various dates the Deputy Governor committed the following acts which were in gross violation of the specified provisions of the Leadership and Integrity Act, among other provisions-

- (1) THAT the Deputy Governor used his office to push for Government contracts in various County Departments including Trade, Health and Agriculture to relatives and friends contrary to section 10 of the Leadership and Integrity Act;
- (2) THAT the Deputy Governor intimidated his colleagues through cell phone text messages and telephone calls seeking various favours contrary to Section 34 of the Leadership and Integrity Act; and
- (3) THAT the Deputy Governor solicited for Kshs500,000 from Dr. Sunil Kumar Dhall, the County Executive Committee Member for Trade, Economic Planning and Industrialization contrary to section 12 of the Leadership and Integrity Act.

### **Ground 3: Gross Misconduct**

The particulars are as follows-

- (1) THAT on various dates, the Deputy Governor failed to attend County Executive Committee meetings without good cause;
- (2) THAT on 7<sup>th</sup> July, 2014, the Deputy Governor conducted himself in a manner unbecoming of a public officer by misleading the public that he had been ordered out of a County Executive Committee meeting, information that the Deputy Governor knew to be false;



- (3) THAT on various dates the Deputy Governor misled members of the public that his security had been withdrawn, information which the Deputy Governor knew to be false;
- (4) THAT on various dates, the Deputy Governor neglected duties delegated to him by the Governor;
- (5) THAT the Deputy Governor made utterances in public which disclosed information that was confidential to the County Executive Committee; and
- (6) THAT the Deputy Governor criticized Government decisions which he was a party to.

#### **Ground 4: Abuse of Office**

The particulars are-

- (1) THAT on various dates, the Deputy Governor attempted to use his office as the Deputy Governor of Machakos County to influence the award of a tender to supply drugs by incessantly making telephone calls to the County Executive Committee Member in charge of Health and Emergency Services;
- (2) THAT the Deputy Governor threatened Executive Committee members to be loyal to him purporting that he would protect them once the Governor was impeached; and,
- (3) THAT the Deputy Governor used his office to cause anxiety and tension to investors, private sector professionals and members of the public who were non-Kambas and non-Machakos Kambas.

Hon. Senators, section 33(3) (b) of the County Governments Act and Standing Order No.68 (1) (b) of the Senate Standing Orders both provide that the Senate, by resolution, may appoint a Special Committee comprising 11 of its Members to investigate the matter. Hon. Senators will observe that in today's Order Paper, pursuant to these provisions of the law, the Senate Majority Leader will be giving Notice of a Motion for the establishment of a Special Committee. You will also observe that the Motion has, with the approval of the Speaker, been listed on the Supplementary Order Paper.

Hon. Senators, should the Motion for the establishment of the Special Committee pass, the Special Committee will be required, under section 33(4) of the County Governments Act and Standing Order No.68 (2), to investigate the matter and to report to the Senate within ten days, on whether it finds the particulars of the allegations against the Deputy Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in plenary. The Resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all hon. Senators, that debate on the Motion shall be limited to the substance of the Motion, namely; whether to establish a Special Committee consisting of the listed Senators to investigate the proposed removal from office of the Deputy Governor of Machakos County. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits. It is, therefore, not permissible to deviate to any matters other than the Motion before the Senate.

Hon. Senators, as I conclude, I have previously stated in this House that the hearing of charges for the proposed removal from office of a State Officer is one of the most important and also most solemn functions of the Senate under the Constitution. I, therefore, urge once again, that the Senate exercises the highest level of responsibility and circumspection on this matter in plenary and also, should the Motion by the Senate Majority Leader pass, in the Special Committee.

Thank you.

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

**The Speaker** (Hon. Ethuro): What is your point of order, Sen. Khaniri?

**Sen. Khaniri:** Mr. Speaker, Sir, I rise to seek your guidance---

*(The Speaker consulted the Clerk-at-the-Table)*

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

**Sen. Khaniri:** Mr. Speaker, Sir, I rise to seek your guidance and, therefore, I need your full attention.

When you introduced this matter, you cited Article 181 of the Constitution and Standing Order No. ---

*(The Speaker consulted the Clerk-at-the-Table)*

Mr. Speaker, Sir, I need your full attention.

**The Speaker** (Sen. Ethuro): Sen. Khaniri, you are speaking to the House.

**Sen. Khaniri:** Mr. Speaker, Sir, I need your guidance and your ruling on the matter that I want to raise and, therefore, I need your full attention.

When you introduced this matter, you cited Article 181 of the Constitution and Standing Order No.68. Reading Article 181 of the Constitution, it provides for the procedure for the removal of a county Governor. It does not state the position of a Deputy Governor. Similarly, Standing Order No.68 also gives us the procedure for the removal of a Governor and it is very silent on the issue of the Deputy Governor. So, I just want to seek your guidance if we are really acting within the law because the Standing Order you cited and the Article in the Constitution does not provide for removal of a Deputy Governor.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Speaker, Sir. I thought that the office of the Governor implies the office of the Deputy Governor, because the Deputy Governor is the running mate of the Governor. Without the Governor, there would be no Deputy Governor. So, it is a fact of law stipulating that the impeachment of a Governor will *mutatis mutandis* imply the impeachment of the Deputy Governor.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. In the same vein that Sen. (Prof.) Anyang'-Nyong'o has spoken, I also want to say that whereas Sen. George Khaniri is right to the extent that there is a lacuna, especially with regard to those two provisions that he has cited plus Section 33 of the County Governments Act, towards the end of Section 33 of the County Governments Act which looks at the process of the removal of a Governor by impeachment, it says that if a

Governor or Deputy Governor is removed under this section, then the following shall apply--- This means actually that the intention was to apply those provisions to both officers. Therefore, I want to support Prof. Anyang'-Nyong'o, but also provide an additional justification why I think that the provisions for the removal of the Governor by impeachment applies to the removal of the Deputy Governor *mutatis mutandis*.

**The Speaker** (Hon. Ethuro): By the way, the guidance was being sought from Mr. Speaker.

**Sen. Mutula Kilonzo Jnr.:** It is true, Mr. Speaker, Sir, but we have a right to sort of also assist you in doing this interpretation.

Mr. Speaker, Sir, we have a principle of law called construction, where when interpreting the law, the interpretation should not lead to an absurdity. What Sen. Khaniri is suggesting would lead to an absurdity. It is not only that, but if this Senate is going to be bound by precedent of what we have done before, Sen. Khalwale in his Committee for the removal of the Deputy Governor of Embu County, held and found – and which we voted – that the law applicable for the removal of a Governor applies *mutatis mutandis* to a Deputy Governor.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. If you look at Article 179 (4) of the Constitution, the Governor and Deputy Governor are the chief executive and deputy chief executive of the county respectively. From your Communication, I am persuaded that the only way that you can proceed is if that charge was against the office and, therefore, it is not possible for the Deputy Governor to be impeached separately as the attempt is being made.

**Sen. Khaniri:** Mr. Speaker, Sir, maybe just in response to Sen. Mutula Kilonzo Jnr., Sen. (Prof.) Anyang'-Nyong'o and the Senate Majority Leader, we do not want to act in futility. This will be a very strong ground for somebody to take us to court. If you look at the procedure for the removal of the President, there is a separate procedure for the removal of the Deputy President. The Senate Majority Leader is telling me that it is the same, but Article 150 and Standing Order No.67 are very clear on how to remove the Deputy President. So, the same should have applied for the Governor and his deputy.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. I cannot do better than to reiterate what Sen. Mutula Kilonzo Jnr. has said, because we have set a precedent in this House and it has withstood the test of time. We impeached the Governor of Embu and salvaged the Deputy Governor of Embu, which means that we considered her impeachment. If I remember and I could be corrected if I am wrong, I believe that the High Court in Kerugoya decided that the procedure for the removal of the Deputy Governor would be the same as that of a Governor and, therefore, we acted correctly and within the law.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. There is no lacuna in the law in this matter, because law is not necessarily what is written. It is guided by precedents, practice and usage. When we dealt with the Embu matter, there were two impeachment proceedings from Embu County Assembly; separate charges for the Governor and the Deputy Governor. The Khalwale Committee presided on both and returned a verdict of “guilty” on one and “not guilty” on the other.

The Khalwale Committee was very clear and never cited any gap in the law on the process of impeaching the Deputy Governor. I agree with the distinguished Senator for Kisumu, the Senator for Tharaka-Nithi and the Senator for Makueni that their interpretation of the law is correct. The House should be guided by our previous conduct on a similar matter and we proceed to the Motion and deal with the matter before us.

**Sen. (Dr). Machage:** On a point of order, Mr. Speaker, Sir. Whereas I may not be a lawyer, I know one fact. Just because a wrong has been done does not justify repeating the wrong and calling it right. I believe in my own mind that our two previous Committees made a mistake in the interpretation of the law. This is because the Constitution which was approved by a majority of Kenyans was not adhered to. The Constitution does not prescribe the method of removal of a Deputy Governor. If a Governor or county assembly, therefore, thinks that a Deputy Governor is not performing, then that mistake should be pushed to the Governor who made the mistake of picking that fellow as his running mate. Therefore, regarding the Machakos issue, the Governor should be impeached, so that the Deputy Governor is taken care of, if that is what they want. I think that, that is what the law says.

**The Speaker** (Hon. Ethuro): The last contribution on this is by Sen. Kerrow

**Sen. Billow:** Mr. Speaker, Sir, mine is on a different matter.

**The Speaker** (Hon. Ethuro): Order, Members! I think that this is really much ado about nothing. You do not need to make any references to any school of law. All you needed was to be a Member of the Senate of the 11<sup>th</sup> Parliament. We got two impeachments from Embu County, ably handled by Sen. Khalwale and his team. Not only did we decide that we were going to get two Committees, because they were not the same persons, but two different persons performing certain functions--- In fact, the Constitution has even ring-fenced some of the things that the Deputy Governor cannot do, which only a Governor can do. So, that already tells you that they are different things.

By quoting that article of the Constitution, Sen. Khalwale actually went the opposite direction, when I thought that he would actually support the cause; that since we have a chief and deputy, then each one of them is responsible. From all the words that have been used, check Article 259 (1) which says:-

“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.”

In fact, Article 259 (3) (a) and (b) goes on to say:-

“Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and, therefore, among other things—

- (a) a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office;

(b) any reference in this Constitution to a State or other public office or officer, or a person holding such an office, includes a reference to the person acting in or otherwise performing the functions of the office at any particular time;”

Sen. Khalwale, in fact, you will still be responsible even when you are acting, but for the Governor and Deputy Governor, people took a vote and decided that this is the team that is going to be there and the Constitution has given them certain functions.

The question by Sen. Khaniri that is more valid is whether the law has provided for that. I think that Sen. Kindiki has spoken to it; that if you look actually at the entire law, it provides that where the Governor would be impeached, the Deputy Governor can also have the same. Of course, we have already put it in our Standing Orders, in appreciation of the work done by Sen. Khalwale’s Committee, and I am sure that it will find its way into legislation. That is how legislation is made. We learn from the experiences and identify the lacuna that exists technically, but, surely, it does not take away the principle of accountability, especially if you hold that particular office.

Let us proceed because I am completely satisfied that this is the best way to proceed. A Governor and a Deputy Governor can actually be impeached by a county assembly and the matter can move to the Senate.

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

**The Speaker** (Hon. Ethuro): Sen. Amos Wako, there is no doubt in this country that you are an eminent lawyer. So, with that obvious understanding, you actually add nothing more useful to the rest of the discourse. Maybe if it was another Senator whose credentials are not known, I would allow.

What is it, Sen. Wako?

**Sen. Wako:** Mr. Speaker, Sir, permit me to agree with your ruling, the Senate Majority Leader, the Senate Minority Leader, Prof. Anyang’-Nyong’o and my son, Sen. Mutula Kilonzo Jnr. But still, there is a lacuna somewhere which I hope can be cured in future, either by amendment or whatever. The lacuna is that both the court in Kerugoya and Khalwale’s Committee did not address this issue; that it appears as if within this Constitution the position to the extent that Article 182 (4)--- Article 182 talks about a vacancy in the office of the county Governor. Of course, as everybody has said, it does not talk about a vacancy in the office of the county Deputy Governor. But Article 182 (4) reads:-

“If a vacancy occurs in the office of county governor and that of deputy county governor---

The provisions for a vacancy for a deputy governor have not been set out in the Constitution. We are talking about a possible vacancy, if these proceedings succeed, of a deputy governor independent of a vacancy in the position of the governor. So the word “or” becomes very important. The only situation where it is contemplated that the deputy governor cannot be there would be if the deputy county governor is unable to act. That word “unable to act” under this Constitution presupposes that the only time that the position of the deputy governor can be vacant is in those situations where he is unable to act.

“Unable to act” can mean through physical, mental, infirmity and so on. Therefore to that extent, one could say that the Constitution contemplates that the fate of

the deputy governor is tied up with the governor himself. I do agree that there is a lacuna there but because of the rulings and the precedence that has been set, we are on the right course. Later on, certain issues will have to be addressed. You cannot have an independent vacancy in the office of the deputy governor only in situations where the deputy governor is unable to act. Actually you can have that vacancy in other situations, for example, through the impeachment process.

**The Speaker** (Hon. Ethuro): I am a bit reluctant to give a rebuttal to Sen. Wako for all the words I had said before he spoke.

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

**The Speaker** (Hon. Ethuro): Sen. Khaniri, you sought guidance from the Chair and it was given. It is not to be challenged. I think you are the one who has been telling us about these points of order. You do not need to stand to say it. You just sit and I will see if you have already made your intervention. So, hold your horses and I hope your point of order is on a different matter.

**Sen. Khaniri:** Mr. Speaker, Sir, I did not want to raise this earlier because I did not want to derail the flow of thinking of the Senator for Busia but did you hear him refer to the Senator for Makueni as “my son Mutula Kilonzo Jnr.”? This is contrary to the provisions of Standing Order No.90(6) which is very clear that a Senator shall refer to another Senator by the title “Senator so-and-so”. It is a breach of our own Standing Orders.

**The Speaker** (Hon. Ethuro): I heard him loud and clear. I almost intervened but I guess for the same reasons, I did not. We refer to Members only as Senators in this House, those others are details which we do not entertain here. There are very many social occasions for you to demonstrate that.

Proceed, Sen. Wako.

**Sen. Wako:** Mr. Speaker, Sir, on that issue, I entirely agree with what Sen. Khaniri has stated. I should not have referred to Mutula Kilonzo Jnr. as “my son” but in terms of upbringing in the law, I regard him as my son but he is actually Sen. Mutula Kilonzo Jnr. who is being brought up very well on the issues of----

**The Speaker** (Hon. Ethuro): Order, Sen. Wako. It takes you so long to make just a small clear point.

Before we go to the Committee of the Whole, I will allow the Senate Majority Leader to give notice of his Motion.

### NOTICE OF MOTION

#### ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF THE DEPUTY GOVERNOR OF MACHAKOS COUNTY

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, whereas, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 23<sup>rd</sup> July, 2014, the County Assembly of Machakos

approved a Motion “to remove from office, by impeachment,” the Deputy Governor of Machakos County;

And further, whereas by letter dated 24<sup>th</sup> July 2014 (Ref:MKSCA/ADM/IMPDG/Vol 1/6 and received in the Office of the Speaker of the Senate on 25<sup>th</sup> July, 2014, the Speaker of the County Assembly of Machakos informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

And whereas, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b) the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

Now therefore, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators -

1. Sen. Lenny Kivuti;
2. Sen. Mutahi Kagwe;
3. Sen. Sammy Leshore;
4. Sen. Abu Chiaba;
5. Sen. Martha Wangari;
6. Sen. Njoroge Ben;
7. Sen. (Prof.) Peter Anyang’-Nyong’o;
8. Sen. Kennedy Mong’are Okong’o;
9. Sen. (Dr.) Agnes Zani;
10. Sen. Daisy Kanainza; and
11. Sen. Hassan Omar Hassan

to investigate the proposed removal from office of the Deputy Governor of Machakos County and to report to the Senate within ten days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Thank you, Mr. Speaker, Sir.

## 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 COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.9 OF 2014)

**The Chairperson** (Sen. Kembi-Gitura): Order, Senators. We are in the Committee of the Whole and we cannot transact business unless we have the numbers. We do not have the numbers. Ring the division bell. If we still do not get numbers, we shall decide what to do. Ring the Division Bell for eight minutes.

*(The Division Bell was rung)*

*(The Chairperson (Sen. Kembi-Gitura) left the chair)*

*(The Temporary Chairperson (Sen. (Dr.) Machage) took the chair)*

### **INTERRUPTION OF COMMITTEE OF THE WHOLE DUE TO LACK OF QUORUM**

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Senators, there seems to be no quorum. We will, therefore, have to report to the Speaker on the progress and seek leave to sit again.

*(The House resumed)*

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

### **REPORT**

#### **LACK OF QUORUM**

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I stand on Standing Orders No.35 and 36 to report to you that there was no quorum. Therefore, Standing Order No.8; Committee of the Whole, was not executed.

I, therefore, seek leave that we adjourn this business to another day.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Mr. Chairman. It is so ordered.

*(Committee of the Whole deferred)*



**POINT OF ORDER****PRIORITIZATION OF THE COUNTY ALLOCATION  
OF REVENUE BILL, 2014**

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. I seek your guidance. The issue regarding the County Allocation of Revenue Bill is very urgent. As you know, today is 31<sup>st</sup> July. Counties ought to have had their money. The fact that we are not yet done with this Bill means that we are likely to jeopardise the operations of counties. I want your guidance and request that the Rules and Business Committee prioritizes this matter.

Yesterday, we sat here almost until 6.00 pm hoping that we would conduct this business. Everything that is being debated here today is important. However, in terms of the challenges that counties are facing, I urge the Speaker in the next session of this House to give priority to this matter so that we conclude this business and enable counties to operate as required.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Billow Kerrow, I hear you. Unfortunately, Order No.11 was to consider two Bills; the County Allocation of Revenue Bill which is important and the County Governments (Amendment) Bill, Senate Bill No.1 of 2014 which is also important. However, seeing that there is no quorum, the Standing Orders do not allow us to continue to sit in Committee unless we have a threshold of 24.

We have to vote by delegation on every amendment. Those are the operations of our own Standing Orders. Whereas we did not fail to vote because of anything else other than the fact that there was no quorum, the Rules and Business Committee can do very little with regard to the issue of quorum. It is the role of the Whips to ensure that there is quorum.

Your request is that the matter be prioritized. I can assure you that the Rules and Business Committee will be accordingly informed so that they prioritise the matter. However, without anticipating debate, we have the Motion for extension of time, Order No.12. If it passes, we will deal with it next week.

**Sen. Billow:** Mr. Deputy Speaker, Sir, there was a ruling by the Speaker, if I am not wrong; last year, that after 4.00 p.m, chances of having quorum in the House for the purpose of a division were low and therefore, divisions be held at 3.30 pm when there is maximum presence of people in the House.

The reason I am saying prioritization is important is because we spent nearly two hours on statements. They are important but this issue ought to have been concluded today and gone on to be assented to so that there is cash flow in counties. We need to target that time when Senators are present, 3.30 p.m. to 4.00 p.m. so that we have a quorum to vote.

**The Deputy Speaker** (Sen. Kembi-Gitura): I think the HANSARD will bear you out when the Rules and Business Committee meets on Tuesday or whenever it will meet next.

That is it for now. The order, as requested by Sen. Billow is that we will extend time so that the Motion on Order No.11 is prioritised so that we pass the Bill in good time.

## MOTION

### ALTERATION OF THE SENATE CALENDAR

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order No.28(4), the Senate resolves to alter its calendar (Regular Sessions) for the Second session for the recess to commence on 11<sup>th</sup> August, 2014 and to end on 23<sup>rd</sup> September, 2014.

Mr. Deputy Speaker, Sir, this Motion has been necessitated by a number of items in the business of this Senate that require urgent conclusion. Chief among them is the Third Reading of the County Allocation of Revenue Bill, 2014. This Bill needs to be passed and assented to by the President as soon as possible so that our counties can have some money during this financial year. If this has to be done, therefore, this Senate must have some patience and a sense of duty so that we sit for a few days next week so as to conclude discussion on this Bill.

The second business item is the matter of the impeachment of the Deputy Governor of Machakos County which has been referred to us. As hon. Senators may know, there are very strict timelines. Once the Senate is seized with a matter of impeachment, it must dispose of it expeditiously within 10 days if it goes the Committee route. However, even if it does not go the Committee route, it must dispose of that matter, which cannot happen today because of quorum and because of the fact that some Senators have already started travelling to Mombasa. Although I am told that it is not very clear whether that meeting in Mombasa is there or not.

*(Sen. Murkomen limped in with  
the aid of a walking stick)*

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

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order, Sen. Sang?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, thirdly---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Order! There is a point of order from Sen. Sang.

**Sen. Sang:** Mr. Deputy Speaker, Sir, the honorable Senator from Elgeyo-Marakwet has just gained access to the Chamber with some crude weapon. Is he in order? Are we safe in this House?

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): What Standing Order are you referring to, Sen. Sang?

**Sen. Sang:** Mr. Deputy Speaker, Sir, I am basing my point of order on you precedent---

**The Deputy Speaker** (Sen. Kembi-Gitura): I have not seen any ruling on this.

*(Sen. (Prof.) Lonyangapuo stood up in his place)*

Sen. (Prof.) Lonyangapuo, what is your point of order? Let us hear whether it is on the same issue.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, it is on the same issue that my colleague, Sen. Sang, has raised. We have never seen a Senator walking and dressed the way Sen. Murkomen is today. This is in the same format where last time you ruled on the way some Senators walked in here and dressed in a manner that was not fitting.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, although I am a Senator, I am also a registered medical practitioner in the Medical Practitioners and Dentists Board. I have maintained my licence to date. Therefore, allow me to tell you that in my capacity as a professional, I witnessed Sen. Murkomen when he got injured. I examined him and found him to be incapable of walking without support---

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Machage!

*(Laughter)*

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I think this is one of those times when Standing Order No.1 would apply. This gentleman, Sen. Murkomen, got injured in pursuit of duty----

**The Deputy Speaker** (Sen. Kembi-Gitura): Why are you defending him? He is here and I will ask him. What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, is Sen. Sang in order to mislead this House?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang is completely in order.

**Sen. Mutula Kilonzo Jnr.:** To mislead the House?

**The Deputy Speaker** (Sen. Kembi-Gitura): He is completely and fully in order.

**Sen. Mutula Kilonzo Jnr.:** But there is no provision that states that a Senator cannot walk in with a walking stick.

**The Deputy Speaker** (Sen. Kembi-Gitura): Well, the rules are clear. It says that no Senator may bring any firearm or other offensive weapon into the Senate Chamber.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** So---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Mutula Kilonzo Jnr.! We have a booklet which all of you got called “The Speaker’s Rules” on the conduct of Senators within the precincts of Parliament. So, Sen. Murkomen, why did you bring a weapon into the debating Chamber?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I think I came to the Chambers, not with a weapon, but with a walking stick and for good reasons. While I was on duty, properly directed by the Speaker of this House and working so hard, together with the Speaker, Sen. Omar, Sen. Mutula Kilonzo Jnr. and other Senators not before this House today, we gallantly fought for this House to win the cup against the Lower House.

*(Applause)*

In the process of such a fight, sometimes there are casualties and I was one of them. So, I got injured and I am unable to walk. I am momentarily incapacitated and that is why I am walking with the aid of a walking stick.

*(Applause)*

By the way, Mr. Deputy Speaker, Sir, sorry---

**The Deputy Speaker** (Sen. Kembi-Gitura): And Sen. (Dr.) Machage prescribed a walking stick for you?

*(Laughter)*

**Sen. Murkomen:** Mr. Deputy Speaker, he did, together with the St. John Ambulance doctors and paramedics who were there.

Mr. Deputy Speaker, Sir, I would like to confess here that this beautiful walking stick was given to me in the presence of Sen. (Prof.) Lonyangapuo by the great people of West Pokot County when I visited them two weeks ago.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Yes, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, Standing Order No.103 is very clear:-

“No Senator shall bring a firearm or any offensive weapon into the Chamber.”

Mr. Deputy Speaker, Sir, you can take cognizance of what you have seen in other jurisdictions; fist fights in the Italian Parliament, Korean Parliament and, of late, in the Somali Parliament. We have also witnessed fights in some of our county assemblies, for example, Machakos County Assembly, where we saw chairs flying in all directions. In

his own words, the distinguished Senator for Elgeyo-Marakwet has said that the offensive weapon he is using as a walking stick was given to him by the people in West Pokot County. It is not a medical prescription as alleged by the distinguished Senator for Migori. The rules require that he leaves the weapon at the door with the Sergeant-at-Arms. He can limp with the help of the chairs until he gets to where he wants to sit and then, at the end of the day, he can pick it up and go home.

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not want to prolong this matter too much. However, Sen. Murkomen, when Sen. (Dr.) Machage prescribed to you a walking stick, did he not give you sick leave?

*(Laughter)*

Are you able to walk into the House without the help of a walking stick? Because if you are able to walk into the Chamber without the walking stick, on a serious note now, then you should leave it out as the rule says.

*(Sen. Murkomen remained standing in his place)*

Sit down, Sen. Murkomen!

On the other hand, if it is a prescription because you are not able to walk without it then, of course, reasonableness would expect that you be exempted because you want to sit in the House to contribute. So, I think it may look frivolous, but it is an extremely important situation. I hope you have noticed that even water itself in the Chambers these days is given in plastic bottles and not in glasses like it used to be. It is not served in anything that can be turned into a weapon. So, this is a fundamental issue that has been raised; it is not out of idleness that Sen. Sang raised it. If you are able to walk without a walking stick, it will be better that you did not walk with it into the House. If, however, it is inevitable that you must have it, then, of course, there must be an exemption to any rule.

**Sen. Murkomen:** Thank you, Mr. Deputy Speaker, Sir. I am cognizant of the fact that some of the things we carry to the House can be dangerous weapons. For example, the huge pen and very big phone that the Senate Minority Leader carries can be converted any time into weapons.

*(Laughter)*

Mr. Deputy Speaker, Sir, I must hasten to say that I was in my house resting. However, Sen. (Dr.) Machage and the other medics told me that I must not use the leg to step down. I asked them what I should use and they told me that I should try a walking stick for now. If it gets worse, I should go back to hospital so that they can prescribe something else.

Mr. Deputy Speaker, Sir, I was sitting in my house and I was watching the debate about the County Allocation of Revenue Bill. I said that however late I shall be here,

Elgeyo-Marakwet cannot go unrepresented in this House when we are discussing a very important Bill.

*(Applause)*

So, it is only for that reason that I came. Otherwise, I would have taken a bed rest. It is because, inevitably, I had to come with it for now, but I am a very responsible Senator---

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much. I have heard you.

Sen. (Prof.) Lesan, do you want to raise the same issue?

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. Since the so-called stick which my fellow Senator is carrying was prescribed by a doctor, then I think it ceases to be a stick, but an orthopedic supporting instrument.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, I am sure you heard what I said. I do not want us to repeat because whether you call it a prescription or whatever name you want to give it, I have said that if Sen. Murkomen is using that stick because he was advised by a medical practitioner like you to come with it, then there must be an exception to the rule. On the other hand, if it is just for leisure that he is walking with it, he cannot be allowed to do so in the Chamber. Sen. (Dr.) Machage, I am sure that settles the issue.

**Sen. (Dr.) Machage:** Yes, Mr. Deputy Speaker, Sir. Sen. Murkomen will continue using the stick as long as I have not decided that it is not appropriate. I would also like to inform the Senator for Bungoma that even when we prescribe, usually the drugs and other appliances have been manufactured by somebody else, which could include the people of Murkomen, or sometimes even water in your own house.

**The Deputy Speaker** (Sen. Kembi-Gitura): Since Sen. Murkomen is seated comfortably, I am instructing the Serjeant-At-Arms to withdraw the walking stick from him for safe custody. When he wants to leave, he can give him back his walking stick.

*(The Serjeant-At-Arms withdrew the walking stick from Sen. Murkomen)*

I am sure he can stand up without a walking stick. It will be kept safely for you and when you want to leave it will be brought back. I must commend you for coming from your house to the Senate to vote. I wish that more Senators could have the same spirit so that we have quorum.

Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. (Prof. Kindiki): Mr. Deputy Speaker, Sir, I had actually almost completed moving this Motion. We have a number of Bills that we must conclude. Other than the County Allocation of Revenue Bill, we have the Public Procurement and Disposal (Amendment) Bill. Most importantly, we have the

Impeachment Motion regarding the Deputy Governor of Machakos County which is time bound. For this reason, it would be important for the Senators to stay around a little longer through next week. We know that Senators have worked very hard, but we just want to encourage them to work a little harder.

Finally, I am happy to say that because this recess had been planned for a long time, we are also, through this Motion, suggesting that the Senate does approve that the recess be moved forward so that we resume a week after 17<sup>th</sup> September which was the expected date of returning back. Therefore, in short, this Motion seeks to request that the Senate sits next week, Tuesday, Wednesday and Thursday, and thereafter take our recess to 23<sup>rd</sup> September, 2014, in accordance with our calendar.

With those many remarks, I beg to move and request the Senate Minority Leader, Sen. Wetangula to second.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. In the opening remarks of Sen. (Prof.) Kindiki, he said that he is not sure whether the Mombasa Conference is on or not. Now that was planned and organized by this House and with that kind of remark from the Senate Majority Leader, would I be in order to request that he substantiates or elucidates on the issue?

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. I have also received information that the Governors have gone to court to challenge the legislation that created the County Development Board which is basically the institution that is going to assist in the coordination of development in our counties. Considering that, that was one of our key agendas which is the operationalization of the County Development Boards, am I in order to say that we should make a resolution in this House to basically agree that even if the Governors have not called off the meeting, we on our Motion call off that meeting until such time that necessary respect is achieved on the County Development Board?

**The Deputy Speaker** (Sen. Kembi-Gitura): Now, you are asking me to do something which is not within my mandate because a meeting has been called and all of you have seen the programme. There is nothing in the agenda and I have not seen anything to do with the Sang Bill in it. Therefore, you cannot ask me to call off a meeting which I did not convene. It is the Senate leadership through the RBC which has organized this meeting. So, I do not think it is in my place or mandate to order that it be called off or not. In any case, what you are telling us right now is hearsay. We do not rely on newspaper reports to make decisions. So, if the Speaker's office wants to stop this meeting, you will be informed the same way you were informed about the meeting in Mombasa.

Sen. (Prof.) Kindiki, you can deal with Sen. (Dr.) Macahage's point of order. Was it not on the same point?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, just to say that it is true that that information is not official, but it is also true that Governors went to court to challenge a Bill which has been passed into law by this House, which is within their right. However, I also want to agree with you that if that meeting is cancelled, there must be some official way of communicating through the Speaker's office.

I beg to move and request the Senate Minority Leader, Sen. Wetangula to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second. This is literally procedural; the RBC as the Committee that arranges our programme and our calendar agreed that we sit next week and extend the length of our recess by an extra one week, so that we can dispose of the workload that is ahead of us, including the proposed impeachment of the Deputy Governor of Machakos, the Allocation of Revenue Bill and one or two other Bills that are pending for purposes of Committee and voting. This being the case, I know that it may be disruptive to programmes that Senators have set in the first week of their recess, but we ask them that duty calls. We have to bear with this, so that we can discharge our duty and responsibility.

Finally, regarding the point canvassed about the governors; we, as a Senate, should be the last House and the last individuals to frown upon anybody going to court to enforce what they think are their rights. The Constitution allows people to go to court, rightly or wrongly. Let the court decide. We have passed a law and we are now *functus officio* on that law. The courts can make their comments on it. We ourselves have also gone to court before on something else. That is a forum that anybody can go to and like the Chair said, I do not think the meeting we intend to have has anything to do with the creation of the Boards under the Sang Bill. We all are happy that those Boards will be coming in place. If the matter is in court, what we urge the Senate to do is to seek legal representation as a matter of interest, so that we have ourselves seeking to be enjoined and to defend what we think is right and what we think ought to be done.

I beg to second.

*(Question proposed)*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I stand to support this Motion. But before I speak substantively on the Motion, I just want to make a comment or two about the Governor's issue. The fact that the governors have gone to court, as the Senate Minority Leader has said, it is, indeed, their constitutional right. I guess that one of the reasons they might have gone to court is to challenge the constitutionality of the law. Indeed, if the courts are up to the mark, they should be able to read the Constitution correctly and uphold the point of view of the Senate.

Mr. Deputy Speaker, Sir, having said that, regarding going to Mombasa, it is even more reason we should meet the governors, to have a dialogue with them. Maybe that can provide us with an opportunity to sort out certain lacunas on their own perception on what this law means and the fact that we, indeed, would like to have a much more deep engagement with the counties at the level of planning and setting priorities in the implementation of that section of the Constitution which gives us the responsibility to look after the affairs of the counties. We cannot really look after the affairs of the counties if we are not somehow organically connected to the need to make certain regulations and laws to the counties that affect their development.

Mr. Deputy Speaker, Sir, having said that, as we go on recess, I would like to request the Senate to think of looking at recess as recess and interpret it as a period



during which we do not continue working as if we are still in Session. In my life in Parliament since 1993, recess has been used effectively for Committee meetings. You meet fulltime until the recess is over. So, I have always wondered if there is any conception of recess, holidays or taking leave for lawmakers. In that recess, there must be at least some two weeks which are bracketed specifically with no activities for lawmakers to do other things like visiting their counties without necessarily having to be engaged in meetings or even take a holiday. So, I would like to appeal to the management of the Senate that we work closely with Committee Chairpersons and those who schedule Committees to bracket out some one or two weeks, during which there is absolutely no activity regarding Committee work, lawmaking and so on.

Mr. Deputy Speaker, Sir, secondly, it is most likely too that during recess some Committees may take the opportunity to do certain visits. I know that our Committee on Devolved Government has organized for some visits. Unfortunately, our Chairperson is injured. I hope that his injury will not affect his other activities, maybe, at home, but those are private matters. I do hope that those visits or tours that Committees do organize should be done in such a way that they do not conflict with other activities of Committees. This is because Members of the Senate belong to multiple Committees and so, the coordination of Committee work during recess should be done in such a way that one activity does not necessarily prejudice the other. The Senate is so busy with so many Committees.

Eng. Karue will remember that when we were in the National Assembly and there were no departmental Committees, it was much easier for Members of Parliament to use recess for their own activities. But the moment Committees multiplied and became so many, the recess became too busy. I feel so strongly about that and hope that the Rules and Business Committee (RBC), in its sitting this coming week before we go on recess, will take this issue very seriously and really try to give us an opportunity to have a better managed recess than we have had in the past.

Mr. Deputy Speaker, Sir, I would like to congratulate you and the House for coming up with this proposal that we work next week and then we can go on recess after we have finished the business of the House. This County Allocation of Revenue Bill is so important, as our Chairperson of the Committee on Finance, Commerce and Budget said, that if we do not pass it in good time, not only may our reputation as those who look after the affairs of the counties be tarnished, but I think that the work of the counties themselves may be kind of prejudiced.

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

**Sen. Murkomen:** Thank you very much, Mr. Deputy Speaker, Sir. I really agree with the Senate Majority Leader that we need to complete the matter of allocation of revenue because that is critical. It would have been better if we had dispensed with it today, so that the counties can properly proceed. I did not ask the Senate Majority Leader, but as you advised me yesterday, we could not have debated it if it was not published. We are glad that the President signed the Bill yesterday and it is now published. Therefore, it will be prudent for us, as a House, to pass the County Allocation of Revenue Bill and allow our counties to proceed with the development agenda for this country, so that we can realize the fruits of devolution.

Mr. Deputy Speaker, Sir, as I have said over and over again here, both individually and as the Chair of the Committee on Devolved Government, we must distinguish between the role of individuals in promoting devolution and devolution itself, so that we do not reduce devolution to be a one-man agenda and argument that it can only be the Governor, Member of County Assembly (MCA) or a Senator. In fact, Article 174 is one statement that really good scholars of law and political science, like Prof. Anyang'-Nyong'o, would be interested in questioning further. It says that the county government or devolution provides a self-government of the people, in the sense that it brings that part of ownership; that the people own their county and want to run it.

Mr. Deputy Speaker, Sir, my Committee had planned further county visits during the recess. The recess is necessary so that we can visit those counties. We have critical questions to find out. We need to know the challenges and successes that the counties have gone through in implementing devolution. It is important that this House identifies about ten counties that are doing so well in implementing the Fourth Schedule functions and how they are achieving it. We can use them as examples. We want to visit those counties and ask questions about inclusivity. We want to find out how many counties have hired people from across the board and incorporated the minority communities in their leadership. We want to ask whether the counties have helped, being a self-government of the people, in bringing new entrepreneurs and given opportunities to youth and women, including the "*mama mbogas*." Have they been converted into "*mama contractors*?" So, my Committee in the next set of visits during the recess will want to come up with these critical answers.

We have chosen a few counties regionally that we want to go to. We want to visit two counties in Western. We also want to visit Kisumu City and find out whether they have implemented the city and urban areas laws. Do they have that management that is provided for by the Act? Are Eldoret and Uasin Gishu implementing the same? How far is Nakuru County implementing the same? What challenges do they have in the management of these institutions? These are the critical questions that the people of Kenya are asking. We, as a Committee, have to do a good job.

Mr. Deputy Speaker, Sir, I have said it over and over again that when we do the things that we want to do as Senators, we do not it, so that we can seek for cheap publicity. We are doing it for posterity. A lot of work is being done by the Committees of this House for the record, posterity and action. It is not just to be heard that you were here or made the most noise here. We must do things that when my children come and study about the first Senate of Kenya under the new Constitution, they can go to the record and find that there was Sen. (Prof.) Anyang'-Nyong'o who Kipchumba Murkomen was privileged to work with and the things that they did in their Committee were this and this. We want to utilize the brains of a professor of the level of Sen. (Prof.) Anyang'-Nyong'o, a very brilliant man. I am surprised that I have never met another politician who has consistently remained in politics and, at the same, remained sharp academically, other than Sen. (Prof.) Anyang'-Nyong'o.

These are the things he was suggesting that, perhaps, during recess, we need about two weeks so that we can do something about value addition. For example, you can sabbatical in the university locally or abroad and download the experience you have

received to a book and paper so that the world can learn from it, exchange and share experiences across the board. So, there is a lot we can do as a House, especially during the recess for the sake of our people.

*[The Deputy Speaker left the Chair]*

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

Mr. Temporary Speaker, Sir, some of us are new in politics, but Sen. (Prof.) Anyang'-Nyong'o has been in this game for a while. Sen. Mutula Kilonzo Jnr. and myself have just come in.

One of the things that we must value in our country is that, perhaps, politicians need about two weeks in a whole year to just spend time with their families, particularly of a younger age like me. In promotion of family values, we want the politician to remain with his family consistently during holidays for about two weeks, just sit with his children, play and have fun. We should not end up being absentee mothers and fathers. Promotion of family values is a positive thing. In most cases, when you tell someone that you are having some time with your family, they feel like when you are voted for, you are supposed to forget about your family.

It is important that we set an example even we, as leaders from the perspective of the family issues and also the situation of dealing with matters of the state. Without a successful and supportive family behind us, we will come here with a disorganized mind and without flow of thought. You will not take advantage of your knowledge and your leadership skills. These are some of the things that we need to inject into this recess thing so that it does not only become an opportunity for us to go for bench-marking or going back to the counties.

Mr. Temporary Speaker, Sir, considering that the County Allocation of Revenue Bill has not been passed and considering that there is a critical matter of Machakos County, this House will be sitting for the first time to preside over an impeachment of a deputy governor without being accompanied by a governor. We have innovative challenges we are dealing with in the law. It is important that next week we also create that time to deal with this matter so that we can dispense with it and allow the people of Machakos County to proceed in their governance matters and focus on devolution. I am glad that the challenges that we faced when we dealt with Governor Wambora and the Governor of Kericho have made this House wiser and more knowledgeable. People used to think that we are a House of mob lynching, but we are a House of wisdom.

I was surprised today that when we were playing a game, even people of your age were running the whole morning. It is encouraging that the wisdom in that is jelling in this House from people who are experienced like Hon. Ekwee Ethuro, yourself, Sen. (Prof.) Anyang'-Nyong'o and also from us who are still young in politics, it is important that we combine this wisdom, deal with the issue of Machakos and allow the people to proceed. As a researcher on matters of devolution, I will make my position known when the time comes. Therefore, I am waiting eagerly when this House will convene again next

week, so that we can preside over this matter, dispense with it and allow the people of Machakos County to proceed with matters that can benefit the common *mwanaanchi*.

With all those remarks, I support this Motion to allow us to postpone our recess so that we can attend very important matters touching on this House and the Republic of Kenya.

I support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I will be brief. I rise to support this Motion and more importantly say that as a Member of the Committee on Finance, Commerce and Budget, it would be a travesty for us to go on any form of recess, leave or otherwise, without passing the County Allocation of Revenue Bill which the Committee has worked tirelessly for the last several months to put it in place.

In addition, it would be a serious travesty for the Committee on Mediation in which I sat, for this Bill not to be passed after we managed successfully to have the shareable revenue at Kshs266.66 billion contrary to what the National Assembly had suggested. Although Senator Professor says that we should all go on vacation, I doubt I have any vacation. But more importantly, we should state that there are many things that we have not resolved or sorted out in our Committees. I think a week should be allowed, so that we can clear pending work. When we resume we can have a clear desk, value for money and account for the time that the people of Kenya have put us in this Senate.

Mr. Temporary Speaker, Sir, I want to say that it is absolutely critical and it is important because tomorrow is 1<sup>st</sup> August, 2014 and the financial year begun on 1<sup>st</sup> July, 2014, that means we are already 30 days late. It is important to say that this sort of delay has a spill-over effect whether in 2014 or 2015, but it will reflect somewhere in the remaining three or four years of the county governments. Therefore, it is important we resolve this so that we do not, at one point, accuse governors of hoarding money and not subjecting it to development yet we did not do our duty as required by the Constitution.

Article 96(3) gives us this mandate to make a determination on county allocation of revenue. In my perspective, this Article is our core mandate. Therefore, recess would be a travesty to our own constitutional duty to protect counties. I support this Motion to extend our sitting. Machakos County is waiting anxiously to an extent that they are publishing all sorts of things in the newspapers thus spending public money to do things we should be doing. I condemn such actions because it is waste of public funds. I think it is a waste of public funds to publish allegations and evidence in the newspaper when the matter is already before the Senate.

It is important for the people of Machakos County whether or not, the deputy governor will remain in office or be impeached by this Senate, to refrain themselves from publishing allegations in the newspapers. The country will be watching whether we shall be taking leave and disappear into the comforts of wherever we will be going without doing one of the most important things, including passing the County Revenue Allocation Bill and impeachment or lack thereof of the deputy governor of Machakos County.

To support the adjournment, there are some duties that we are supposed to carry out in our counties. We need to explain to people what we have been doing. This is the time we should have gone to the counties to explain why the Sang Bill should have been assented to a long ago. It would be important to explain to counties why Senators have

insisted to participate in the coordination and implementation of projects so that we are not left out in issues that we were elected to carry out so faithfully.

In addition, Mr. Temporary Speaker, it would be important as we go out there for recess, to explain to our counties; as we pass the schedules attached to this paper, that there should be financial prudence. I urge Senators to make a point of going to County Assemblies of their respective counties and explain to them why this should not be a matter of academic purposes and that what we are doing is important for all counties.

We must share the knowledge we have acquired in the last few days. The bulk we have allocated here about 70 per cent will not go to development expenditure. These are things we must explain to counties. We must let them know that there is no way that devolution will succeed unless we revolutionarise the way this money is being spent. More importantly, we should insist that the Senate will not turn a deaf ear to misuse of public resources by persons whom we have elected at counties and who have become small gods.

With those few remarks, I beg to support.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also rise to support that, indeed, we need to extend our sessions before we go on recess so that we deal with critical matters before this House. The County Allocation of Revenue Bill is an obligation of this Senate. We need to ensure that county governments get resources to run. It is also the obligation of governors to start understanding that we have a Senate which they need to work with regardless of whether they like the individuals in the Senate or not. It is important for the country to know that governors running to courts concerning everything will not help counties.

Today, we have an issue with the referral hospitals in 11 counties. I have not seen governors coming together to say that they will work with Senators to see how they can resolve matters and work with the national Government to ensure---

*(Sen. Hassan crossed the Floor without bowing at the bar)*

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. Did you notice that Sen. Omar Hassan crossed the Floor to come say hello to me and went back to sit? He did it like a gazelle, jumping from one end to another. Not only did Sen. Omar cross the House without due respect to the rules, but he started playing around with the computer.

*(Sen. Hassan moved to the bar, bowed and proceeded to his seat)*

**Sen. Elachi:** Mr. Temporary Speaker, Sir, before the Senator of Mombasa decided to do something that was not right---

**The Temporary Speaker** (Sen. (Dr.) Machage): He decided to be mischievous.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I was saying that it is important for governors to appreciate that Kenyans, through the Constitution, felt that there was need

for the institution of the Governors and that of Senators to collaborate and to work together.

As I said, it is unfortunate that they have decided that the courts will be their best friend. However, the Senate should now stand firm and move on. Under 96(1), we are supposed to protect counties. Therefore, what we are doing is not for Governors, as individuals. We are here to protect the people in the counties and to ensure that the electorate gets the services they want.

Last year, we had challenges like the erroneous population of some counties. However, the Committee on Finance, Commerce and Budget has made sure that each county gets a fair share. I hope that counties will appreciate that monies will go to them. Whether in Bungoma, Busia, Kericho or Bomet, this money is meant for those counties. I hope that we will not see counties going to court claiming that other counties used their money. We would appreciate if they would harmonise this. I agree that there was a mistake. They should agree if money was not for a certain county and move on.

When we will be going through the County Allocation of Revenue Bill, we must tell the country what has happened. We have to tell counties the decisions we have taken. We want to see cohesion in counties, so that they agree whenever they face challenges.

Having said that, we need to pull up our socks and debate on the Bills pending before this Senate. It is unfortunate that we have very many Bills, but dispensing very slowly. Kenyans see the Order Papers and can download it any time. They know what the Senate will do today and even tomorrow. It is important that we respect our own Order Papers and the duties that we have been accorded.

Hon. Senators should go to Mombasa and deliberate, so that they come up with resolutions that they can share with governors. If the governors buy the resolutions, so be it. If they do not, hon. Senators will have finalised their decisions and will not need another meeting to talk to governors because of this or that issue.

If governors have gone to court regarding Sang's Bill, that is their own wish. Probably, they want to seek interpretation. I hope that the courts will give them a very good interpretation. When they are managing money, they should give responsibility to those who are not managing it to help them to coordinate activities, especially how to implement projects with the monies that they have been given by the Senate.

With those many remarks, I support.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, first, I want to use the opportunity you have accorded me to profusely apologize for the slight oversight. I think I had gone to empathize with one of our strikers who was doing a fabulous job. In the spur of that moment, he called me so casually and I responded casually. I also came back to this side casually---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order! Could you delete that word from your head? There is no "casual" behaviour in this House.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, that is exactly why I am apologizing.

**The Temporary Speaker** (Sen. (Dr.) Machage): Never should there be casual behaviour in this House.

**Sen. Hassan:** That is exactly why I am apologizing.

Mr. Temporary Speaker, Sir, I rise particularly to support this Motion. I think just this morning when I saw the Speaker at the Nyayo Stadium, my first request to him was that, it appears to me that there is so much Business of the House. I told him that it would be disastrous for us to proceed for this recess because we can only be recalled, particularly for the Motion of impeachment and other Motions that were urgent in terms of dispensing of them as the Senate, including the County Allocation of Revenue Bill. Some of us came with a clear mind on what we wanted to ventilate with respect to the allocation of revenue, particularly on the formula that continues to prejudice some of the counties, particularly the county I represent in the Senate.

Mr. Temporary Speaker, Sir, I think the reason I support the Motion is because there are some of these processes that are time bound. If they are time bound, then we have no option, but to ensure that we meet the expectations. It will be expensive for this Senate and the Senators to then adjourn at this point and then only to come back for one or two specific areas which I think will be important. That also puts the challenge on the leadership of the House in terms of how they manage the House calendar. I think we can project in our planning both in terms of time and in terms of the Motions that need to be dispensed with. So, I think even as they put things on our table, they must consider the fact that we must respect our calendar and, maybe, in future, they should put in place mechanisms to ensure that we are timely in the dispensation of these Motions. I think it will be bad precedence to continue to always adjourn or to procrastinate our adjournment based on the fact that we have certain Business that is still outstanding.

Mr. Temporary Speaker, Sir, let it also be explained to our constituents. I do recall that when I suggested to our friend that we were adjourning tomorrow, that was yesterday when I was speaking to him, to reopen on the 16<sup>th</sup>, they thought we are going on leave. I think the reasons for our recesses must be subject to public profiling of what the expectations of every Senator are with respect to the recess. You do realize that as much as our responsibilities border on Article 96 of the Constitution, the general expectations politically is to also conduct certain consultations and be on the ground to do certain things. Ironically, if you were to say that you were to come here as Sen. Elachi or Sen. (Prof.) Lesan, the Senator from Nairobi, the Senator for Makueni or yourself, to initiate 10 legislations over the period of four years, when you go back to the field and they have not seen you over that period of time, they will say you are a stranger to their cause.

Unfortunately, if you look at the structure of politics, it is important for us to overhaul the political structure so that people start to internalize it. We have not done enough to explain to the electorate the mandate of the Senate. I think they expect of me or of us, the same that they expect from their Members of Parliament (MPs), Members of County Assembly (MCAs) and the Governor. I have heard many Senators aver to the fact that every other time that they go to the ground, the people tell them “this is the harambee from the Governor; where is yours?”

I remember just this weekend, and I mean no offence to the county, I went to present Kshs1 million on behalf of the County of Mombasa to the victims of the attacks in Soweto, Likoni recently. This has almost been a figure that has been accepted; that every other time there is a certain crisis, the county comes up with Kshs1 million. But here you are, as the Senator, trying to dig into your pocket to appear like you can almost

match up the Kshs1 million. So, you find yourself putting in Kshs100,000 or Kshs200,000 and you walk as the “biggest” contributor. But in the minds of the people, the biggest contributor is the county or the Governor who has given more than Kshs1 million.

I spent a lot of my time upcountry from the time I left school at the age of 14 years. I had not lived in Mombasa for more than one month in any given time. I was a student at Lenana High School then proceeded to Moi University, spend some time at Lanet and then started working for the Kenya National Human Rights Commission (KNHCR). So, when I went back to Mombasa, I got a culture shock. It matters to sit down on a round table regularly. I thought it is important for me to be in the Senate to deliver. For people to keep in touch with you, it is the question of readjustment. We need to overhaul our political culture. This being the inaugural Senate under the new Constitution, we have an extra ordinary opportunity to explain to our electorate what politics is all about and what we expect as politicians. Many of us have retreated to doing business as usual. That is why some of us are finding it difficult to adjust.

I have heard Senators make some of the most obnoxious statements. For example, that the human rights activists should keep silent. They do not realize that there is a new Constitution. They say that the police do not have enough power because they still live in the nostalgia of the past without trying to take up the challenge of internalizing the contemporary reality of the new Constitution.

Mr. Temporary Speaker, Sir, as we tutor others, we should also tutor ourselves that times have changed and the Constitution has changed. We have what people unfortunately call an activist Constitution although it is a liberalist Constitution. Kenya has one of the most liberal constitutions in the world. It has liberal values because it provides for a very broad regime of rights. It provides for democracy, universal suffrage and many things that are manifestations of liberal democracy. So, people tend to want to be conservative in a situation where the country has liberalized technological advancement. Levels of knowledge have moved forward whereas some people still live in the nostalgia of what used to happen during the 1960s, 1970s and 1980s. We claim that these days Ministers do not matter. It is true that the Constitution wanted the Ministers to just deliver on their jobs so that they are nobody in the stricter sense of bossing other people. They should be servants of the people as articulated in Cap.6 of the Constitution. Therefore, these are the issues that we need to start internalizing. I have seen a temptation to literally restore some of these things that the Constitution had taken away through legislative agenda. I think this Senate must desist from being an extension of an executive that might want to roll back the democratic freedoms.

We know that we may not have the same kind of thinking, but security must be based on the concepts of human rights. There should be regional and ethnic balance that is envisaged, more competitive democracy, a minority and a majority and a well capacitated Parliament. We did not realize that the constitutional commissions that are independent and are supposed to intervene on certain matters of governance were definitely going to be a culture shock for many. I think there is nothing wrong to ask when you do not know. I believe that there are people with more knowledge on some issues than I have. You should not come here and argue that the police were right to kill



arbitrarily and that we should not question how security is being implemented, but only be patriotic and allow the squander of human rights. I think that is the kind of concept that this Constitution tried vehemently to obliterate. We, as a Senate, must tutor ourselves on the constitutional values and principles represented in our Constitution.

Mr. Temporary Speaker, Sir, maybe at some point we need to internalize the notion that if we cannot get budgets to run our offices day in, day out, to enable us run programmes, we should be facilitated as Senators to have forums per constituency when we break for recess. I come from a fairly small county in terms of size and not numbers or economy. I can tell you that if I was to hold one forum in six of the constituencies, people will start to appreciate and know us better. Nowadays the Governors are always advertising in the media. I saw one playing rugby and inviting people for beach rugby. So, there is a communication strategy and it is facilitated. If there is a way that we can be facilitated to have forums to have communication budgets, I think that is the first way in terms of moving forward.

Therefore, it must be a unique opportunity for us when we go on recess. I have seen a few Senators who are already lining up at the Co-operative Bank trying to withdraw their mileage allowances, so that they can go to the constituencies and disseminate some information. They know that eventually the people are as harsh as they are in terms of how---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order! Are you sure that every Senator who lines up at the Co-operative Bank is withdrawing mileage allowance? Can you withdraw that because it is throwing us into bad repute?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, it is just an opinion because I spoke to one or two that I met at the Co-operative Bank. However, I want to withdraw that so that it does not generalize.

Mr. Temporary Speaker, Sir, that said and done, for us to avert the burdens on us, I think it is important that we have the right budgets to do these types of things.

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

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, we have come to the end of today's business. The House stands adjourned until Tuesday 5<sup>th</sup> August, 2014, at 2.30 p.m.

The House rose at 6.25 p.m.