

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 5<sup>th</sup> December, 2013

*The Senate met at the County Hall,  
Parliament Building at 2.30 p.m.*

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

#### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Hon. Senators, let us determine whether we have a quorum.

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

Hon. Senators, I am informed that we have quorum. Therefore, we may proceed.

#### COMMUNICATION FROM THE CHAIR

#### RELOCATION OF THE SENATE PLENARY SITTINGS FROM THE KICC TO COUNTY HALL

**The Speaker** (Hon. Ethuro): Order, hon. Senators! I welcome you to our new Chamber. I hope you feel more comfortable than you were at the place we were previously hosting you. You will also realise that our Chamber is digital. So, maybe some noises are coming from your other gadgets. So, try to ensure that your phones are not near microphones.

#### KENYA 50<sup>TH</sup> ANNIVERSARY INDEPENDENCE CELEBRATIONS

I have a further communication to make. As you are all aware, Kenya marks her Golden Jubilee this year. The Government has lined up a series of activities to mark Kenya at 50 Celebrations. They run up to 12<sup>th</sup> December, 2013 when His Excellency the

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President will lead the nation in a celebration to be held at the Moi International Sports Centre, Kasarani. The Kenya at 50 Steering Committee has organized an exhibition where all public institutions are participating to show case their contribution to nation development over the last 50 years. The exhibition takes place between 4<sup>th</sup> and 10<sup>th</sup> December, 2013 at the KICC.

Indeed, our own institution, Parliament of Kenya, has a stand which hon. Senators are invited to visit. In appreciation of the significance and magnitude of the 50<sup>th</sup> Anniversary Independence Celebrations, a Ministerial Preparatory Committee was constituted in May, 2012. The Committee wishes to communicate that following arrangements to Senators who wish to attend the event on 12<sup>th</sup> December, 2013 – I encourage all of us to attend so that we become part of an anniversary of this magnitude – His Excellency the President will lead the nation in a celebration to be held at the Moi International Sports Centre, Kasarani.

All the Senators will be picked from Parliament Building by designated buses on Thursday, 12<sup>th</sup> December, 2013 at 8.00 am and will be seated at a designated section at the venue. They will be ferried back at the conclusion of the event.

Kindly, note that personal vehicles will not be allowed into the stadium. Parliamentary staff will be available to assist Senators to board the buses and to ensure their comfort at the venue of celebrations. Senators who wish to attend the ceremony are, therefore, asked to register at the reception desk outside the old Senate Chamber by the close of business, Friday, 6<sup>th</sup> December, 2013 which is tomorrow.

The event organizing committee will prepare admission passes which are a requirement for admittance to the venue.

Thank you.

## PETITION

### TARMACKING OF KIBWEZI-KITUI-MWINGI ROAD

**Sen. Moi:** Mr. Speaker, Sir, as hon. Senators may be aware, I am the first to speak in this Senate Chamber. So, I will go down in history for that.

Under Article 119 of the Constitution;

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

Pursuant to Standing Order No.222, Sen. David Musila presented a petition to the Senate on 27<sup>th</sup> June, 2013 on behalf of Mr. Joseph Kalinga, a resident of Kitui County. He petitioned the Senate, through the Standing Committee on Energy, Roads and Transport, to inquire into the matter of upgrading and tarmacking of the Kibwezi-Kitui-Mwingi Road (B7).

Apart from the issues concerning the contractors and upgrading of the road, the Committee looked at the matter and made the following recommendations. This is a

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matter which our honourable colleague has pursued for the last 15 years. We are happy to note that through the intervention of our Committee and the Government, the loan agreement with the Chinese Government to implement the project is ongoing now. We have requested the contractor to exert pressure on the Chinese Exim Bank to approve the funding of the road project. Progress has been made on this and I would like to thank my Committee Members.

### PAPER LAID

#### TARMACKING OF KIBWEZI-KITUI-MWINGI ROAD

**Sen. Moi:** Mr. Speaker, Sir, I beg to lay the following papers on the Table of the House, today, Thursday 5<sup>th</sup> December, 2013.

The Report of the Standing Committee on Energy, Roads and Transportation on the Petition presented by Sen. David Musila on behalf of Mr. Joseph Kalinga to inquire into the matter of upgrading and tarmacking of the Kibwezi-Kitui- Mwingi Road (B7).

**Sen. Mugo:** Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate, today, 5<sup>th</sup> December, 2013.

The Parliamentary Service Commission (PSC) Annual Report, 2012.

### STATEMENT

#### PLIGHT OF NOL TURESH WATER AND SANITATION COMPANY WORKERS

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, it is also a privilege to be third one to speak in this Chamber.

I rise to seek a statement from the Chairman of the Standing Committee on Agriculture, Lands and Natural Resources regarding the Nol Turesh Loitokitok Water and Sanitation Company Limited in Kajiado and Makueni counties. In the Statement, the Chairperson should state the following:

- (a) the areas in Makueni that are covered by the water company;
- (b) confirm whether the water company supplies the areas in Makueni County as required;
- (c) state whether he is aware that the community within 100 kilometres from the source, in Kajiado County, has vandalized the pipe and are using illegal connection for private irrigation and have created private dams using the water;
- (d) state whether any action has been taken against the said individuals and the reasons for resolving the issues;
- (e) state if he is aware that the workers of Nol Turesh Loitokitok Water and Sanitation Company have not been paid for over 10 months and the reasons thereof;

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(f) he should also clarify whether he is aware that the workers seconded from the National Water Conservation Pipeline Corporation to Nol Turesh Loitokitok Water and Sanitation Company are about to lose their jobs due to disbandment to the above parastatal and what action is being taken to address their plight and pay dues; and,

(g) lastly, explain whether the salaries of the workers seconded from the National Water Conservation and Pipeline Corporation were harmonized according to the guidelines issued by the Ministry of Water and Irrigation dated 20<sup>th</sup> January, 2007.

I lay the request for the statement on the Table.

*(Sen. Mutula Kilonzo Jnr laid the document on the Table)*

**Sen. Khaniri:** Mr. Speaker, Sir, given the fact that the honourable Senator has requested for many issues including investigations into the alleged vandalism, I request for three weeks so as to issue the statement.

## STATEMENT HOUR

### SEQUENCE OF BUSINESS FOR THE SENATE

**Sen. Keter:** Mr. Speaker, Sir, honourable Senators, pursuant to the provisions of Standing Order No.43(2), I would like to make the following short statement.

The Order Paper for today contains among other things a Motion of Adjournment of the Senate until Tuesday, 25<sup>th</sup> February, 2014 which I will be moving later in the course of business today. Any business that will be outstanding at the close of business today, if the Motion of Adjournment is carried, will be prioritized by the House Rules and Business Committee and scheduled for consideration when the Senate resumes.

Hon. Senators, since the first sitting of the Senate on 28<sup>th</sup> March, 2013, the Senate, while executing its legislative role, has passed a number of crucial Bills and in executing its deliberative and oversight role adopted many Motions and sought statements from Committee Chairs.

In executing its constitutional mandate of safeguarding the interests of counties, the Senate has, through its Committees, visited a majority of the counties and witnessed firsthand challenges within those counties. The committees have brought reports which the House has adopted and is committed to ensuring implementation of the recommendations of committees. You may also recall that following the request by numerous counties, we recently conducted public hearings on transfer of functions to counties. This, dear colleagues, is an indication of the Senate's commitment to fulfilling its mandate as bestowed on us by the citizenry. Let us endeavour to do all we can to make devolution work and make Kenya a better country for the benefit of our generation and the generations to come.

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I take this opportunity to thank all of you for your co-operation and commitment to work, which has brought us this far. I wish you a blessed festive season and prosperous 2014. God bless the Senate. God bless Kenya.

Thank you, Mr. Speaker, Sir.

COMPLETION OF CONSTRUCTION OF CAMPS  
FOR INTERNALLY DISPLACED PERSONS

**Sen. Munyes:** On a point of order, Mr. Speaker, Sir, I sought a Statement from the Chair of the Committee on Devolution two weeks ago over Internally Displaced Persons' (IDP) camps in Turkana which have stalled for over two years. I do not know whether the Statement is ready.

**The Speaker** (Hon. Ethuro): Is the Chairman of the Committee on Devolved Government here? Vice-Chair? Any Member?

**Sen. Elachi:** Mr. Speaker, Sir, indeed, I will have to request the Chair to ensure that he brings the Statement. We have had discussions about it, but I know that we have some challenges. This is because the Ministry of Devolution and Planning has not been able to give us a concrete report.

**Sen. Munyes:** Mr. Speaker, Sir, this is a very serious matter. As you know, yesterday we saw Kenyans demonstrating at State House. This is going to apply in very many counties in this country, because of lack of completion of structures and resources. Could the "Leader of Government" undertake to expedite the process of ensuring that the IDPs are supported in this country?

**Sen. Elachi:** Mr. Speaker, Sir, indeed, we will ensure that, that happens. I know that the Government has put measures in place and by February, we will have finished the whole process.

**The Speaker** (Hon. Ethuro): Order, Sen. Elachi! I thought that the request was to the Senate Majority Leader and the last time I checked, that was Sen. (Prof.) Kindiki and not Sen. Elachi.

Yes, Sen. (Prof.) Kindiki!

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Did you hear the Senator for Turkana refer to the Senate Majority Leader as the Leader of Government? Is he in order? There is no Government in this House.

**Sen. Munyes:** My apologies, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I heard him and he is, definitely, out of order.

**Sen. Munyes:** Mr. Speaker, Sir, he has not responded.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, on the question of IDPs raised by Sen. Munyes, we are requesting that the Statement be made available on the first sitting of the next session.

**The Speaker** (Hon. Ethuro): I guess your attention was being sought, so that even as the Statement is prepared, some of the actions being sought in the Statement could be implemented even before then, so that by the time we resume, you will be reporting what has been accomplished.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I will convey that request to the Chair of Committee on Devolution and make an undertaking that some of those things will be attended to even during recess.

**The Speaker** (Hon. Ethuro): Well done.

STATUS OF ONGOING CONSTRUCTION OF ROADS SINCE  
COMMENCEMENT OF DEVOLUTION

**Sen. Obure:** Mr. Speaker, Sir, I want to respond to a Statement which was requested by the Senator for Kakamega, Sen. Boni Khalwale, who wanted to obtain evidence of payment of Kshs100 million to the contractor undertaking the construction of Sigalagala-Butere-Sidindi Road.

Mr. Speaker, Sir, I have all the payment vouchers and there is evidence contained here, which demonstrates that the payment has been made. I want to lay this document on the Table.

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to thank the Chair and the Government because two things have happened since the time that we raised this matter in the Senate. First, the contractor has been brought back on site for purposes of making the road motorable. He has been there for a week.

Mr. Speaker, Sir, in the interest of this country, the list that has been brought by the Government has got 28 such projects in the country. Out of 28 projects, 20 of them are taking place in Nairobi County and only eight are scattered in a few counties in the country. This shows that devolution was necessary for this country. This is because a situation where Nairobi County was getting 20 out of 28 projects and yet we have 47 counties is really a shame.

Mr. Speaker, Sir, I want to thank the Chairman for that. But now, that the contractor is on site, what is he going to do to ensure that the Kshs200 million that you pay him per financial year will be enhanced? This is because the project, at that rate, is going to take seven years, unless you enhance it.

**Sen. Obure:** Mr. Speaker, Sir, first of all, I want to make a response on the two issues that he has raised.

Mr. Speaker, Sir, on the first one, I must say that I agree with the observation that he has made; that the list which has been tabled here contains projects largely based in

Nairobi. We will draw this to the attention of the Ministry and point out that the Ministry is, indeed, expected to serve all the 47 counties of this country.

Mr. Speaker, Sir, on the second issue which he has raised, we will ask the Ministry to make sure that payment is made to this particular contractor in accordance with the terms of the actual contract itself. Payment will be made on the basis of certificate issued for work done. We will make sure that the Ministry ensures that the contractor completes this particular project.

*(Sen. Abdirahman crossed the Floor  
without bowing to the Chair)*

**Hon. Senators:** Yeah! Throw him out!

**Sen. Ong'era:** On a point of order, Mr. Speaker, Sir. Is the Acting Senate Minority Leader in order just cross over to the other side without bowing, and he is an old Member?

**The Speaker** (Hon. Ethuro): Order! Minority Leader! My attention has been brought to the effect that you just crossed the Floor without following the due process? Could you do it properly?

*(Sen. Abdirahman walked to the  
Bar and bowed to the Chair)*

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

**The Speaker** (Hon. Ethuro): Let us exhaust this one!

**Sen. Keter:** Mr. Speaker, Sir, it is related to that.

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

**Sen. Keter:** Mr. Speaker, Sir, this is our first time in this new Chamber and we were used to the other one where you would cross without necessarily doing what is supposed to be done. So, you can, at least, give a leeway.

**The Speaker** (Hon. Ethuro): Order, Sen. Keter! There is no leeway. You admit with your own wording that this is another Chamber.

**Sen. Hassan:** Order, Mr. Speaker, Sir. Sorry! On a point of order, Mr. Speaker, Sir.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Omar! You are completely out of order!

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

**The Speaker** (Hon. Ethuro): What came first has already betrayed your intention. You cannot order the Speaker, especially when I was responding to a point of order raised by Sen. Keter.

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It is obvious that we are in another Chamber. This Chamber has two sides and the other one had one. You will notice that even the Speaker, in the other Chamber, could only bow once. Today, I did it to the right and left. So, it is incumbent upon any other Senator to realize the new circumstances. So, I cannot allow any other way but to follow what is the proper procedure.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. The Chamber might be new, but the Member is old. Therefore, he should have internalized the rules.

**The Speaker** (Hon. Ethuro): Order, Sen. Omar! I think that you are excited about the new Chamber, because that matter had been exhausted.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr:** On a point of order, Mr. Speaker, Sir. You had given a directive to the Chairperson of the Standing Committee on Agriculture, Land and Natural Resources to give a Statement on the logging of forests in Makueni. The Chairperson gave an undertaking to give a report last Tuesday. Similarly, there was a Statement on the Konza City Boundaries that was supposed to be issued in November and it has not been issued.

Mr. Speaker, Sir, I beg to know when these Statements will be issued, because they are causing problems in my county.

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

**Sen. Kivuti:** Mr. Speaker, Sir, we have consulted on this matter and I did talk to the honourable Senator and informed him that the Ministry is doing some paperwork that will be presented to the Committee for onward transmission to Sen. Mutula Kilonzo Jnr. I request that we be given two more weeks in order to finalize the report.

**Sen. Mutula Kilonzo Jnr.:** I am not sure which one my good friend, Sen. Kivuti, was commenting on, because I had raised two issues. As for the third issue, the Chairperson had, in fact, come to the Chamber---

**The Speaker** (Hon. Ethuro): Order, Senator! You said you had raised two issues; are you now raising a third one?

**Sen. Mutula Kilonzo Jnr.:** Allow me, Mr. Speaker, Sir, because it is the same Chairperson. He had, in fact, come to the Chamber with a Statement for Masongaleni, which was ready – you had asked for two weeks – and he has not presented it. The other one is the one on Konza City; this being a Vision 2030 project, it has stalled simply because there appears to be a boundary dispute. We have delayed; the Government has made a budget for this particular year and nothing is happening because of this boundary dispute.

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

**Sen. Kivuti:** Mr. Speaker, Sir, I was referring to the one on boundaries, because my colleague, Sen. Mutula Kilonzo Jnr., has actually requested for four Statements so far, and we have already issued two. As I speak, my deputy has already given a timeline on



the third one. But as for the boundary one, it is the one I was referring to; that we are still yet to receive the information from the Ministry.

**The Speaker** (Hon. Ethuro): I think that is clearer.

#### STATUS OF “ONE MILLION ACRES” IRRIGATION PROGRAMME

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, two weeks ago, you directed the Chairperson in charge of the Standing Committee on Agriculture, Land and Natural Resources to bring a comprehensive statement to the question I had ask about the one million acres that were supposed to be put under irrigation this year. Indeed, he had agreed that he will bring the Statement today.

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

**Sen. Kivuti:** Mr. Speaker, Sir, the answer to that question was forwarded to the Senator, because we got it from the Ministry; but we did not agree on when to table it. But we can table it in the next sitting of this House.

**The Speaker** (Hon. Ethuro): Did you get him, Senator?

**Sen. Mutula Kilonzo Jnr:** No, Mr. Speaker, Sir.

**Sen. Kivuti:** Mr. Speaker, Sir, maybe there might have been some small confusion because the response from the Ministry of Lands contained more than one answer. What I did is that we made copies for all the people who had asked the statements pertaining to land; that included Sen. Kiraitu and the Senator for Pokot. If there was that confusion, you can allow us to go and sort it out of the Chamber together with the Senator, because I know we got the reply.

**The Speaker** (Hon. Ethuro): That is the best way to proceed, Sen. (Prof.) Lonyangapuo. You can liaise with the Chairperson.

#### DISPOSAL OF POLYTHENE PAPERS AND SYNTHETIC MATERIALS

**Sen. (Prof.) Lesan:** Thank you very much, Mr. Speaker, Sir. Four weeks ago, I requested a statement from the Chairperson of the Standing Committee on Agriculture, Land and Natural Resources on the policy of the Government with regard to the disposal of polythene papers and synthetic materials. He had promised that the answer will be given in four weeks time as from 29<sup>th</sup> of October, 2013, when I requested for the Statement. To date, I have not received any reply.

Thank you.

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

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. I know I supported that Motion on polythene papers, and we did write to the Ministry of Environment, Water and Natural Resources. I very much support that idea of having an environmentally friendly Kenya, but there have been some delays in getting the reply from the Ministry.

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Mr. Speaker, Sir, with your permission, allow us to intervene again as a Committee to bring the Statement within two weeks from today. I can even push it maybe to one week.

**The Speaker** (Hon. Ethuro): Order, Chairperson! As soon as you get the response, you can get in touch with the Senator.

PLIGHT OF RICE FARMERS AT MWEA  
IRRIGATION SCHEME

**Sen. Karaba:** Thank you very much, Mr. Speaker, Sir. My point of order is directed to the Committee on Agriculture and Roads. Several weeks or months back, I sought one Statement from the Chairperson---

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. There is no such Committee known as the Committee on Agriculture and Roads. Can the hon. Senator be specific as to which Committee he is referring to?

**Sen. Karaba:** Mr. Speaker, Sir, I sought a Statement from the Standing Committee on Agriculture, Land and Natural Resources, on a Petition which was debated in the House and they promised to visit Mwea Settlement Scheme during this session. Now that we are adjourning today, I need your direction as to whether they are coming in March or what time will they come during the recess?

CONSTRUCTION OF SAGANA-KUTUS-  
KERUGOYA-KARATINA ROAD

Similarly, Mr. Speaker, Sir, I had sought a Statement from the Ministry of Roads, and a promise was given to the same effect that the construction of Kerugoya-Kutus-Sagana Road will commence within this session, but nothing has happened so far.

So, Mr. Speaker, Sir, I beg for your indulgence.

Thank you, Mr. Speaker, Sir.

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

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

**Sen. Hassan:** This is a separate issue, Mr. Speaker, Sir. Even though Sen. Wako has served the successive Governments and is used to that other side, I would just like to remind him, for purposes of this Eleventh Parliament, that he is a Member of the Opposition!

*(Laughter)*

*(Sen. Wako stood up in his place)*

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

Sen. Wako, I do not think Sen. Omar made a contribution about you. He just mentioned your name, longevity, tenure and where you are seated. You never indicated to me whether that is wrong or right; so, I do not know if you really have anything to respond to.

**Hon. Senators:** Ignore! Ignore!

**Sen. Wako:** I cannot ignore.

Mr. Speaker, Sir, I think Sen. Omar has made his point. The fact that he is here means that there are no demonstrations outside there!

*(Laughter)*

Mr. Speaker, Sir, I believe I can sit anywhere in this Chamber, but if this side is the Government Side, may I remind him that I am the Chairperson of the Committee on Legal Affairs and Human Rights and, therefore, I am, therefore, the Attorney-General and the Minister for Justice of the Government!

*(Laughter)*

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

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

**Sen. Billow:** Mr. Speaker, Sir, I think for the guidance of the House, we need to know; because the practice in the Commonwealth Parliamentary System is that there are two sides – the Majority and the Minority sides – and that there is a Front Bench for the Leaders – and in this case the Chairpersons. For the guidance of the House, would we be having two benches for this House or rather can the chairpersons sit anywhere? We need guidance on that matter.

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

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

**Sen. Muthama:** Mr. Speaker, Sir, as is the norm, I am looking at what happened in the Tenth Parliament under the Grand Coalition Government, where was the Government Chief Whip? We also had chairpersons, and the so-called Opposition, which was not there physically. So, as was the norm, it is within the Standing Orders that the Members of the Opposition should sit on this side. I want to whip Sen. Wako, as the Senate Minority Whip, to also come and sit on this side.

*(Laughter)*

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

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

**Sen. Keter:** Mr. Speaker, Sir, did you hear what Sen. Wako said, by mentioning Sen. Omar; that the fact that he is around here, rest assured there are no strikes outside? Was he suggesting that he is the leader of strikes or demonstrations outside Parliament?

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*(Laughter)*

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

**The Speaker** (Hon. Ethuro): Let me take the last few and then we conclude this matter.

**Sen. Ongoro:** Mr. Speaker, Sir, if my memory serves me well, there are situations like this one that arose sometimes back in the Chamber; and I remember the Speaker ruling that under the new structure, we do not have the Government represented in the Chamber and that what we have is the Minority and the Majority sides. If my memory also serves me right, Sen. Amos Wako belongs to the Minority Side; so, he should honourably cross the Floor and help us in avoiding this confusion.

Thank you, Mr. Speaker, Sir.

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

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, this is not a matter that is actually meant to create some excitement. Indeed, the position is as articulated by other speakers before me. Being the chairman of a committee does not give you an entitlement to actually represent the Government on the other side. We also know that you are there by virtue of being a chairman of a committee of this House. You do not represent the Government---

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

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, we are all learning and we are waiting for your direction on a number of issues that are waiting judgement in terms of determination and how we should proceed. In short, I want to say that being a chair, it is not an entitlement to go to the Government side. We must be where we belong.

**Sen. Wako:** On a point of order Mr. Speaker, Sir. I do not know what the Acting Senate Minority Leader---

**The Speaker** (Hon. Ethuro): Order, Sen. Wako! Until you learn the basic rules of this business, I am afraid you might suffer the consequences of not being heard. Let me reward faithfulness and recognize Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, this matter might require a proper communication from the Chair because we have migrated from the old Constitution where we did not have a Senate to the current one. It has been our practice that Ministers would not only sit on the right of the Chair but they would also address the House from the Dispatch Box. Maybe in our set up, you need to tell us whether the Chairs will again be taking the front rows and sit on the side of the Government and whether they will be speaking from the Dispatch Box. As you do so, you and I have been in this business for a while and we know that the former Speaker Kaparo ruled that in the House, anybody can

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sit anywhere and only said that it is only the Ministers who would then sit on the right side and speak from the Dispatch Box while sitting on the Front Row.

It is important that we be clear and also because you have allowed me, may I kindly remind my brother, Sen. Wako, that the meaning of being in the minority, it means that you ran on a party whose presidential candidate did not win an election; he lost. It is because hon. Raila Odinga and hon. Mudavadi lost. We should all be this way facing the Government.

**Sen, Wako:** Mr. Speaker, Sir, as we await your ruling on this matter, on this specific issue – Sen. (Dr.) Khalwale will bear me witness – my bag is there. Can you carry it up for everybody to see? That is my bag and that is where I am sitting.

*(Sen. (Dr.) Khalwale to displayed Sen. Wako's bag)*

I had come to this end to make consultations with the Senate Majority Leader on the Motion that is about to take place. So, I was sitting next to him just awaiting a chance to make that consultation. Sen. (Dr.) Khalwale will again bear me witness because he knows the consultations that I had come to make with the Senate Majority Leader. So, as far as I am concerned, I am sitting there but on the whole, we just want a ruling from you on all these issues.

Now that I have consulted, I can go and resume my seat.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Wako! First, I want to thank everybody for the interventions you have made and in particular to borrow from Sen. (Dr.) Khalwale in terms of maybe there are issues around it which we need to look at. But for now, I am guided by the Standing Orders. Standing Order No.241(1) talks about sitting in the Chamber and I will read it.

“There shall be reserved sits in the Senate Chamber for the exclusive use of each of the following:-

- (a) The Deputy Speaker.
- (b) The Senate Majority Leader
- (c ) The Senate Minority Leader.
- (d) Senators with disabilities.

(2) All other seats in the Chamber shall be available for the use of any Senator whether in the minority side or the majority side.

(3) Subject to this Standing Order and any other order of the Senate, any question relating to the occupation of seats in the Senate Chamber shall be determined by the Speaker”.

I am afraid on this one, I am the ultimate and the suggestions you have raised maybe in terms of designating certain seats for the Chairs, I think might be a good

proposal which you can consider in the future. I think for now, let us be guided by Standing Order No.241 until we phrase it out in terms of looking at the leadership in the House.

For Senator Wako, I just want to give him the assurance that the Chair will protect whichever arrangements you seek as long as you take into account Standing Order 214 (1), which are the reserved seats. You are at liberty to sit anywhere even further from Sen. Muthama as you wish.

Before we were interrupted, there were issues raised by Sen. Karaba; one was an issue with regard to a Statement by the Committee on Agriculture, Land and Natural Resources. The second one he mentioned about a committee on roads and he had not learnt from the intervention by Sen. Khaniri that such a committee does not exist. So, it is good to make reference to proper committees.

**Sen. Billow:** Mr. Speaker, Sir, thank you for the guidance you have given us, but is it just by default that we sat on this side and the minority sat on that side? Following the ruling that you have made, it would appear that we can sit anywhere. That is what you have suggested. Is it by design that you decided to—

**Hon. Senators:** You stick to your side!

**The Speaker** (Hon. Ethuro): Now, surely, Sen. Billow, how do you expect me to read the minds of all of you? You should be the one to tell me why you decided to sit where you are sitting. The Chair cannot help you. Let us stop that particular debate. We have more business to transact.

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

**The Speaker** (Sen. Ethuro): Do you want to offer an explanation why you are where you are?

**Sen. Orengo:** No, Mr. Speaker, Sir. I am not offering an explanation. I am just drawing the Speaker's attention to the conduct of the Senator for Busia. His microphone is constantly on which may lead to an assumption that when he wants to speak, it is a matter of right instead of a matter in the Speaker's discretion. Can you guide him accordingly?

*(Laughter)*

**The Speaker** (Hon. Ethuro): In fact, Sen. Orengo is very right.

**Sen. Wako:** Mr. Speaker, Sir---

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

*(Laughter)*

I have tried to punish Sen. Wako by refusing him to talk because of that persistent desire to speak even when he has not requested and when he has not been called out. So, I

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cannot add more than what Sen. Orenge has advised. Being good friends and lawyers, I am sure I do not need to add more.

*(Sen. Wako stood up in his place)*

Order, Sen. Wako! I will not allow you to speak. Where is the Chairman of the Committee on Agriculture, Land and Natural Resources to respond to the Statement sought by Sen. Karaba?

**Sen. Kivuti:** Mr. Speaker, Sir, fortunately, we are neighbours with Sen. Karaba and we have common interests in Mwea, and you actually did---

**The Speaker** (Hon. Ethuro): Order, Sen. Kivuti! You have a tendency to give other Statements other than what you are being asked. Our Standing Orders require us to be relevant and precise. Just respond whether you have done it or not.

**Sen. Kivuti:** Mr. Speaker, Sir, what I was trying to explain is that we have discussed the matter and the Statement sought was given in writing but because of the nature of the problem, Sen. Karaba wanted the Committee to visit his area and we have agreed that we will look for an appropriate time to visit the area because we would like to support him.

**The Speaker** (Hon. Ethuro): That is good.

**Sen. Obure:** Mr. Speaker, Sir, I am aware that Sen. Karaba has discussed this matter with the Chairman of our Committee and I am also aware that the Chairman of the Committee has indicated that he will bring this matter up for discussion as a Committee, after which a decision on the way forward would be made.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Is it really fair to the House and to the country which is following this debate live on television and radio for us to adopt that position because our understanding is that the Statement should be made to the House so that we raise any other points that require further clarifications? More importantly, the people of Kirinyaga want to follow the debate and see the accuracy of how the Government is performing in their county. For your information, while we were discussing the Sigalagala-Butere-Sidindi Road, I have already received electronic communication on the ground and they are telling me how the contractor is working on the ground. It is important that it does not become a private matter between the Chair and the Senator who requested for the Statement. The whole country must follow the debate. This is not the County Assembly of Kirinyaga!

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I do not think the discussions between the Committee Chair and the Senator ended there. The first agreement with the Senator was a visit. So they need to agree on the dates of the visit. You do not need to televise that. Then after they make their visit, the Committee will make the report and I am sure they will come and report to the Plenary and the same to the Statement sought by Sen. Obure, while I appreciate that when it is in Plenary, you can get feedback from the electorate.

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Next Order!

### MOTION

#### DEVELOPMENT OF OFFICES AND DEBATING CHAMBERS FOR TANA RIVER, NYANDARUA AND THARAKA-NITHI COUNTIES

THAT, aware that pursuant to Article 6(2) of the Constitution, the Governments at the national and county levels are distinct and inter-dependent; also aware that one of the key objects of devolution pursuant to Article 174 is to facilitate the decentralization of state organs, their functions and services, from the capital of Kenya; noting with concern that three counties namely Tana River, Nyandarua and Tharaka-Nithi, have no appropriate offices or debating chambers for the County Executives and County Assemblies respectively as they lack buildings and other infrastructure as their headquarters are located away from major urban centres impeding the performance of their constitutional and statutory functions and negating the purposes and principles of devolution; the Senate calls on the national Government, in line with section 15(2) of the Sixth Schedule of the Constitution, to take immediate measures to develop office facilities and debating chambers for the three counties.

*(Sen. (Prof.) Kindiki on 4.12.2013)*

*(Resumption of Debate interrupted on  
4.12.2013 – Afternoon Sitting)*

**The Speaker** (Hon. Ethuro): Order, Senators! We had exhausted debate on this Motion on this particular Motion. So the Motion is awaiting to go to division.

**Sen. Keter:** On a point of order, Mr. Speaker, Sir, I have instructions from the Senate Majority Leader, Sen. (Prof.) Kindiki that there are proposals to extend debate on this Motion and to bring an amendment which he is agreeable. He has no objection to that.

**Sen. Murkomen:** Under which Standing Order? The Mover had replied.

**Sen. Sang:** Mr. Speaker, Sir, with regard to the request being made by Sen. Keter, this debate on this Motion was concluded yesterday and the Mover had replied. Is it still possible that we can reopen debate and carry out an amendment on a Motion whose discussion had been completed?

**The Speaker** (Hon. Ethuro): Let me get some interventions. Sen. Murkomen, I suspect that you may be speaking on the same line with Sen. Sang.

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**Sen. Murkomen:** Mr. Speaker, Sir, if we were to open debate on the same Motion, we will be setting a very bad precedent where Members who for whatever reasons have failed to attend the House will be coming up with their own requests of opening debate. I think we have concluded and the Mover had even requested that we go into voting which was to be done today at 3.00 pm. The only thing we came to do is to vote.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. I stand under Standing Order No.1 which gives you discretion. The discretion is subject to the Constitution and the Standing Orders. Standing Order Nos.1 and 50 talks about Motions which may be moved without notice.

Standing Order No.50(a) states that the following Motions may be moved without notice.

“(a) Motion by way of amendment to a question already proposed by the Chair.”

As matters stand and as far as that order is concerned, a question has been proposed but a question has not been put. Secondly, the House has not been ordered into a division. That being the case, that Standing Order has no limitation. It says, in very eloquent ways that a Motion to amend a question which has already been proposed can be made without notice. I beg you to allow an amendment to be made on this Motion purely on account of the fact that this is a meritorious Motion. It is a Motion that during the debate, many Senators gave their support. However, it is good for the Senate to be seen to be acting in the interest of the entire country as opposed to one particular area. The question has been brought by the Senate Majority Leader. I think it would be wrong for the Senate Majority Leader to be seen to be acting for three counties in his neighbourhood. So, for us to be saved from that embarrassment---

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Orengo to insinuate that the Mover of this Motion moved it targeting Tharaka-Nithi or a particular region when we know that Tana River County is down there? Secondly, it is important for Sen. Orengo to understand the philosophy that informed the choice of the three counties.

**Sen. Orengo:** Mr. Speaker, Sir, I know that Sen. Murkomen is a very good lawyer. However, in geography, he scores very badly. These are neighbouring counties. He may think of Tana in terms of where Hola is. However, he does not know where Tana begins and where it ends. Strictly speaking, these three counties are neighbours and that is a matter of fact.

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo! I think between you and Sen. Murkomen, in terms of geography, you are in different thinking. Senators, let me make a ruling. First, both sides of the arguments have some merit. As far as I am concerned, the debate has been exhausted. It was time for voting. The counter argument coming from Sen. Orengo wants me to use powers that are not there. He forgot that I have express powers under Standing Order No.52. The argument is between the question being

proposed and the question being put. We have proposed the question, we have debated but we have not put the question. If you look at Standing Order No.52(1), it says;

“Unless otherwise provided for in these Standing Orders, any amendment to a Motion which a Senator wishes to propose in accordance with these Standing Orders may be moved and, if necessary, seconded at any time after the question upon the Motion has been proposed and before it has been put.”

That is the relevant Standing Order. I also hear that others contributed on the basis of availability of time. However, we will not undo a resolution of the House. This Motion is being offered by the Senate Majority Leader must be given due recognition in terms of coverage. After that has been done, I will allow the amendment to go on.

*(Applause)*

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. Thank you for the ruling you have made. My question is, there is a second part of having extended debate and probably you should give us an estimate of how much time we will take in terms of the debate. Or should we deal with the amendment first and after we complete debate on it, we put the question?

**The Speaker** (Hon. Ethuro): We are just moving debate to the amendment. The moment we complete debate on the amendment, we will put the question.

**Sen. Murkomen:** Mr. Speaker, Sir, I think when you exercise that discretion under Standing Order No.52, that should be done with substantial reason. I am saying this with all due respect. I do not come from Tharaka-Nithi or any of those counties. Yesterday, Sen. (Prof.) Lonyangapuo tried to move an amendment which tried to include other counties including my county. However, it is important that that decision be made. Sen. Orengo – I was in the House all through – kept on leaving the House and coming back – he should have contributed to this Motion.

I believe that you have made your ruling and I am not challenging it. However, going forward, we need to thrush this out so that we have a particular criteria to follow in terms of determination and how to exercise that discretion. Otherwise, it may be used wrongly in future.

**The Acting Senate Minority Leader** (Sen. Abdirahman): On a point of order, Mr. Speaker, Sir. It is not in order for any Member of this House to personalize national issues concerning this House. I want to clarify, as the Acting Senate Minority Leader, that I consulted my colleague on the other side and we found it important to share this with a number of Members so that we do not disadvantage any county in this country. We should not look for another Motion for the same. This Motion should not be open ended but, at least, allow one or two Members to improve on or add on so that we have a collective position. It is not a question of whether someone was in or out. However, this is in the best interest of this country. It is not Sen. Orengo saying this but as a

membership, we do not want to have iniquity in this country. This was the basis. I think Sen. Murkomen was not there then but that is what I wanted to say.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, first, I want to declare that I come from one of the counties that were listed in the Motion. The amendment has not been laid on the Table, so we do not know precisely what it is all about. However, there are sentiments that the three counties are favoured. If you recall, very strong arguments were brought to the House as to how the three counties were arrived at.

**The Speaker** (Hon. Ethuro): Order, Sen. Karue! I would not want to cut you short. However, you can bring that argument when the Motion has commenced.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, let us see what the amendment is and we move on.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, in the interest of respect to procedure in this House, Sen. Keter has raised a very important thing about time. This is a timed Motion. It is timed for two hours. Therefore, if in your considered opinion, you have allowed it to go on, it is good if the Senate Majority Leader can move a Motion so that the time of debate on the Motion is also extended. It is only after that extension that we shall be operating within our Standing Orders.

**Sen. Orendo:** On a point of order, Mr. Speaker, Sir. What I want to say is unrelated to what I was trying to do in terms of this amendment. However, you heard Sen. Murkomen cast some aspersions on my conduct. This cannot go without you considering what I will say. He said that during the debate, I was walking in and out.

Mr. Speaker, Sir, there is nothing that stops a Senator from walking in and out. Secondly, it is not a must that every Senator speaks to every Motion. Participation can be by way of listening or cheering in a way that is accepted in the House or by voting. Many Senators are here because there will be a division. Therefore, I want you to protect me because my record is very good in this House and in other Houses. For the Senator to say that I was walking in and out and without knowing what I was doing--- He may not have known what I was doing outside. I may know more about the conduct and procedures of this House.

Mr. Speaker, Sir, I seek your protection.

**The Speaker** (Hon. Ethuro): You are protected, Sen. Orendo.

*(Sen. Murkomen stood up at his place)*

Sen. Murkomen, the protection being accorded to Sen. Orendo is because of you. For you to be standing when we are protecting Sen. Orendo, puts another claim all together.

Let us conclude this matter. This is a fairly straight matter. My observation is that Sen. Murkomen observed that the Senator was in the House and probably did not make any contributions but allowed the debate to be concluded only for him to come back to reopen debate. However, in terms of how we proceed, there is nothing wrong with that. It

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is also correct that the Standing Orders allow a Motion to be amended before a question is put.

I took the liberty of the interventions to find out what actually had transpired. What happened is that this debate was concluded, not on expiry of the time, but because those who were presented had concluded their contributions. This means that even in terms of time, it is available. But on the issue raised by Sen. Keter and Sen. (Dr.) Khalwale, on the timing, I think that, that is good. This is not a new Motion. We are amending the existing Motion. So, it will be an amendment and I will not allow it to go beyond 30 minutes. So, we will have to vote on the amendment and then put the question.

Let us proceed. Who is moving the amendment?

**Sen. Orendo:** Mr. Speaker, Sir, this amendment is very simple and straightforward.

Mr. Speaker, Sir, I beg to move that the Motion be amended by inserting the words “or any counties” after the words “the three counties” appearing on the last line. The Motion would then read in the third line from the bottom:-

“The Senate calls on the national Government, in line with section 15 (2) of the Sixth Schedule of the Constitution, to take immediate measures to develop office facilities and debating chambers for the three counties or any other counties.”

Mr. Speaker, Sir, in essence this does not take away anything from the Motion, because the focus and emphasis is still on the three counties. But for the Senate to be seen to be concerned about other counties which similarly do not have these facilities, we have used the word “or” as opposed to the word “and.”

Mr. Speaker, Sir, without any further ado, I beg to move.

**The Acting Senate Minority Leader** (Sen. Abdurahman): Mr. Speaker, Sir, I stand to second the amendment.

**The Speaker** (Hon. Ethuro): Order! It is the Mover to identify the Seconder.

**Sen. Orendo:** Mr. Speaker, Sir, with respect to my leader, just to show the spirit of unanimity in the House, I call upon the lion king, the Senator from Meru to second.

**Sen. Murungi:** Mr. Speaker, Sir, as you know, I am the Senator who neighbours Tharaka-Nithi County. Although I did not speak to this Motion yesterday, as Sen. James Orendo said, there are many ways of contributing. I contributed by supporting the Motion and lobbying other Members to support it.

Mr. Speaker, Sir, I think that the amendment that is being introduced by Senior Counsel is very reasonable. This Senate should be looking at all corners of this Republic and we should be supporting the development of infrastructure in all counties. So, I do not see in what way the amendment dilutes the Motion. Indeed, it is saying that any other counties which have similar problems be assisted. I think that it is our duty, as Senators, to support those other counties as well.

Mr. Speaker, Sir, I urge Members on both sides of the House to support the amendment. I do not think that it is a controversial amendment.

Mr. Speaker, Sir, I beg to second.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! I, therefore, wish to propose the question; that the Motion be amended by inserting the words “or any other counties” immediately after the words “the three counties” appearing in the last line.

*(Question of the amendment proposed)*

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, just for the record, I was the seconder to this Motion and I support the amendment which has been proposed.

Mr. Speaker, Sir, the three counties had been identified as having extreme problems. However, I think that it is reasonable that any other counties which might find themselves in similar problems can also be assisted.

Mr. Speaker, Sir, with those few words, I support.

**The Speaker** (Hon. Ethuro): Order, Senators! Before I put the question, this is a matter affecting counties. So, we will vote accordingly. I, therefore, wish to put the question, that the Motion be amended by inserting the words “or any other counties” immediately after the words “the three counties” appearing in the last line.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it possible, using your discretionary powers, that you put the two questions, one for the amendment and the other for the main Motion, so that when we go to Division, we can vote for both of them respectively?

**The Speaker** (Hon. Ethuro): That is pushing it too far and denying the Senators the flexibility of voting one way or the other.

**Sen. Sang:** Mr. Speaker, Sir, just along the same line, maybe you should not put one question for both questions, but really rule that we can use the same Division Bell for the two questions, so that the Division Bell can be rung just once and we are able to sort out the two questions at ago.

**The Speaker** (Hon. Ethuro): I think that I agree to that one. I think that we have done it before, although I realize the disadvantage. If somebody is outside, he or she may not be able to come and vote. That is the price that you must pay. Being the proposer of that issue, it gives you an extra burden to also whip others who may be in the neighbourhood.

Ring the Division Bell.

*(The Division Bell was rung)*

**The Speaker** (Hon. Ethuro): Order, Senators! Close the doors and draw the bars. The following are the Tellers, for the Ayes, Sen. Judith Sijeny; and for the Noes, Sen. Naisula Lesuuda.

I, therefore, wish to put the question, which is that the Motion be amended as follows:-

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“By inserting the words “or any other counties” immediately after the words “the three counties” appearing in the last line.”

### DIVISION

#### ROLL CALL VOTING

*(Question of the Motion as amended put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang’a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr, Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Sijeny.

**Teller of the Noes:** Sen. Lesuuda.

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:

**AYES:** 33

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question of the Motion as amended carried by 33 votes to nil)*

**The Speaker** (Hon. Ethuro): Senators as we agreed, we are now going to vote on the Motion as amended by division.

#### DEVELOPMENT OF OFFICES AND DEBATING CHAMBERS FOR TANA RIVER, NYANDARUA, THARAKA-NITHI OR OTHER COUNTIES

THAT, aware that pursuant to Article 6 (2) of the Constitution, the Governments at the national and county levels are distinct and inter-dependent; also aware that one of the key objects of devolution pursuant to

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Article 174 is to facilitate the decentralization of state organs, their functions and services, from the capital of Kenya; noting with concern that three counties namely, Tana River, Nyandarua and Tharaka-Nithi, have no appropriate offices or debating chambers for the County Executives and County Assemblies respectively as they lack buildings and other infrastructure as their headquarters are located away from major urban centres impeding the performance of their constitutional and statutory functions and negating the purposes and principles of devolution; the Senate calls on the National Government, in line with section 15 (2) of the Sixth Schedule of the Constitution, to take immediate measures to develop office facilities and debating chambers for the three counties or any other county.

*(Sen. (Prof.) Kindiki on 4.12.2013)*

*(Resumption of Debate interrupted on  
4.12.2013 – Afternoon Sitting)*

## **DIVISION**

### **ROLL CALL VOTING**

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

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Sijeny.

**Teller of the Noes:** Sen. Lesuuda.

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:

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**AYES:** 33

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question of the Motion carried by 33 votes to nil)*

### **POINT OF ORDER**

#### **CONCURRENCE ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL 2013)**

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I think it is important for this House to take note of the current developments particularly that touch on travesty as envisaged in our Constitution. In particular, I make reference to the debate that is going on or has just been concluded in the National Assembly with respect to the Kenya Information and Communications (Amendment) Bill. I think it is important to bring this matter because, first and foremost, I wish to seek your direction as the Speaker of this House whether that Bill can probably be brought before this House so that the Senate can ventilate on this matter.

When a Bill touches on the Bill of Rights, then it touches on each and every citizen. If the enactment of that Bill would be to literally abrogate some of the fundamental rights that have been provided within the Constitution, it would be abysmal to believe that such kind of travesty is one that will only affect counties but also possibly affect the proper conduct of this House.

Mr. Speaker, Sir, I want to remind you of Standing Order No.117 which stipulates that there should be concurrence in terms of determination on views concerning counties. It says:

“Whenever the Speaker receives a communication from the Speaker of the Assembly seeking concurrence that the Bill concerns counties, including concurrence that the Bill is a special or ordinary Bill in terms of Article 110(3) of the Constitution, or that a Bill originating in the Assembly does not concern counties, the Speaker shall convey his or her decision to the Speaker of the Assembly within seven days of receipt of the communication”.

Mr. Speaker, Sir, first, I want you to guide this Senate whether this Bill concerns counties and for the reasons that I have stated, whenever there is a travesty, a fundamental breach of the Constitution in particular the Bill of Rights which is fundamental to every Kenyan, I do believe that it is a Bill which concerns us, as counties or Kenyans and, therefore, it must be brought before the Senate.

In particular, I want to make reference to Article 2(a) of the Constitution that states that the State shall not (a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the

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dissemination of information by any media or penalize any person for an opinion or view or the content of any broadcast publication or dissemination.

Mr. Speaker, Sir, further to Article 34(2) of the Constitution, I wish to bring to your attention Article 34(5) of the Constitution which says that Parliament shall enact legislation that provides for the establishment of a body. The guidelines of that body are provided for in the Constitution and these are:

- (a) Be independent of control by the Government, political interest or commercial interest.
- (b) Reflects the interest of all sections of the society, and;
- (c) Sets media standards and regulates and monitors compliance to those standards.

Mr. Speaker, Sir the operating clause is sub-section (5) (a) which states that that body shall be independent of control by Government, political interest or commercial interest. I do believe that the Senate has appraised itself with the debate that has been going on in the media. We have been able to internalize the amendments that have been proposed and those amendments have the effect of limiting fundamental rights and freedoms as per Article 34 of the Constitution.

**The Speaker** (Hon. Ethuro): Order, Sen. Hassan. You stood to seek guidance from the Chair but now you are debating a matter that is not before the House.

**Sen. Hassan:** Mr. Speaker, Sir, I was laying the basis on which I wanted to seek your direction. I thought in my own judgement, I could then stand guided - if I was to present a slight case before that case before the debate itself. That will then compel this House to offer direction. The Constitution, potentially is under threat and this Bill is about to be concluded and we are proceeding on recess. So, it is my humble submission that you guide this House as to whether or not this Bill, first and foremost, concerns counties and if that is the case, then you advise the President not to assent to this Bill so that the Senate is able to ventilate on this Bill. Otherwise, we might go for recess and come back when the country has much less media freedom we are enjoying.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I would like to support the request by the Senator for Mombasa that this matter be brought before this House. I would also like to draw the attention of my colleagues here that the President in his wisdom, when he first received the Bill that was passed by the National Assembly, he refused to assent to it and suggested to the Assembly a better version, although I have not read it. That better version has failed to get the mandatory two-thirds majority in the House. This means that there are many Members of the National Assembly in the House who are thinking like us in the Senate, that we should protect media freedom.

I beg that you allow us to debate this matter because if we do not, we will have taken a walk into the past; the bad old days. We shall have taken a walk into the Far East; the economies of communism and so on, and in the process, we become retrogressive and lose our face in the international community.

I support.

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. Sen. Hassan has brought up a very important point into the debate about the National Assembly. However, purely, on

technicality, this Constitution says that Parliament consists of the National Assembly and the Senate. That statement is not for nothing. When an Act of Parliament is enacted, passed, assented or returned, it does not become an Act of the Senate or the National Assembly, this is an Act of the Parliament of Kenya which consists of the National Assembly and the Senate. That is why the ruling from the Supreme Court was very important that there is no Bill that should be removed from either House before the provisions in the Constitution are complied with.

That means that according to Article 110 (3), no Bill can move in any one of these Houses until the Speakers find concurrence on whether the Bills concern counties or not. That is why at the end of the day, we are asked the question; did the Senate deal with that Bill? In my estimation, the Senate should have dealt with the Bill before it came before you for concurrence. At that time, you would have considered whether it concerned counties or not. The way we are dealing with Bills at the National Assembly or even here takes away the fundamental structure in the Constitution that says that Parliament, ultimately, when the laws are made, is one institution.

I really think that Sen. Hassan Omar is bringing a point that we may, for now, ignore. However, for the purpose of the future, out there, people ask the question; what is the Senate saying about this Bill which is so fundamental? We have not been given an opportunity to express our position on the basis of this Bill. For me, expression or having an input in this Bill does not mean that the Bill should come here for us to debate it physically. It is enough, for me if the Bill goes to the Speaker and he makes a ruling that it does not concern counties. Therefore, the Senate, in the eyes of the public will be absolved. Right now, the public does not understand why the Senate has not dealt with this matter. At some point, even if it means that we adopt Sen. Hassan Omar's tactics of going out there, which I am very familiar with, we should first follow a way that brings results. Otherwise, if we do not insist on what the Supreme Court ruled, everyday, we will be singing as House on how we are dealing with Motions of no consequence and hurdle with little words when ultimately, the business of the Parliament will be at the National Assembly as the legislature.

I do not want to be in this Senate when the critical issues that concern the Laws of Kenya are being debated but I just watch as a spectator. The Constitution does not want me to be a spectator. At the end of the day, I will just argue that you should not let this Bill be titled as one which has been enacted by the Parliament of Kenya because it has not. We have not seen it. It has not come to me. On that ground alone, this Bill should not see the light of day especially when we want to build a republican constitutional democracy where respect of law is paramount.

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. I rise to concur with Sen. Orendo on a technical matter and proceed to propose further that when Bills are sent from the Government to Parliament, they are referred to the National Assembly. Ideally, they should be sent to Parliament and not to the National Assembly. By sending them to the National Assembly, it appears like it is the Assembly to decide whether the Bill should be

debated by the National Assembly or by both Houses. I think in the discussions we will have – I agree completely that this Bill should be brought before this House – with the Chairman in charge of the respective Committee that deals with this matter, I have been hard pushed by the public to say what the position of the Senate is on this Bill. I have, as you may be well aware, communicated with you in private and sought that this Bill be brought to this House for debate. To me, this is a matter that concerns counties.

At the very least, counties are supposed to be getting broadcasting rights and frequencies for counties as county governments. Therefore, I cannot see, in the eyes of any reasonable person, why this Bill should be debated by the National Assembly and not by both Houses.

**Sen. Murkomen:** Mr. Speaker, Sir, I salute Sen. Omar Hassan on this important issue. Sen. Orengo has even put it in a clearly concise manner.

It is upon you to inform the House whether the two of you; the Speaker of the National Assembly and the Speaker of the Senate, can sit together to make a decision on whether a Bill concerns counties and supposing you do not sit, what is the validity of a law that goes to the President for signature? Kenyans are watching and those who are not happy with legislation can move to any court and one of the grounds for moving to court would be the fact that it is not the Parliament of Kenya that passed the law. So, whatever ruling you will give, as the Speaker, will be critical not only for this House but for the people out there. The determination first should be whether it is an Act of Law in the first place.

I agree with Sen. Orengo that this is a question of whether we are following the advisory opinion of the sitting court and Article 110. Secondly, it is very clear that this is a House that is friendly to the media freedom. However, that discussion must form the content and the provisions of the Bill. We cannot be heard to be debating like any other person out there. Our critical opinion as to the direction of that law would be heard and understood if that Bill was in this House. So, it is your determination, even if it means that you take your time in making a ruling.

You need to make a ground breaking ruling that will guide, not only this House, but any other Kenyan out there who will be willing to challenge whatever law that has been enacted by one House without the consideration of the other.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I do not want to repeat what everybody has said. However, for purposes of record, I want to read Article 1 of the Constitution for the purpose of clarity.

All power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

Under Article 1(3); the sovereign power under this Constitution is delegated to the following state organs which perform their functions in accordance with this Constitution:

(a) Parliament and the legislative assemblies in the county governments.

Article 1(4) reads; the sovereign power of the people is exercised;

- (a) at the national level; and,
- (b) at the county level.

It is my suggestion that, in fact, the question as to whether this Bill affects counties should not be there. It affects counties. It affects the people of Kenya, their rights and the sovereign power. It is our mandate as the Senate, in fact, under Article 1(3) to interrogate this Bill to its entirety together with the Memorandum that was presented to Parliament so that we can be seen to be exercising the sovereignty of the people who elected us at the county level.

*(Applause)*

I support.

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I think this matter is self explanatory and very obvious. The media affects counties. I do not see any thinking that can be otherwise.

The issue here is that this Bill affects counties. Since this Bill affects counties and was not referred to us, that is a clear breach of the Constitution. The question is; what do we do? Do we just sit here and complain? We have advisory opinion from the Supreme Court which clearly states what the procedure should be. That procedure has been ignored. The law recognizes self-help remedies as part of the law. I think it is upon us, as the Senate, to exercise our legal rights through self-help remedies. The simplest self-help remedy is to bring that Bill, since it is in public domain, in our Order Paper. We should then debate and pass our resolution as the Senate. That is a legal process, and I am sure the emeritus Attorney-General of this Republic will confirm, indeed, that is the law.

**Sen. Wako:** Thank you, Mr. Speaker, Sir, for giving me a chance to contribute to a very important point that was raised by the Senator of Mombasa. I support all the sentiments that have been raised by the Senators who have contributed to this Motion. I do not want to dwell so much on the Bill concerning counties because that has adequately been covered by the previous speakers.

However, I want to state that in addition to the Bill concerning counties, we cannot adjudicate our role in terms of Article 94 which says;

“(1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

Parliament shall protect this Constitution and promote the democratic governance of the republic. Parliament is the National Assembly and the Senate. Therefore, bearing in mind and taking into account that fact, you cannot touch the Constitution and have the Senate play no role.

When it comes to amending the Constitution, the Senate has a role to play and so on. Therefore, in as much as this matter touches on the fundamental human rights under our Constitution, this Senate has a specific role to play.

Mr. Speaker, Sir, I want to also raise a wider issue, because it is not just this legislation, but most of the legislations that are now being passed in the National Assembly, and I hear that they are very many of them, touch on counties. Maybe you should talk to your counterpart. I hope that this being the last Bill, those Bills that are being enacted there will not find their way quickly to State House, because they do actually touch on counties. This one touches on the counties and all those other Bills, if you read them very carefully, touch on counties. Therefore, we need some assurance that very much as they have been enacted by the National Assembly, those Bills, including this one, will find their way here for us to debate them.

Mr. Speaker, Sir, on the issue of the procedure that has been raised by the King of Meru, I think that you can never disagree with the King of Meru. So, I agree with him, because he is a monarch. He is not just that, but a very senior advocate, who is actually senior counsel in waiting.

*(Laughter)*

Mr. Speaker, Sir, for those reasons, I would urge that we move with speed. On this one, we would really want you to move, so that, at least, it comes before us. But it is not only this one. I think that we should make a point. There has to be a difference between what pertained before the ruling of the Supreme Court and the practice after the ruling of the Supreme Court. We must have respect to the orders and judgments of the Supreme Court of this land, which is vested with the powers to interpret the Constitution finally and conclusively. Therefore, the procedures that have to be put in place, after that ruling, should respect particularly your role as Speaker and our role as a legislative body.

Mr. Speaker, Sir, it does appear to me that there should be some agreement that any Bill going to the President for his assent must be countersigned by both the Speaker of the National Assembly and the Speaker of the Senate. I am saying this because by countersigning, it will now promote the spirit of consultation and agreement on the issues relating to legislation, so that we do not have to embarrass the President. That proposal that you both countersign, to me, is very important, because there are many Bills which may not necessarily touch on the counties and are within the province of the national legislation. Even for those Bills, your signature is very important, if only to say that we agree that these Bills do not touch on the counties and, therefore, it was proper that the National Assembly legislated on them.

Mr. Speaker, Sir, regarding the others attached including this one, your signature again is very important, only to affirm that this is a Bill that touches on counties and it has, indeed, gone through the proceedings of the Senate before presentation to the Head of State.

Mr. Speaker, Sir, I, therefore, support what has been raised by the Senator for Mombasa; that we really must have a look at this one. Freedom of expression is one of the cornerstones of democracy. Therefore, to the extent that both the National Assembly and the Senate are the defenders and promoters of the Constitution and democratic

governance--- Since this matter, definitely, touches on democratic governance and violation of human rights under the Constitution, we are legitimately concerned and, therefore, must come here for us to express our opinion.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I think that we need to conclude this matter. If I give two minutes each, those will be ten minutes. So, prioritize your issues.

**Sen. Billow:** Mr. Speaker, Sir, thank you very much. This issue is likely to create a crisis in the Government. This is not a small issue. If that Bill and any of the other Bills which are in the pipeline are passed by the National Assembly, personally, as the Senator for Mandera, I have instructions from my county that if a Bill is touching on my county and is harmful to the interests of my county people, I am going to bring a Motion here declaring such a Bill's nullity. The resolutions passed by this House will provide evidence to the court that, indeed, the Senate has ruled that, that Bill or law was not properly enacted in relation to the Supreme Court's ruling. Therefore, based on that resolution of the Senate, it can be used in a court of law to declare that Bill a nullity. So, what is the effect of His Excellency the President or Government accepting such Bills to be enacted into law? I think it is important---

**The Speaker** (Hon. Ethuro): Your time is up!

**Sen. Ongoro:** Mr. Speaker, Sir, I will not repeat what has been said. All those who have spoken before me have actually validated why we need to interrogate this Bill.

Mr. Speaker, Sir, one of the main reasons and our main mandate, as the Senate, is to ensure the welfare of counties. My interpretation of that statement was not that we were to take care of the welfare of infrastructure within those counties. It made reference to the people who are within those counties. How else can we take care of the welfare of these people if we are not going to interrogate something that is going to actually be one of the key means of ensuring that we, as a Senate, get to know what happens in those counties and protect the freedom of speech?

Mr. Speaker, Sir, I just want to invite all of us to make reference to the Bill of Rights, which is enshrined in the Constitution. If you look at Article 19(3) (a), it actually states that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State. That, to me, is a very strong statement. It is not supposed to be granted; it is already granted by virtue of the fact that we already promulgated this Constitution.

Mr. Speaker, Sir, it has already been mentioned, even in reference to the freedom of expression, in Article 33 (a). I just want us to make reference to that, even as we confirm why it is very important for us to interrogate this Bill in this House.

Thank you, Mr. Speaker, Sir.

**Sen. Sang:** Mr. Speaker, Sir, I want to agree with my colleagues who have contributed on this particular matter with reference to the Media Bill. I do not want to take much time on that, but I think that the bigger question raised by the Senator for Busia is of much importance to this House. In the last three or four days, there have been

discussions with regard to the number of Bills that are pending in the National Assembly for discussion. Given the fact that the National Assembly has had to make a resolution to increase the number of sittings, to deal with the Bills, the indication out there is that they want to complete discussions and pass some of those Bills, so that they are enacted into law before they go on recess. We know that this is our last sitting this year and some of the Bills being discussed are issues that, obviously affect counties. Then question that we need to address ourselves to is: How are the two Houses complying with the Supreme Court ruling with regard to how we need to transact business in this House? It is quite unfair that this House religiously follows the Supreme Court's ruling and have processed two Bills in this House that are pending deliberation in the other House, yet the same House discusses Bills that have been processed in this House, but do not want to remit some of their Bills to this House. I think that we need to have finality in terms of how we move forward on this particular issue.

Mr. Speaker, Sir, I would request you to guide this House on how the Senate and the National Assembly intend to deal with the businesses of the two Houses, in light of the Supreme Court ruling.

**Sen. Okong'o:** Thank you, Mr. Speaker, Sir, for this opportunity. I also take this opportunity to concur with the sentiments of my colleagues, now that we have a myriad of Bills set for debate and conclusion in the National Assembly.

Mr. Speaker, Sir, I would like to seek direction if we can defer our recess and discuss these matters of national importance. Secondly, if you go through the HANSARD of the Tenth Parliament, it is sad to note that the "grave" that we are in was dug by some of the senior Members in this House. Some of us want to go on record of history in this country that we stood to lay the foundation for a proper constitutional dispensation.

Thank you, Mr. Speaker, Sir.

**Sen. Madzayo:** Asante sana, Bw. Spika. Ningependa kusema kwamba huu ni Mswada muhimu sana kwa Wakenya. Kulingana na mambo yoyote yanayohusu habari, hiki ni kiungo cha kati baina ya mwananchi na viongozi wake. Katiba inasema kwamba katika jambo lolote ambalo linahusu wananchi au kaunti, Seneti itahusishwa wakati wowote ikiwa kutakuwa na Mswada. Habari ni kiungo cha kati ambacho kinahusu mambo ya wananchi. Itakuwa na upungufu kuona ya kwamba Mswada kama huo unapitishwa na upande mmoja wa Bunge.

**The Speaker** (Hon. Ethuro): Muda wako umeisha!

**Sen. Madzayo:** Asante, Bw. Spika.

**The Speaker** (Hon. Ethuro): Order, Senators! First, I want to say that I share with the earlier contributions and concerns as to how we process the business of the House. I have been persuaded by Sen. Murkomen and other Senators who have spoken, saying that they need a considered ruling. I feel like I should not make it now; I will make it at a later time. One thing I want to confirm now is that, one – and I said this yesterday when this matter also came up – that we do not seem to appreciate the provisions of Article 112 of the Constitution. That is what has made us, as a House, to go

to the Supreme Court for the Advisory Opinion. That opinion is out there; we have correspondence to the effect that, first, the two Speakers must agree on each and every Bill. Because for the Bill to finally become an Act of Parliament, it will need both Houses, either by debating on the two Bills, or the fact that the Speaker of one House can agree with the other House; that should be good enough. So, that is our position as a Senate. We will maintain that position.

For those ones of you who are Members of the Rules and Business Committee (RBC), you know the many strategies that we have been considering, which I think might be premature to state here, including the self-help strategies promoted by the Senator for Meru. But I think what is really important and what has been guiding us is fidelity to the rule of law and constitutionalism. On that one, we want to promise each other that will remain so.

On the discussions on whether the content of the specific Bill that is before the National Assembly on the media, one, I have always said Standing Order No.88(5) does not really allow us to discuss the content, but we can discuss the structures and the rest. That is why we can entertain the relationship between the two Houses. But really how the other House conducts its business is up to them.

I also note that this is a matter that the debate before the House was as a result of the Memorandum from the President. So, really, the Bill had already gone to the President. It was the President who brought it back to the House. So, to that extent, our issue should just remain the normal issue in terms of whether the Bill, like the other Bills, came to us. We would expect, as Sen. Sang has correctly observed, whenever we have passed our Bills, we take them to the National Assembly and ask everybody to support it. We expect the same to happen for the Bills from the National Assembly. So, that is the matter that is being contested and we hope that things will improve in the future.

Thank you.

**Sen. (Dr) Kuti:** Mr. Speaker, Sir, is it possible to seek a clarification on your statement? It is a very simple question.

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

**Sen. Musila:** Mr. Speaker, Sir, the process ends up with His Excellency the President. Have you bothered to find out why His Excellency the President entertains these Bills when they have not followed the procedure?

*(Applause)*

If His Excellency the President returns these Bills to the National Assembly and says “These Bills did not follow the procedure; let them follow the procedure;” I think we would not be where we are today.

Mr. Speaker, Sir, in addition to talking to your counterpart, seek audience with His Excellency the President and seek his opinion as to whether he should be entertaining Bills for assent which have not followed the right procedure.

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Thank you, Mr. Speaker, Sir.

*(Applause)*

**The Speaker** (Hon. Ethuro): Sen. Musila, if you followed my counsel, (inaudible--). I would not want to delve into much discussion; suffice to say the discussions are involving all the parties for legislation and for information matters.

*(Applause)*

So, next order.

Order, hon. Senators! Before we prosecute that particular Order, I need to make a communication on the procedure. It is 36 minutes past 5.00 p.m. and our business is concluding at 6.30 p.m., and we have two items. So, we may have to limit the time on each of the orders. I will suggest, therefore, that we discuss Order No.9 in terms of--- Who can do the mathematics of dividing that time by two?

**An hon. Senator:** 40 minutes each.

### COMMUNICATION FROM THE CHAIR

#### PROCEDURE TO FOLLOW ON ORDER No.9

**The Speaker** (Hon. Ethuro): About 40 minutes each, and then it can be revised if that mathematics is not correct. So, I will want to give the procedure on how to proceed on Order No.9.

Hon. Senators, I would like to guide the House on the procedure which shall apply to the consideration of the report of the Rules and Business Committee on the Review of the Standing Orders. This guidance is important because the Standing Orders now provide for an entirely new procedure. You will realize that in the past, reports on the review of the Standing Orders were usually considered in three phases; in the first phase, when the Order for Motion was read, the Chairperson of the Committee moved the Motion that Mr. Speaker do now leave the Chair, which was subsequently seconded and the question proposed to initiate debate on the policy and principles implied in the report. At the end, the question was put, "THAT, Mr. Speaker do now leave the Chair." If this was agreed to, the House would dissolve itself into a Committee of the Whole. In the second phase, the report was considered in the Committee of the Whole in a similar manner as the Committee Stage of a Bill, except that the Speaker took the Chair as the Chairperson of the Committee of the Whole, since he was also the Chairperson of the RBC. The Clerk would then read each of the proposed amendments to the Standing Orders, one after the other, and each amendment was disposed off in that order like in the case of a Bill. After all the proposed amendments had been disposed of, the Question for the Motion of the Adoption of the Report was then put. In the third phase, the House

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resumed and the Speaker reported progress of the Report. The Question was then put “That the House doth agree with the Committee on the said report.”

Hon. Senators, the new procedure which shall apply to Order No.9 is provided for under Standing Order No.247, which provides that:

“Upon the tabling of a report of the Rules and Business Committee under Standing Orders 244, 245 and 246, the procedure set out at standing order 245(5) and (6) shall apply with the necessary modifications.”

Standing Order No. 245(5) provides that:

“The Senate shall consider the proposed amendments to the Standing Orders as reported from the Rules and Business Committee on a Motion that “The report of the Rules and Business Committee be approved”

You will note that the proposed amendments to the Standing Orders are contained in the report of the Committee as an annex to the report. Any proposals to amend the amendment proposals would, therefore, be an amendment to the report and may be filed as a proposal to approve the report subject to the following amendments.

Drawing from these provisions, we will not be having the Motion “THAT Mr. Speaker do now leave the Chair.” We will also not be having the Committee of the Whole on Order No.9, since the Motion before us is for the approval of the Report of the RBC under Standing Order No.245(5). If the report is approved, the amendments proposed will similarly have been approved.

Thank you.

## MOTIONS

### ADOPTION OF REPORT OF THE RULES AND BUSINESS COMMITTEE ON REVIEW OF STANDING ORDERS

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I beg to move:-

THAT, pursuant to Standing Order 247, the Report of the Rules and Business Committee on the Review of the Standing Orders laid on the Table of the Senate on Wednesday, 4<sup>th</sup> December, 2013, be approved.

Mr. Speaker, Sir, in view of the short time given to us, I do not wish to spend a lot of time giving the constitutional justification for the review that we are undertaking, because it is provided for under Article 124 of the Constitution. Neither do I want to take the House through the Standing Orders, because you have already dealt with that and the House is familiar with the Standing Orders.

Mr. Speaker, Sir, at the second sitting held on the 23<sup>rd</sup> April, 2013, the Rules and Business Committee resolved to undertake a review of the Standing Orders, pursuant to Standing Order No.244, and to this end, constituted a sub-committee on the review of the Standing Orders to consider the necessary amendments to the Standing Orders and to

present a report on its findings to the Rules and Business Committee. The following Senators were appointed to the Sub-Committee:-

Sen. James Orengo	–	Co-Chair
Sen. Kiraitu Murungi	–	Co-Chair
Sen. (Dr.) Agnes Zani	–	Member
Sen. Beatrice Elachi	–	Member
Sen. Charles Keter	–	Member
Sen. Janet Ongera	–	Member

Mr. Speaker, Sir, the Committee adopted a methodology which included inviting proposals for amendment from Senators, and this was done through a Communication from the Chair; inviting proposals from the public, which was done through the media on 9<sup>th</sup> of May, 2013, and compilation and analysis of the proposals received, which was done by the Sub-Committee in two workshops on 13<sup>th</sup> June, 2013, and on 8<sup>th</sup> July, 2013.

Mr. Speaker, Sir, the report was prepared and adopted by the Sub-Committee on 16<sup>th</sup> July, 2013. The Sub-Committee had a total of four sittings and two retreats. The Sub-Committee's report was presented to the Rules and Business Committee of the House on 16<sup>th</sup> July, 2013. The RBC held a retreat from 17<sup>th</sup> to 19<sup>th</sup> October, 2013, in Kisumu County to consider the Report of the Sub-Committee and as you are aware, you chaired the proceedings of that retreat, and the Members who were presented at that retreat are stated on page 3 of the Report. I do not want to spend the Senate's time by going through all the names.

Mr. Speaker, Sir, the Rules and Business Committee adopted the Report of the Sub-Committee with amendments and prepared this Report, which is now being presented to the Senate for debate and adoption. Following deliberation and consideration of the Report of the Sub-Committee on the Review of the Standing Orders and other proposals received from Senators and other stakeholders, the RBC now present the proposed amendments which have been set out in the annex for debate and approval.

In addition to the proposed amendments to these standing orders, Mr. Speaker, Sir, the RBC made further observations and recommendations on operations of either Houses of Parliament to ensure that each House plays its full part in the complex process of fulfilling its constitutional mandates.

Mr. Speaker, Sir, the Committee particularly noted the administrative challenges arising out of a shared Parliamentary Service which we consider slow in efficiency and resourcefulness which can only be addressed through each House having its own administrative autonomy. More specifically, we, the Upper House, have suffered a lot of humiliation, injustice and discrimination at the hands of the National Assembly controlled Parliamentary Service Commission. We feel time has come for this Senate to be treated like Senates in other Commonwealth countries like Canada where the Senate has its own separate administrative support system. For this purpose, we are urging the Senate to consider establishing a Senate Service Commission through appropriate amendments to the Constitution at a future date.

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Mr. Speaker, Sir, that was beyond the mandate of my Committee and, therefore, we did not make any literal recommendation on it. I would like to record my appreciation to my co-Chair, Sen. Orenge, the Members of the sub-committee, the Members of the House Rules Committee for their total commitment, dedication and excellence in performing the tasks leading to the Report that we are presenting to this House today.

It is now my wish to quickly take the Senate through the proposed amendments. If you have my Report, we can read it together. I am now on page 4. The first proposal was to amend the prayer. The feeling is that the prayer in the current Standing Orders is a bit too long and, therefore, there is a proposal to shorten it in the manner set out in the Report and there is also a proposal that the prayer be translated into Kiswahili. I think this should not elicit any controversy at all. We are trying to save time for the Senate.

Second is Standing Order No.6 which relates to the election of the Speaker, and here we are trying to improve transparency in the election of the Speaker. We are saying that the Senators or agents of the candidates should be present to inspect the votes so that when the Clerk makes a declaration that a vote is invalid, it should be done in the presence of, and after inspection by Senators representing each of the candidates in the election.

Mr. Speaker, Sir, on page 5, Standing Order No.13, we are providing that the Speaker once elected, should preside over the election of the Deputy Speaker. This is normal practice and what we are trying to do is just to qualify what has been happening in the past.

Fourthly, on Standing Order No.15, we are saying that in the absence of the Speaker, the Deputy Speaker, or a Member of the Chairperson's Panel should preside over the Committees of the Whole. This has also been happening and what we are trying to do is just to codify the practice because the Chairpersons to the Speaker's Panel have in the past sometimes presided over Committees of the Whole without the Speaker or the Deputy Speaker.

Fifth is the heading at Part IV. I think if you look at your Standing Orders, it is page 32. It currently reads "the Senate Majority Leader and the Senate Minority Leader". We are saying that that heading should be amended to read the "Senate Political Leadership", so that we can also capture other political leaders of the Senate like the Senate Majority Whip and the Senate Minority Whip.

Mr. Speaker, Sir, we are also proposing that Standing Order No.19 be amended by adding a new paragraph to provide that a Senator belonging to a party or a coalition of parties be elected by the party and the Senate Majority Whip because the current article does not provide for election of the Whip or the Deputy Whip by the political party.

On page 6, we are proposing an amendment by inserting a new paragraph to state that whenever a Senate Majority Leader is absent or is unable to perform his or her functions, the Deputy Senate Majority Leader performs those functions in an acting capacity. We are also making an amendment to propose that in the absence of the Senate Majority Leader and the Deputy Senate Majority Leader, the Whip performs the

functions of those functions in an acting capacity. I think those are common sense amendments. We are also proposing to amend similar provisions in Paragraph 5 of Standing Order No.19 by making similar provisions to provide for removal of a Majority Leader or a Whip of a party by the political party, but having a clearer system of communicating with the Chair so that in the case of a Senate Majority Leader, then it is the Whip of the political party who communicates with the Chair about the decision of the party. Then in the case of the removal of the Whip, it is the Senate Majority Leader who should communicate to the Chair the decision of the party to remove the Whip. So the decision of removing the Whip or the Senate Majority Leader remains with the party, but the communication is done by somebody else so that the Senate Majority Leader may know the person communicating his own removal or the Whip to know the one communicating his or her removal.

Mr. Speaker, Sir, Standing Order No.20 which is on page 33 of our Standing Orders, we are making similar amendments or else called *mutatis mutandis* regarding the Senate Minority Leader and the Minority Whip. So, it is the same amendment, but touching on the Minority Leader and the Minority Whip. Also providing for performance of their duties, the Deputy Minority Leader should act when the Minority Leader is not there and also the Minority Whip to act when both the Minority Leader and the Deputy Minority leaders are not there.

On page 7 of the Report, we are proposing to amend Standing Order No.25 which is on page 36 of the Standing Orders. This one regards visiting heads of States and visiting dignitaries. The proposal here is that the Speaker may after consultation with the Senate Majority Leader and the Senate Minority Leader allow a visiting Head of State or a visiting dignitary to address the Senate. The purpose of this amendment is to allow for more consultation between the Speaker and the leadership of the House so that they can agree whether a visiting dignitary can come and address the Senate or not. This is because if one side agrees and the other one does not, then we could face embarrassment to a visiting Head of State is only one part of the House is coming to listen to such a visiting dignitary.

Mr. Speaker, Sir, Standing Order No.29 on page 38 of the Standing Orders which deals with calling of special sittings of the Senate---

**The Speaker** (Hon. Ethuro): Order, Sen. Murungi. Because of the time allocation, you are almost exhausting your time. So, maybe you need to conclude.

**Sen. Murungi:** Mr. Speaker, Sir, how much more time do I have?

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. Since Sen. Murungi was a co-chair of the sub-committee with Sen. Orengo, I think it is only fair that you allow Sen. Murungi to exhaust everything then Sen. Orengo and some of us will just make brief comments. If there are any amendments, we deal with them as we make the comments. I have seen the amendments. It would be better that when we are making our contribution, we bring in those amendments at that time.

**The Speaker** (Hon. Ethuro): Is that the mood of the House? But even then, we had allocated about 40 minutes and you have done almost 25 minutes.

**Sen. Murungi:** Mr. Speaker, Sir, I could try to rush given another ten minutes or so. However, by the look of things, I am sure this debate is not being concluded today.

**The Speaker:** Try five minutes.

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. In view of the time constraints, I would urge the Senators to look at the Report which has been supplied and just highlight what I would consider the very key amendments.

Standing Order No.34 which deals with quorum requires the Speaker to establish quorum at the commencement of a sitting. Traditionally, in most Commonwealth parliaments, the Speaker is usually blind to the presence or absence of quorum at the commencement or any time of the proceedings unless a Senator raises the issue. So, we are proposing to amend Standing Order No.34 so that we follow this Commonwealth tradition by deleting Standing Order No.34(2) so that the Speaker does not have to count us at the beginning of any sitting.

Mr. Speaker, Sir, Standing Order No.35 which provides that the doors should be locked and no Senator should leave the Chamber during the counting. We consider that Standing Order to be oppressive to Senators because it restricts our freedom of movement. So, we are proposing that that Standing Order be amended as proposed in Paragraph 35(3) by deleting all the words which appear after the words “the door shall remain locked” so that Senators are free to move in and out even as we vote because we are responsible people.

Standing Order No.41 provides for messages to be received from the President. In view of our special relationship with the counties, we are proposing to amend Standing Order No.41 so that it will be possible for the Senate to be sending messages, through the Clerk and the Speaker, to the county assemblies and to the Governors. It should also be possible for the Speaker to give advisory opinion to the Speakers at the County Assemblies, either at the request of the Speaker of the County Assembly or at the initiative of the Speaker of the Senate. We thought that this would have been a way of helping the Senate perform its role better in protecting the interests of the counties.

Mr. Speaker, Sir, on page 12 of the Report, with regard to Standing Order No.42 on Senators’ General Statements, we are proposing that new Standing Order No.42 be deleted and a new Standing Order be brought in so that we create a Statements Hour, every Tuesday and Wednesday commencing not later than 3.00 p.m. This will allow Senators make statements regarding their counties and other statements of general nature. This will also create time for Chairpersons of Committees to respond and make statements on matters relating to their dockets. We are also creating time for the Senate Majority Leader and the Minority Leaders to make statements in the House regarding their responsibilities as the leaders of the House.

That Standing Order should be amended so that a Senator who wants to make a statement, under Standing Order No.41, alerts the Speaker before 1.00 p.m., every day so

that the Speaker is aware. The Speaker may allow or refuse to allow the Statement to be made if it leads to a matter that cannot be properly discussed before the Senate.

Standing Order No.74 relates to roll call voting. The roll call voting has been complex as provided for in the current Standing Orders. We are proposing that the Standing Order be simplified so that the Speaker may allow a vote on several clauses to be done at the same time. We are just qualifying the practice that has been developed at the instigation of the Deputy Speaker which has largely been adopted as the practice in the House as we did earlier today. This process allows for various processes to be voted on during at division at the same time without necessarily ringing the bell for every vote.

On the issue of Senators handbags, both ladies and gentlemen can bring these into the House. Even men need to carry out documents. We raised the issue of size with the individual Senator. The other matters are about Committees in the schedule. I am moving to that in view of the constraint of time. It is being proposed that some Committees are too large and that their mandate is very wide that they cannot effectively cover it. We proposed to split and create new Committees under Standing Order No.206 where we are proposing that this new Standing Order be created. In that Standing Order, we will have a new Committee called the County Public Accounts and Investments Committee. That Committee should support the Senate in its oversight functions regarding the affairs of the counties by looking at the Report of the Auditor-General and special reports on County Governments Funds and to examine reports of the Auditor-General on the County Public Investments and exercise oversight over County Public Investments.

We were also proposing that the mandate of the Implementation Committee be expanded because this Committee now has no teeth. It is being recommended that the Implementation Committee examines matters relating to Acts passed by County Assemblies and subsidiary legislations of the counties; on whether those Acts are being implemented or not. We should also give the Committee on Implementation power to recommend sanctions against public officials. It also proposed that a new Committee be created out of the current Committee on Agriculture, Lands and Natural Resources so that we create a Committee on Agriculture, Livestock and Fisheries and also a Committee on Lands and Natural Resources because the mandate of that Committee recently created is too large to effectively be covered by one Committee.

We are also proposing that the Committee on Finance, Commerce, and Economic Affairs be restructured so that we create a new Committee on Finance, Commerce and Budget which will review the estimates of the county governments, examine budget policy statements and examine Bills relating to county budgets and division of revenue. The Senate, as a protector of the interests of the counties needs to play a more visible role in the budgets of the counties. The Committee is also recommending that the Committee on Health, Labour and Social Welfare be restructured so that we have a Committee on Health to deal with matters of medical services and public health and sanitation.

With regard to the Committee on Labour and Social Welfare, the mandate of this Committee is too wide to be handled by one Committee. In view of the time constraints

that we are facing, I will urge Members to read the proposed amendments in details. Time has come for us to make the work of the Senate much more efficient than effective by refining these Standing Orders.

The Committee recommends the proposed amendments to the Standing Orders to come into force upon resolution of the Senate to adopt the House Rules and House Business Committee Report pursuant to Standing Orders Nos.244, 247 and 248.

I now beg to move and call upon Sen. Orengo to second the Motion.

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

Going by your ruling, this Motion was to take 40 minutes, the Mover has already taken 35 minutes, we are remaining with only five minutes. I am not sure that we will rush into making decisions with regard to Standing Orders like we did in the last Parliament. I do not know whether it is right for me to move a Motion of Adjournment for another day so that we, first, deal with the Motion for Adjournment. I do not want to stand on Standing Order No.97 before we agree.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. I want to agree with him because this Report is very good and has been done very well. First, I want to commend the Committee. However, the Report was only laid on the Table yesterday. Now, we have 40 minutes left.

These are very important issues that will affect the running of our Senate. I plead that we postpone this Debate so that we continue with it when we come back. By then, we will have digested the very useful comments that have been made by this very hardworking Committee.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. It is up to the House to agree with me. However, my general view is that we should stay the next business and conclude this business. That will help us in terms of moving forward instead of doing things halfway and postponing to the next session. Why can we not conclude? There is little that we may want to ventilate until Jesus returns.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. I want to support the Senator.

*(Inaudible)*

**An hon. Senator:** You are not using the microphone.

**Sen. Billow:** Mr. Speaker, Sir, a proposal like changing the sitting hours on Wednesday's from 9.00 am to 10.00 a.m. is important. We have missed very many days of sitting because these sittings are poorly coordinated. There are many other Standing Orders, especially on the voting, that we need to change, including those that affect the Committees.

I second what Members have said. The leader should bring a Motion to extend and allow us to finish.

**Sen. G.G. Kariuki:** Mr. Speaker, Sir, on the first day, when we were sworn in as Senators, there was a problem of the Standing Orders which were made by the National

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Assembly. At that time, I said the Standing Orders that were guiding this House were not those of the Senate, because they were done outside the Senate, of course, following the due process of law.

Mr. Speaker, Sir, we received notification of the amendments to the Standing Orders this morning. I think that we have been following the current Standing Orders when debating for almost a year and do not see the reason we should rush on this matter just for the sake of passing it, and then regret later on. We should not be in a hurry. I, therefore, propose that we postpone the debate until we come back later.

Thank you, Mr. Speaker, Sir.

**Sen. Orengo:** Mr. Speaker, Sir, I was supposed to second the Motion. In fact, if Sen. Kiraitu Murungi would have been given time to go methodically through the amendments and give us the justification as to why we need these amendments, then I would have just stood up and said “I support.” But, unfortunately, the amount of time that Sen. Kiraitu was given, and being the co-Chair of the Committee, he did a very good job. However, I thought where there is an amendment to the Standing Order; he would have explained to the House why that amendment is necessary. Everybody must carry a copy of the Standing Orders. We look at what the position is now and what we are trying to amend. This is because Standing Orders by tradition are not amended as you wish. It takes some bit of time to make these amendments. Just look at the amount of time that the Committee that was chaired by Sen. Kiraitu took to debate on each amendment.

Mr. Speaker, Sir, I think that it is unfair to the House now that these amendments have come to the House and then we are telling you to pass them, without an explanation as to why they are necessary. On my part, I will not want to stand here and just say “I second.” If it is necessary for me also to take an hour, I think that it is important. As you know, the Standing Orders, unlike many other pieces of legislation, flow from the Constitution. So, in the hierarchy of regulations and laws they rank very high. So, I would beg and plead with you that if the necessary Motion is moved, I think there is justification why we should be in a hurry. I was just talking to one of my colleagues and she is of the opinion that even on the issue of Committees, we are proposing the formation of new Committees. There are other people who are of the opinion that we need, in fact, additional Committees. Probably, they are not happy even with the way that we have allocated the functions of these Committees. I believe that we may live to regret not having the opportunity to sit over these amendments.

Mr. Speaker, Sir, you have been part of the people who have been making these amendments. It takes one or three years just to come up with these Standing Orders, so that we regulate business in the House. But now when it comes to the House, we want to take one hour.

Thank you, Mr. Speaker, Sir.

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. I would like to support Sen. Orengo’s view.

Mr. Speaker, Sir, I think that we should not rush through something that is very important, just because we want to go on recess. We could actually ventilate on it, digest it and think about it. After that each one of us can come and contribute to the debate. I do not think that one hour is enough to ventilate and make decisions that will affect this Senate for the next five years or more.

**Sen. Keter:** Mr. Speaker, Sir, I agree with the sentiments of the Members, but some of us are ready to sit until late at night. Therefore, I rise under Standing Order No.33 to move that the House extends its Sitting today until the conclusion of the business appearing on the Order Paper.

Mr. Speaker, Sir, you will remember that we came up with these Standing Orders in the last Parliament and there was no input from us. That is why we are having problems. That is why we are having problems even with the way we communicate with the National Assembly.

*(Several Members stood up on their feet)*

I am explaining. I was moving the extension of the sitting time.

**Hon. Senators:** No! No!

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

What is it, Sen. Kerrow!

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. We are a House which governed by rules. I think that when a Member has moved under the relevant Standing Order, that the sitting of this House be extended until the conclusion of the business of the House, we should listen and contribute. If we just say “No! No!” in chorus, I do not think that, that really in order.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I think that I am a little bit lost and need to be informed. There seems to have been a general consensus, including when Sen. Orengo was speaking here, that we need to leave the issue of the Standing Orders as an agenda until next year. So, if the extension of time is in regard to the remaining business in the Order Paper, then we have no problem. But if it is for purposes of serving the interest of the Standing Orders, then I think that Sen. Orengo has made a sterling explanation as to the importance of Standing Order, to convince me that it is not something that we should just run over.

**The Speaker** (Hon. Ethuro): Order, Members! Of course, it is the House to decide, but to me, these are the issues: One, there has been a process of formulating the new Standing Orders, which was participatory and included everybody, as has been explained.

Yesterday, we tabled the Paper and the whole purpose why it was tabled a day earlier was so that, at least, everybody can look at the document. This is not a huge document. Thirdly, in fact, we are even lucky that we had the Paper tabled yesterday. The ones that we are using now were actually tabled, debated and approved in one Sitting, the

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very last one. So, we felt like maybe it could conclude this business during this last Sitting, so that when we resume, it will be a matter of implementation. But, of course, it is for the House to decide.

Sen. Keter's Motion to extend the Sitting of the House was to allow those who felt that there was not enough time to debate the matter to do so.

What is it, Sen. Orengo? By the way, we have no Motion before us, because it has not even been seconded.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. I want to be very candid on this matter, and this explains how bad the situation is. I was rung by the Clerk Assistant, Mr. Amolo, at about 11.00 a.m. today, that Sen. Kiraitu was going to move this Motion and he has asked me now to second it. I was in Committee meetings and the Report came to me at noon. That is the first time that I saw the final Report. I have been part of the process, to be given that Report at about 1.00 p.m. and then I am expected to do some justice, it will not be fair. We are accountable and not just a Committee which just considers issues without some level of accountability to the Plenary.

Mr. Speaker, Sir, I think that a lot of times we live to regret when things are brought at the last minute and then we say that they must be passed. I have very bad memories of the history of Parliament, whenever things are brought at the last minute and they must be passed. The next day we end up regretting what was passed.

Sen. Wamatangi had many issues to do with these Standing Orders. I need to feel comfortable that when I am seconding this Motion, I can look at Sen. Wamatangi in the face and say: "Truly, the issues that you raised have been addressed in this Report." As it is, if I am not feeling very comfortable and I am a Member of that Committee, what about the other Members who received this Report yesterday and are not Members of this Committee. In fact, they were being circulated in the Chamber today. The Attorney General *emeritus* received his copy while we were sitting there about half an hour ago.

Mr. Speaker, Sir, I would really plead with Sen. Billow Kerrow, that he has a point, but let us do justice to the Standing Orders, because we do not want to leave to regret how we have formulated them if we rush them in this House. I would really beg.

**The Speaker** (Hon. Ethuro): Order! Order! Let me give---

**Hon. Senators:** Bule! Bule!

**The Speaker** (Hon. Ethuro): Let us have the last contribution by Sen. Bule, by public demand!

**Sen. Bule:** Thank you, Mr. Speaker, Sir. Those of us who are new in this Senate, feel ambushed when we are given such a Report and expected to do digest and debate it. So, we need to be given more time, so that we can digest and understand what we are trying to put across.

Thank you, Mr. Speaker, Sir.

**Sen. Kittony:** Mr. Speaker, Sir, I am supporting Sen. Orengo because my fear – and I said yesterday that I would like to be on record because there is something that I disagreed with and I can see things being rushed without proper consultation and time for

us to digest it. It is important that we be given more time to look at this because it touches us and it concerns this House. So, I think the suggestions that have been put forward should be considered.

Thank you, Mr. Speaker, Sir.

**Sen. Obure:** Mr. Speaker, Sir, I think we are in real time. You have heard hon. Orendo, who was the Co-Chair of this Committee, saying that he is himself uncomfortable. Imagine those of us who are seeing this document for the first time this afternoon, how uncomfortable we will be.

Mr. Speaker, Sir, I feel there is justification and merit in allowing us to interrogate this document a little longer. In fact, I would have wanted to hear Sen. Kiraitu speak on the justification of this document for longer, because I know he was hurried when he was given only 40 minutes to discuss it. So, I really plead that we be allowed to look at this document. These rules that we are talking about are very fundamental to the operations of this House. Therefore, I plead that we be allowed to look at it so that when we come back, we will be able to understand what we are passing.

**The Speaker** (Hon. Ethuro): Finally, Sen. Kiraitu; because we must dispose of this matter somewhat.

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. It will be very unfair if hon. Senators felt that our Committee has ambushed them, especially the Co-Chair, who we have worked with closely since April. I would like him to be comfortable when seconding this Motion.

Mr. Speaker, Sir, we are going for recess until February; we are not going to deal with Standing Orders when we go for Christmas---

*(Laughter)*

We will deal with the Bible and such holy books---

**The Speaker** (Hon. Ethuro): Order, Sen. Kiraitu! I think you have made your case.

Order, hon. Senators! Let me guide the House. Look at your time. The main thing in Sen. Keter's Motion was actually that we had to do 30 minutes before purposing to extend the time for the next Motion. Now, we do not have that luxury. I think the mood of the House is that we postpone this debate.

**Hon. Senators:** Yes!

*(Applause)*

**The Speaker** (Hon. Ethuro): We have procedures, before you applaud. One, that the Motion, because it is only the Mover who actually made it, but the Motion is not yet seconded. Then it dies. The other is that it is seconded, the Question is proposed, and then you seek an adjournment.

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*(Loud consultations)*

**Sen. Keter:** Mr. Speaker, Sir, going by your advice and the mood of hon. Senators, I think the best thing – because Sen. Kiraitu rushed in explaining it – why do we not let the Motion to die? I move under Standing Order No.97 that we adjourn the debate because right now---

**The Speaker** (Hon. Ethuro): Order! You cannot proceed considering there is no Motion. So, the choice is that we just allow it to die naturally by failing to second it. We can go through the other process of seconding it, the Question is proposed and then you move for adjournment.

*(Sen. Orengo consulted loudly)*

Order, Sen. Orengo! I thought you would have been the good adviser to Sen. Amos Wako. You should not speak before you are given the opportunity.

*(Laughter)*

**Sen. Wako:** But even there was that Clause 4.

*(Laughter)*

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

**Sen. Orengo:** Thank you, Mr. Speaker, Sir. I was proposing that instead of moving that the debate on the Motion be adjourned, we can have the Motion for the adjournment of a debate under Standing Order No.50(b). It states:-

“The following Motions may be moved without notice-

(b) Motion for the adjournment of the Senate or of a debate;”

So, what we are saying is that we are adjourning the debate; as opposed to adjourning the Motion, because there is no Motion.

**Sen. Kagwe:** Mr. Speaker, Sir, I want to seek your guidance on something. I think this is the kind of Motion that should, probably, be taken to a *Kamukunji* before it is brought to the House for discussion and concurrence on very many serious issues that are on it.

Therefore, Mr. Speaker, Sir, I want to seek your guidance; in the event that we do want to go to a *Kamukunji* with this, what would be the best way forward as I speak now?

**The Speaker** (Hon. Ethuro): Order! Order, Senators! I thought I gave directions; and Sen. Orengo’s free advice is basically misleading us. The choices are very clear. Sen. Orengo, it was on the basis of a Motion that had been initiated. But I am saying there is no Motion. So, we continue in the sense that you are not going to second the Motion so

that there is no Motion and it dies naturally. You second it, we propose the Question, and then you ask for the adjournment of the debate.

*(Loud consultations)*

**Sen. Musila:** Mr. Speaker, Sir, I am pleading with my colleagues that in order that we may give Sen. Kiraitu Murungi another opportunity to now move this Motion properly, as was suggested by his Co-Chair, we let this Motion die so that when he comes, he will start afresh. So, I really want to plead that we should let this Motion die.

*(Applause)*

**Sen. Keter:** Mr. Speaker, Sir, I think that it is good that the procedures are followed. Sen. Kiraitu had already moved the Motion and he had asked Sen. James Orengo to second it.

**An hon. Senator:** And he declined!

**Sen. Keter:** Therefore, it is there in the HANSARD---

**An hon. Senator:** But he declined!

**Sen. Keter:** Did he refuse?

**Hon. Senators:** Yes!

**Sen. Keter:** So, it is good to get that clarification for the Chair so that, next time, somebody will not raise it.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Order! Please, be attentive and listen very careful. I will just repeat this for avoidance of doubt, because I will put the next question and I will not entertain revisions. If a Motion is not seconded, then it dies. If a Motion is seconded, then it must be proposed and you can only terminate the debate by seeking adjournment as proposed by Sen. Keter. I want to believe you are in order to help me to so as to avoid more confusion. The House is of the opinion that the Motion dies---

**Hon. Senators:** Yes!

**The Speaker** (Hon. Ethuro): What I recall for the Seconder, there should be no Seconder.

*(Laughter)*

So, that is why suspension is---

So, the Motion is as it has been moved by Sen. Kiraitu and so Sen. Orengo is supposed to second it. So, do we have a Seconder?

**An hon. Senator:** He is not there!

*(Laughter)*

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**The Speaker** (Hon. Ethuro): In the absence of the Seconder, the Motion dies.

**Hon. Senators:** Yes!

*(Applause)*

*(Motion dropped)*

**The Speaker** (Hon. Ethuro): Next Order, Senate Majority Leader.

ADJOURNMENT PURSUANT TO STANDING ORDER 28(3)

**Sen. Keter:** Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order 28 (3), the Senate do now adjourn and that in accordance with Standing Order 27(2) the Senate resolves to commence the Second Session on Tuesday, 25th February, 2014.

Mr. Speaker, Sir, I would not take much time because we are only remaining with about 20 minutes. I think we have come a long way from the time when we started at the Kenyatta International Conference Centre (KICC). Today we are here by my intention; but we are here by forcing ourselves to be in this Chamber.

*(Laughter)*

It is good to know that if, at all, the issues which had been raised by hon. Senators earlier on regarding the Senate are not addressed; we will still have the same problems come next year. So, I want to believe that as we go on recess, the leadership of the Senate must also take responsibility so that come February 25<sup>th</sup>, 2014; there will be progress to be reported so that we do not have a lot of these issues coming up and down.

Mr. Speaker, Sir, as we go back to our counties, it is good that we take stock of what is happening. There are big publications and reports indicating that there are a lot of funds which are lying in accounts which have not been utilized by our county governments. I think it is good also that as the people responsible for our counties, that these are some of the issues that we need to take into consideration so that when we resume, we have to work extra hard and pass the Bills.

Mr. Speaker, Sir, there have been allegations that the Senate does not do anything; they do not have work and that there are no Bills which have been passed by the Senators. To me, that was a deliberate move to make sure that the Senate does not exist and that devolution does not work. We want to assure them that devolution must work. We saw devolution in what the Constituencies Development Fund (CDF) did with the 2.5 per cent allocation. With the 32 per cent, we expect a lot of development in our remote areas of our counties. Therefore, the issues which are addressed under---

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

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

**Sen. Hassan:** Mr. Speaker, Sir, is Sen. Keter in order to liken the CDF to Devolution?

**Sen. Keter:** Of course, it was part of the struggle for devolution---

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

**Sen. Keter:** Mr. Speaker, Sir, as we resume, there must be clarifications on the issues of Bills. When Government originates Bills, they can send ten to the National Assembly and ten to the Senate so that the National Assembly are debating some, we are also debating some. By so doing, we can pass about 20 Bills simultaneously. We do not want to be accused for not working and neither do we want to accuse other people. So, I do not want to take much time because I think each of us wants to go for recess. I will ask the Acting Senate Minority Leader, Sen. Hassan, to second this Motion.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Thank you, Mr. Speaker, Sir. I also stand to support the Motion of Adjournment and would like to make a few comments because of the time limit. First of all, I would like to appreciate the efforts the Senate has made during this Session, particularly with regard to passing crucial Bills and very good Motions. I want to note, particularly the County (Amendment) Bill and the Flags and Emblems Bill which went through the Third Reading last week. It will be a milestone in moving the counties to greater lengths and reduce the conflicts we have witnessed in the past few months.

Mr. Speaker, Sir, we may pass Motions in this House and very good Bills, but if they are not implemented by the Government, we will not be making much progress. It will be important for us through the Secretariats to actually do some tracking on how best some things are done. We can make use of Committee on Devolved Government to know how far these Bills have been implemented. It would be good to gauge before we resume House business in order to know the progress that has been made by the Government with regard to the Bills and Motions that were passed by the Senate.

What we have witnessed in recent times, which this House does not subscribe to, I am happy to note that both sides of the House have worked harmoniously for the national good. When the national Government does not respect the country's interests, for example, the Media Bill which is in contention is one such case. These are some of the things that embarrass the Government. It does not help. What is happening between the Judicial Service Commission (JSC) and the Government is not good. We do not want to negate the gains this country has made over the last few years. Those elected on a platform of change must uphold that change.

Mr. Speaker, Sir, with regard to devolution which we all support, there has been a crisis, particularly on matters relating to the health sector and the conditions in which the doctors and nurses are working in. These are issues that can be managed. Services are now better at our counties after health matters were devolved and we do not want professionals to be an impediment to the devolution process in this country. There is also what I would call a quiet mode in which the Transition Authority (TA) is going to be

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killed in the next few weeks. I say this because the Ministry of Devolution has been given more prominence. We know it is an important Ministry, but we would not want the Intergovernmental Relations Committee to quickly take up positions that they cannot hold. The fact that the membership will be drawn from the county governments does not necessarily guarantee the autonomy which the TA will have helped us achieve in terms of implementation of devolution at the county level.

I also want to point out that the Senate must closely relate with the county governments. A number of county governments are not able to perform well so far and unless they get guidance from this House, we are bound to lose. The county assemblies require a lot of capacity building through the Senate. Fortunately, the proposals in the new Standing Orders have taken into account the fact that the Senate can play some advisory role in terms of helping the county governments.

Mr. Speaker, Sir, insecurity in this country has reached alarming proportions and particularly for pastoral areas that have had serious problems. There are homegrown solutions that we know, but without enforcement from the national Government, particularly those charged with the responsibility of delivering security to this country have failed. The national Government security officials have failed this country. They cannot avert killings even when they are informed of an impending crime. Why are these officers holding those offices if they cannot avert crime? I hope that by the time we come back on 25<sup>th</sup> February, 2014, we should have had a number of those heads roll. They should either be sacked or redeployed where they best fit.

Finally, I want to speak about the relationship between the two Houses. It is my belief and the belief of a number of people that these things can be resolved with time if there is political goodwill from the top echelons of power in this country. Even if we engage in dialogue with our brothers, it may not help much. The President should put his foot down so that the National Assembly does not continue with this disgrace. I cannot shy from saying this. These are two Houses of dignity that require some close collaboration in terms of helping this country.

I second and thank you very much.

*(Question proposed)*

**The Speaker** (Hon. Ethuro): Given that we have ten minutes to go, I will allow two minutes per contributor.

**Sen. Murkomen:** Mr. Speaker, Sir, I would like to first point out that this has been a very interesting year. This is the year that some of us had the first opportunity to come to this Chamber and to be legislators.

I am proud to announce as the Chairman of the Devolved Government Committee that we have achieved a lot in terms of laying the foundation for devolution. We, as a House, have strongly defended the interests of the counties. We have succeeded in passing the necessary legislations, including financial legislations. We have also

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succeeded in raising the issues that needed to be addressed when it comes to matters of devolution. I urge the county governments that between now and February, they must start spending the money that we allocated to them in order to make a difference at the local level. When we come back, we will have set in motion the agenda for another Division of Revenue Bill and they must demonstrate to us that that money is making sense at the local level.

I support.

**Sen. Hassan:** Mr. Speaker, Sir, I want to touch on something that we did outside the Senate and draw the attention of the other Senators that as we come next year, that we have sports in *Bunge*. Five of us will be going to Kampala with the soccer team and two other Senators will be travelling to Kampala with the netball team. This helps us to keep our bodies and minds healthy. I think the Senate is under-represented. I am aware that Sen. Wako, Sen. Kembi-Gitura and Sen. Kagwe are good players. I would urge you to follow that interest passionately so that we can build a healthy cohesion. It has given us the opportunity to relate with our friends and colleagues in the National Assembly.

I beg to support.

**Sen. Elachi:** Mr. Speaker, Sir, I would like to appreciate Members from the minority side that we have worked with very closely. I also want to thank all Senators for being present when we wanted them in the House. I hope that when we come back, we shall have new Standing Orders that will guide us and we will have to follow them to the letter.

I also want to urge that as we go for the recess, we should identify the challenges the counties are facing so that we can move there and assist them.

I wish you a merry Christmas and a happy new year.

**Sen. Ongoro:** Mr. Speaker, Sir, indeed, it is in order to go for recess because we need time to spend with those that we represent. We also need time to critic ourselves individually and collectively as the Senate. We should spend time in the libraries to upgrade our skills and information banks. A recess is a well deserved break.

However, I stand to oppose this Motion because in view of the things that are happening in the country that are of national interest, we would do ourselves and the people of this country great injustice, if we go on recess before giving our input and allowing our critical voices to be heard on this very important issues.

Mr. Speaker, Sir, what is happening now with the Bills that are currently being debated even in the National Assembly, it would not be in order if we went on recess. We could extend the sittings up to next Thursday after giving our critical input in some of these issues. Earlier in the day, you also promised to give a ruling on the issue of the persistent flouting of Article 110 (3) by the National Assembly and you said that you were going to give that ruling soon. If we went on recess without giving you that critical opportunity to make a ruling on this issue, they may continue with that habit.

I oppose.

**Sen. Wamatangi:** Mr. Speaker, Sir, I rise to support. I want to start by---

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. When I look at the time, it is only two minutes to go before 6.30 p.m. and yet I can see from the Senators standing to contribute to this important debate, but definitely even if they spoke for a half a minute, not all of them will be able to speak. I also see that important issues are now being raised on whether or not we should adjourn. So, under Standing Order 33(a), that notwithstanding paragraph (i) and (ii), the Senate may resolve to extend its sitting time. So, I would like us to extend the sitting time until we finish debate on this particular Motion.

**The Speaker** (Hon. Ethuro): Order! Senators, it is good to read through to paragraph (iv). A Motion under paragraph 3 (a) shall be moved at least 30 minutes before the time of adjournment. That is what Sen. Keter was trying to do all along and there were very serious protestations from your side.

Sen. Wamatangi, I will give you only one minute.

**Sen. Wamatangi:** Mr. Speaker, Sir, I rise to support the Motion. I wish my colleagues a merry Christmas and a happy new year. Thank you for leading this House exemplarily. I would like to borrow from what you said yesterday that we will have a great duty next year to prove to the people of this country that devolution works. That should be our motto.

Thank you.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to strongly oppose the adjournment of this House because we have the experience in this country. A critical issue like the Media Bill is not going to be wished away. How will I be in Kakamega and how will you be feeling in Turkana to see the action and the fire---

**The Speaker** (Hon. Ethuro): Order! Turkana has a Senator known as Sen. Munyes.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. In fact, I was thinking of Sen. Munyes. It is important that we be here to help the Government unlock---

**The Speaker** (Hon. Ethuro): Order! Your time is up.

*(Question put and agreed to)*

## ADJOURNMENT

**The Speaker** (Hon. Ethuro): Hon. Senators, that concludes the business of the Senate today. The Senate is, therefore, adjourned to Tuesday, 25th February 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m.