

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 15th October, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Do we have a quorum?

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

I am informed we have a quorum. Let us commence business.

ADMINISTRATION OF OATH

Sen. Mbuvi: Mr. Speaker, Sir, may I introduce to the House the newly nominated Senator, Njoroge Ben, from The National Alliance Party (TNA), under the Jubilee Coalition, which is the ruling Coalition in the Republic of Kenya.

Sen. Njoroge is ready to take the Oath of Office.

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

The Oath of Allegiance was administered to:-

Njoroge Ben

(Applause)

Sen. Ong'era: Mr. Speaker, Sir, may I present to you the newly nominated Member of the Senate, Omondi Godliver Nanjira. Godliver is from the Orange Democratic Movement (ODM), as you know, the most popular party in Kenya.

(Laughter)

Hon. Senators: Ndiyo! Wambie.

The Speaker (Hon. Ethuro): Proceed.

The Oath of Allegiance was administered to:-

Omondi Godliver Nanjira

(Applause)

The Speaker (Hon. Ethuro): Hon. Senators, as Sen. Nanjira is settling down, I would like us to give them a round of applause in our usual way. We welcome them to the Senate.

(Applause)

Sen. Ben Njoroge and Sen. Omondi Godliver Nanjira, you are most welcome to the Senate.

Next Order!

PAPER LAID

REPORT OF THE COMMITTEE ON HEALTH, LABOUR AND SOCIAL
WELFARE ON VISIT TO LEVEL FIVE HOSPITALS IN UASIN GISHU,
ELGEYO-MARAKWET AND NANDI COUNTIES

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House, today, Tuesday, 15th October, 2013:

The Report of the Standing Committee on Health, Labour and Social Welfare on the study visit to Level Five hospitals in Uasin Gishu, Trans Nzoia, Elgeyo-Marakwet and Nandi counties.

NOTICE OF MOTION

ADOPTION OF REPORT ON VISIT TO LEVEL FIVE HOSPITALS IN
UASIN GISHU, ELGEYO-MARAKWET AND NANDI COUNTIES

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

THAT, pursuant to Standing Order No.201(6), the Senate adopts the Report of the Standing Committee on Health, Labour and Social Welfare on the study visit to Level Five Hospitals in Uasin Gishu, Trans Nzoia, Elgeyo-Marakwet and Nandi counties.

STATEMENT

DISQUALIFICATION OF DIPLOMA GRADUATES
WITH A KCSE MEAN GRADE OF C PLAIN BY TSC

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Sen. Obure: Mr. Speaker, Sir, about three weeks ago, I sought a Statement from the Chairman of the Committee on Education, Information and Technology regarding a large number of Kenyans who have been locked out of employment by the Teachers Service Commission (TSC). I was promised that the Statement would be issued last week. This has not happened. I stand to find out why this has not happened and when I should expect the Statement.

The Speaker (Hon. Ethuro): Can the Chairman of the Committee comment on this?

Sen. Kagwe: Mr. Speaker, Sir, first, I would like to apologize to Sen. Obure for the delay. He knows that is not the practice of our Committee. But we were delayed and derailed because as you are aware, there are a couple of issues at the TSC at the moment. We got a statement which we were dissatisfied with. We requested that the Statement be done comprehensively, so that we can present a report that we believe this House deserves. We will try and deliver this Statement next week on Thursday.

The Speaker (Hon. Ethuro): Is that okay with you, Sen. Obure?

Sen. Obure: Mr. Speaker, Sir, I accept the spirit of that Statement. But I urge that even as the Chair prepares to issue that Statement, he should be aware that there are Kenyans out there who are very anxious, they would like to know about their future. They have rights. I urge my colleague to issue the Statement next Thursday as he has promised.

The Speaker (Hon. Ethuro): It is so ordered. Let us have the Statement on Thursday, next week.

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

PERSONAL STATEMENT

STUDIES AT THE HARVARD UNIVERSITY AS A GO BRUTLAND SCHOLAR

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I rise to give a Personal Statement to the Senate. Sometime last year, in the month of October, I was invited to Harvard University as a Go Brutland Scholar for a period of ten weeks. I did not take up the offer then but I have now. I have requested permission from the Speaker to be away from the Senate for the next ten weeks. I am saying this because the last time I was away from the country, there were some very unfortunate speculations about my health, which is now fine. I would like my colleagues to know that I will be away to spend some time at Harvard University in Boston as a Go Brutland Scholar. So, there should be no unnecessary speculation about where I am. I will be in the United States of America not for health reasons, but for academic reasons.

STATEMENTS

INSECURITY ALONG THE BORDER OF

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NANDI/KISUMU COUNTIES

Sen. (Prof.) Anyang'-Nyong'o: Secondly, Mr. Speaker, Sir, although I did not ask for your permission, two weeks ago, I requested a Statement from the Chairman of the Committee on National Security and Foreign Relations on the status of security on the Muhoroni-Nandi border. Although I was assured that a Statement would be given, it has not been given and the situation has become worse. Yesterday, a farmer was killed in that area and there have been more invasions of farms. It is alleged that these people, armed with bows and arrows, have been snatching guns from policemen. I do not understand how somebody with a bow and arrow can snatch a gun from a policeman when the policeman has a whole platoon of policemen around him. There is really a lot of tension on that border. At this point in time, the last thing we need to have in this nation is this kind of politically-engineered inter-ethnic conflicts.

Sen. Sang and I have been appealing to the administration in that area to keep peace. But it looks like the police are in cahoots with these invaders surrendering guns to these people to continue spreading violence and deaths in the region. I would like the Cabinet Secretary for Interior and Co-ordination of National Government to take this issue seriously and ensure that peace and security is maintained on the Nandi-Muhoroni border.

Thank you.

The Speaker (Hon. Ethuro): Could we get a comment from the Chairman of the Committee on National Security and Foreign Relations? Is he not here? Is the Vice-Chair or any Member of the Committee around?

Sen. Dullo: Mr. Speaker, Sir, sorry I did not get what Sen. (Prof.) Anyang'-Nyong'o was asking for because I was talking to the Clerk-at-the-Table. Unfortunately, the Chair is not in today because of Eid-ul-Hajj. But I will make sure that by Thursday, we will have what he is asking for.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, this is a serious matter, one of life and death. So, by the Vice Chair giving me a promise that she will communicate whatever I am asking for is not very good. I would like to indulge the attention of the Vice-Chair to brief her on what the issue is.

Madam Vice-Chair, two weeks, I asked for a Statement from the Chairman of the Committee on National Security and Foreign Relations on the security situation on the Nandi-Muhoroni border where people from Nandi had invaded farms and occupied them. One farm belongs to a very eminent person in this country, Effie Owour. Along with that, they had snatched a gun from an OCS. We called the security people there and they said they would do something, but they did not because last night the same thing occurred whereby these invaders came in and killed a well-known retired school teacher. Apart from that, they also snatched another gun from another OCS. This is a pattern that cannot be accidental. It seems to us as if the police are in cahoots with these invaders to jeopardize the security of peace loving people living on this border between Muhoroni and Nandi. We believe the issue has a political intention otherwise the security forces

should have acted. Today I talked to the PPO in Kisumu. He was extremely economical with his words. This is something that should be taken up very seriously in the highest echelons of Government.

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

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

Sen. Sang: Mr. Speaker, Sir, I want to agree with the Senator from Kisumu County that there is need to address the situation within the Kisumu-Muhoroni-Nandi border. But he made a statement that I feel I should correct; that the invaders are coming from Nandi. This particular piece of land is located in Muhoroni region, within Kisumu County. I talked with Sen. (Prof.) Anyang'-Nyong'o last week. I also had discussions with the Nandi County Commissioner. They are in touch with the Provincial Administration within Kisumu County. The issue is a little bit complex. Making a comment that the raiders are coming from Nandi would be in bad faith. We need investigations to be undertaken so that we know where these raiders are coming from. Some of the fellows invading the farm are within Kisumu County. It is important not to project to the entire nation that the raiders are coming from Nandi County. More importantly, we need this comprehensive Statement so that we are able to understand the nature of the issue.

Thank you.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o? I hope you are not going to extend insecurity between the counties and the Senators of the same counties.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, far be it from me to believe and even have the conviction that the invaders are coming from Nandi County. I would be really happy if the origin of the invaders could be exposed so that my speculation is rendered negative. But at the moment, what happened last time is that ward representatives from Nandi County crossed the border to a place called Kopere and held a meeting there in defence of the invaders. There is already ocular proof as to the origin of these invaders which my friend, Sen. Sang and I would definitely like to know. Unfortunately, when the investigations are done, I hope Sen. Sang will be proved right, but the evidence so far existing on the ground points to that direction. I would like the people of Nandi and Muhoroni, to live in peace. I am a potential voter in Tinderet.

The Speaker (Hon. Ethuro): Sen. Dullo, what do you have to say about this?

Sen. Dullo: Mr. Speaker, Sir, this is a weighty issue that requires some time for investigations to be done. I would request Sen. Sang and Sen. (Prof.) Anyang'-Nyong'o give us until Thursday next week to be able to provide that Statement.

The Speaker (Hon. Ethuro): It is so ordered! Thursday, next week! Madam Vice-Chair, we believe that the Committee has a programme of how it works and any Member of the Committee can actually speak to this issue.

Sen. Karaba, I thought you had a Statement. If you do not want to proceed, there is no problem.

RELEASE OF FREE SECONDARY EDUCATION FUNDS

Sen. Karaba: Thank you very much, Mr. Speaker, Sir, for reminding me that I had a Statement to seek. But since I had not received your express permission to do it now, I was shy in seeking it.

Mr. Speaker, Sir, the Statement is on education, and I can see that the Chairman of the Committee on Education, Information and Technology is here. The Statement is about the ongoing problems being faced by schools countrywide as regards the provision of free secondary school funds which so far have not been remitted to schools. This has made schools and head teachers in the country embarrassed with regard to purchase of science equipment.

(Sen. Kagwe stood up in his place)

The Speaker (Hon. Ethuro): If you want to respond, why do you not just allow him to make the Statement?

Sen. Kagwe: Mr. Speaker, Sir, there was a point of order regarding his ability to ask questions.

The Speaker (Hon. Ethuro): Chair, I am sure that when responding, you will raise all the pertinent issues.

Sen. Karaba: Mr. Speaker, Sir, thank you very much for protecting me. As it stands now, there are schools which are facing problems regarding the purchase of examination materials and equipment. Some exams have already started while others will start next Tuesday and teachers are finding it very difficult to execute examinations because of lack of funds. So, I wish to seek this Statement from the Chairman of the Committee on Education, Information and Technology. He should tell us why the Ministry has not released the free secondary education funds to schools, particularly for the third term which is almost ending and the exams have started.

The Speaker (Hon. Ethuro): Sen. Kagwe!

Sen. Kagwe: Mr. Speaker, Sir, even though I am speaking after the horse has bolted, is it really in order for a Member of the Committee on Education, Information and Technology to come and raise a question on the Floor of the Senate, when if he had told me last week, we would have summoned the Minister concerned to appear before the Committee? By now, we would be providing solutions instead of questions.

Mr. Speaker, Sir, however, I will be happy to consult the Ministry and come with a report next week on Thursday.

Sen. Karaba: Mr. Speaker, Sir, if you may realize the gravity of this matter, the main exams are starting next week and the money has not been released by the Ministry. The heads are yet to buy materials which are supposed to be bought before the weekend. Therefore, when the Chairman talks about Thursday next week, I think that we are at a loss. We need to know how exams will be done.

Sen. Kagwe: Mr. Speaker, Sir, the information that I have, which I cannot confirm right now is that money has actually been released to the schools. Therefore,

what I will need is just to make a telephone call and find out, indeed, whether that is correct. But my understanding is that the Ministry has released the money, obviously, in recognition of the important issue that the Senator is raising.

The Speaker (Hon. Ethuro): In view of the concerns by both of you, I am sure that the Chair might be ready this coming Thursday. If it is just a matter of a phone call away, I am sure that you can always do so in the course of the day and by Thursday this week, give us a report.

What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. A matter of procedure has been raised by a Member of this House. Would I be in order to request you to enlighten the House on the right procedure on matters of a Member of a Committee asking his own Chairman a question?

The Speaker (Hon. Ethuro): I thought that I had seen interest from Sen. (Dr.) Khalwale and Sen. Kajwang, whom I always know not to shy away from any situation but apparently, they seem to have chickened out.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, is the honourable distinguished Senator for Nyeri in order to mislead the House that Sen. Karaba should not demand for the Statement, when Standing Order No.43 (c) is very clear that any Senator can request for a Statement from the chairperson of any committee? That Standing Order does not in any way define the kind of Senator who can ask for a Statement. It simply talks about a Senator; who is a Member or not a Member of the Committee or even one who does not have a Committee like some of us.

(Laughter)

Sen. Kajwang: Mr. Speaker, Sir, I think that the Senator for Kakamega has eloquently put it. I only want to suggest that merely belonging to a Committee does not deprive you of your membership of this House. Therefore, you can ask any question to any chairman or committee.

Mr. Speaker, Sir, just to add that this particular matter is serious because I heard it on radio. Some of the head teachers from my county called me and said that they had gone to borrow money to buy some of these equipment and materials, and the people who usually supply them were not willing to supply them anymore because some of them already have gone beyond their creditworthiness. So, it is a serious matter that if is a phone call away, I wish that tomorrow, the Chairman could come and tell us about it, so that we can be comfortable that our schools will handle the exams professionally.

Sen. Kagwe: Mr. Speaker, Sir, I concur with Sen. Kajwang and will, indeed, make a telephone call. In the event that I cannot make it tomorrow afternoon, a Member of my Committee, Sen. Karaba, will respond.

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators! I am not sure that the Chairman has such liberty to take the problem back. Sen. Karaba is asking for a solution.

Hon. Senators, to dispose of the procedural manner – I think the Chair was wise in seeking the wisdom of Sen. (Dr.) Khalwale and Sen. Kajwang – indeed, a Member of a Committee has an enhanced position to either deal with the matter within the committee or use the normal provision to any Senator to use the Floor. For some reason, Sen. Karaba decided to use the Plenary, and it is perfectly within his right. I do not think that he is making a statement on his Chair or membership to the Committee. Reading from what he gave me, he feels that the matter is of such national importance that he needs to attract maybe more limelight than he would ordinarily attract in a sitting of a committee that may be even close the business.

Mr. Kagwe, we will appreciate if you do it even tomorrow. I think that you have done better than you had even told us. So, this matter will come up on Wednesday afternoon.

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF COUNTY GOVERNMENTS PUBLIC FINANCE MANAGEMENT TRANSITION (AMENDMENT) BILL, 2013

THAT, pursuant to the provisions of Standing Order No. 123, the Senate resolves that the publication period of the County Governments Public Finance Management Transition (Amendment) Bill, 2013 be reduced from fourteen days to Eleven days.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I was ready to move this Procedural Motion, but when the Rules and Business Committee met this afternoon, it resolved and agreed that Orders Nos.8 and 9 be deferred to tomorrow. So, perhaps, you can guide us on that. But the position that I have is that this agenda has been recommended for deferral. So, this deferral is also happening here in the Senate.

Thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Before you pronounce yourself on his request, I rise on a point of order, to find out what has become of this Senate. Why is it that it looks like we do not want to discuss Bills?

Mr. Speaker, Sir, we are very excited that as soon as this Bill goes through the First Reading, we will have an opportunity, if Order No.8 goes through, to deal with the Bill. We have other Bills which have gone through the First Reading and never come for the Second Reading. I have in mind the Bill by Sen. Sang and the Bill by myself. I think that when we read in the media that the Lower House has done more Bills than the Upper House, where the real custodian of ideas are, it gives the impression that we are sitting on the job. The excuse given that they want to give the Committee an opportunity to look at the Bill before it goes for Second Reading cannot hold. This is because under the new laws, we have the pre-publication scrutiny which goes to the Committee. So, that was intended, in my view, to shorten the period of moving from the Second Reading to the

Third Reading, after the Committee has put in its input. So, maybe, as you make a decision, you could comment on my concerns.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The Standing Orders dictate that a Member has to give notice to the Chair on a matter of moving or removing a Motion from the Order Paper, at least, two hours before he really does the procedure. Therefore, is the Senate Majority Leader in order to make such a move now?

The Speaker (Hon. Ethuro): Order, Members! The Senate Majority Leader canvassed the deferral of the two Orders, Nos.8 and 9. That has been challenged by Sen. (Dr.) Machage on the basis of notice and Sen. (Dr.) Khalwale on the basis of what appears to be some tendency not to be keen to prosecute business before the House.

I will respond as follows: First, the Order Paper is approved by the Rules and Business Committee. So, in terms of the requirement of the notice, it is actually the Rules and Business Committee itself that decided, on a technicality, that the Bill is not ripe for debate. This is also as a result of our own Standing Orders that require that any Bill published by either House must be communicated to the other House. So, we need to get a response from the other House. That period has not elapsed for us to proceed. This is not just a House that is a custodian of ideas, but also a House that has distinguished itself as a serious observer of our own Standing Orders and the rule of law. So, we could not be the first ones to be seen to be breaking the same rules. That is really the explanation. Maybe the Senate Majority Leader should have done better. Ordinarily, I would even have told you as much, without even the intervention of the Senate Majority Leader, because that is my job. The other aspect raised by Sen. (Dr.) Khalwale would then appear like casting aspersions on the Senate Majority Leader or other Members of the House, to appear not to be keen on the business. Now you know they are so keen that they even overlooked a detail that was pointed to them.

(Motion deferred)

On the other outstanding Bills, there are also procedures. I definitely have your views – they are actually many – which are still undergoing pre-publication scrutiny by our own committees. So, until the committees deliver their reports and they are happy with them, then that is when we will bring it to your attention. We have, as the Rules and Business Committee (RBC) and as your Speaker, directed that committees must conclude that scrutiny in good time so that the business can now roll on to the rest of us. So, that is the position. We also have a *kamukunji* on Thursday at noon when some of those internal House matters will be discussed.

So, hon. Senators, along the thinking of Sen. (Dr.) Khalwale, you may wish to hold your horses for now until Thursday, during the *kamukunji*.

Thank you.

(Sen. Kajwang stood up in his place)

What is it, Sen. Kajwang?

Sen. Kajwang: Mr. Speaker, Sir, there is something that Sen. (Dr.) Khalwale mentioned and if we leave it without commenting about it, the Press can continue highlighting it. This is the fact that the Lower House has had more Bills than the Senate. If we let it go that way, then it will look like it is a fact, but it should not be a fact because the Lower House deals with many, many other Bills, while we deal with very restricted Bills as it is now. If we amend the Constitution and give ourselves powers to look at those Bills again, probably we will be doing the same number of Bills. But we are not denying that if the Press could have looked at what we have debated and reported properly, I think this House has done a lot of good work for this country.

(Applause)

The Speaker (Hon. Ethuro): Very well. I could not have put it better than Sen. Kajwang. So, let it remain that way.
Proceed, Sen. Elachi.

**NOTICE OF MOTION FOR ADJOURNMENT
UNDER STANDING ORDER NO.33**

NATIONWIDE INDUSTRIAL ACTION BY MCAs
OVER SALARY INCREMENT

Sen. Elachi: Thank you, Mr. Speaker, Sir. I wish to give notice to move a Motion of adjournment today, 15th October, 2013, under the provisions of Standing Order No.33 to discuss the national crisis emanating from the ongoing industrial action by the Members of the County Assemblies (MCAs) countrywide over poor terms and conditions of service. The action of the MCAs has adversely affected the work of the county governments and, therefore, the Senate should adjourn its business to deliberate on this urgent matter and offer proposals on how the crisis can be resolved.

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): If you are seated, you do not need to stand because the ones already standing are overwhelming.

Please, resume your seats.

Yes, you have satisfied the requirements of the Standing Orders and, so, we will debate this matter from--- How many hours do you need?

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

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

Sen. Murungi: Mr. Speaker, Sir, thank you for recognizing and describing this House as the House which is the custodian of ideas.

Mr. Speaker, Sir, this is a very important Motion to this country. As we are talking, there is nothing happening. The county assemblies countrywide and the entire

devolution process has been paralyzed because of the activities of one executive by the name of Commissioner Sarah Serem.

Mr. Speaker, Sir, although Motions of this nature are usually given two hours, it is my very humble request that the Senators be given ample time to ventilate on this issue because it is our core duty under Article 96 to represent the interests of the county governments which include the county assemblies. So, I am requesting that we look at a minimum of three-and-a-half hours.

The Speaker (Hon. Ethuro): Order, Senators! Even if I wish to be generous, I do not have the capacity to dispense that generosity. This is 3.22 p.m., so, if I were to give even three-and-a-half hours, you will exceed 6.30 p.m., which is the maximum time we operate in. So, I will give you three hours so that we should conclude by the end of business at 6.30 p.m.

Sen. Murungi: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Then before I allow the Mover of that Motion to move her Motion, I want to give a Communication from the Chair on the Joint Committees of Parliament.

COMMUNICATION FROM THE CHAIR

JOINT COMMITTEES OF PARLIAMENT

The Speaker (Hon. Ethuro): Hon. Members, we will appreciate that we constituted all our committees, including the committees that are joint with the National Assembly sometimes back. All other committees have been operational except the Joint Committees, because we were awaiting the names from the National Assembly. I am, therefore, happy to report that after a meeting, two weeks ago, with the leadership of the National Assembly, they have now written to us to confirm the membership to the Joint Committees from the National Assembly, and they are as follows: Because we do not have another mechanism again to--- We cannot do another resolution because we had already done our bit.

The Joint Committee on National Cohesion and Equal Opportunity, membership from the National Assembly will include:

Hon. Johnson Sakajja, MP
Hon. Peris Tobiko, MP
Hon. Kimani Ngunjiri, MP
Hon. Roba Duba, MP
Hon. Francis Mwangangi, MP
Hon. Moses Injendi, MP
Hon. Maison Leshoomo, MP
Hon. Zipporah Jesang, MP
Hon. Grace Kipchoim, MP
Hon. Mohamed Elmi, MP
Hon. Maj-Gen. (Rtd.) Joseph Nkaissery, MP
Hon. Mohamed Diriye Abdullahi, MP

Hon. James Gordon Rege, MP
Hon. Rose Museo Mumo, MP
Hon. George Omondi Mallan, MP
The Joint Committee on Parliamentary Broadcasting and Library, the National Assembly has the following Members:

Hon. Isaac Waihenya, MP
Hon. Samuel Mathenge, MP
Hon. Ayub Savula, MP
Hon. Leonard Sang, MP
Hon. Wesley Korir, MP
Hon. Francis Waweru Nderitu, MP
Hon. Justice Kemei, MP
Hon. David Kosing, MP
Hon. (Prof.) Hellen Sambili, MP
Hon. Alice Nyanchoka Chae, MP
Hon. Mustafa Salim Idd, MP
Hon. Khamis Mishi Juma, MP
Hon. Bady Bady Twalib, MP
Hon. Regina Muia, MP
Hon. Mwanyoha Hassan Mohamed, MP
Thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Just as a reminder, I wanted to draw your attention to the fact that, also, you had asked the same National Assembly to give you names of people who would join the names you had proposed so that we could vet and iron out the suitability or otherwise of the Bill on flags, emblems and titles. We have been waiting and that Bill is still pending. Of course, that communication has not come. We do not know who to sit and discuss with.

The Speaker (Hon. Ethuro): I know that is one of your Bills and there is no communication. I am still waiting. That was our proposal. What we finally agreed on was that we will go by the period in which the publication took place. As you are aware, there are even two Bills to that effect. But since yours came first, it will assume precedence and it will be the Bill that will be considered. What was remaining was the harmonization process so that when you finally carry the Bill, it is a Bill shared by both Houses after having taken into account the proposals from the other House as well. So, our people are working on that one and you will have your Bill to prosecute.

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

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

Sen. (Prof.) Khalwale: Yes, indeed, Mr. Speaker, Sir. This is why I want to express my happiness. But my concern is that under what Standing Orders is the respective Committee attempting to harmonize the two Bills? My understanding would have been that if we are starting with my Bill, then my Bill will be discussed in this House, and when it will go to the Lower House, then our Bill will be informed by

amendments that we will put into the consideration of the other Bill that had originated from the Lower House. Could you shed light on that, because we are a House of rules?

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, I have given time for the other Motion, which is to start by exactly 3.30 p.m. So, I have only one minute to respond to you. In fact, I will not respond out of mutual respect. I will respond to you at the *kamukunji* on Thursday and that will be consistent with my earlier advice. Some of these things are in the House and they do not need to come to the plenary. I can only guarantee you that whatever we are doing is in your best interest.

Now, proceed, Sen. Elachi.

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

NATIONWIDE INDUSTRIAL ACTION BY MCAs OVER SALARY INCREMENT

Sen. Elachi: Thank you Mr. Speaker, Sir. I wish to, first, thank the Senators for accepting to debate this issue today. As I mentioned, under the Standing Orders, indeed, this is a national crisis. If you look at what is happening within the country---

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. Sen. Elachi should first move the Motion and then explain.

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

THAT, the House do now adjourn.

I began by saying that it is important for us to look at what has been happening since June. In June, the leadership of county assemblies met in Nairobi on 12th with the Chairperson of the Salaries and Remunerations Commission (SRC) and agreed to carry out a job evaluation which she had requested. She had requested to be given three names by the county assemblies so as to carry out the job evaluation until 12th September.

In August, when they met, they decided to follow up since time was elapsing. The Members of County Assemblies (MCAs) called the Chair of the Commission and in her response, on phone, she said that she had not started the evaluation process. She added that she was having challenges with her procurement team in giving out resources to start the evaluation process. She called again and told the Chairperson of the County Speakers that she had not started the job evaluation but a pre-evaluation would start this month.

I think the county assemblies felt that after using the procedural path in terms of engaging the SRC, they were being taken for a ride because one, she would respond very well in letters but of late, she has been responding through the Press. We have been requesting the Commission to look into issues of sensitivity and engage in a manner that respects one people and a manner that is dignified especially when you look at county assemblies under Article 185 of the Constitution which is very clear.

You should ask yourself why the Commission wants to do a job evaluation because the mandate of these people is very clear under the Constitution. It lays out the legislative work that the MCAs are supposed to do.

Today, considering that Madam Serem is a woman who should understand is, indeed, a reflection of lack of respect to families and this country. While MCAs are on strike, they are still receiving salaries. However, in law, you are not supposed to receive any salary when you have decided to go on a strike. That is one thing they do not understand.

Today, if you read the newspapers, you will see that one of the challenges that the Governor for Makueni is facing is related to MCAs. The Governor wants to resign. The whole county will be making sure that when they bring the names to the Senate, the Governor is not impeached. However, they will make sure that the Governor is stressed, hospitalized and, therefore, because he does not want to die – like Prof. Kibwana said – he resigns. Prof. Kibwana said that he does not want to die because of high blood pressure.

Indeed, even his family members are wondering what he is doing in that office if he will end up dying. These are some of the things that Commissioner Serem must look at seriously. One of the things we do not understand, even in the Senate, is whether the Commissioner's powers override the Constitution.

These are jobs which were created after the new Constitution was passed. Since 2010, Commissioner Serem cannot tell us that she has not had time to evaluate people before they came into office. She should have known how many people would be coming to office and how she would pay them. She should have known that she has 2,000 MCAs coming into office and their job descriptions. She says that she does not have money. However, she should give them a dignified package to make them work. That is one thing that Commissioner Serem has never understood. I doubt if she would have appreciated to be treated the way she has treated people, not only the MCAs but also Senators.

Mr. Speaker, Sir, Senators, today, are still awaiting replies of the proposals that were sent to her. She has never bothered to say that, indeed, she received our letter and given us the status. That way, we would understand how things are and move on. The MCAs are now about to go to a period where they will be looking at the next budget. They are saying that they are on recess. They do not want to use the words; “we are on strike.” They told me that they are on a legal recess because they will not be getting any salary. They said that if they do not get salaries, counties will close down.

Indeed, we are seeing it happening. The counties are about to close. I am urging and requesting this House to summon Commissioner Serem in a Committee of the Whole. We will not call her to appear before my Committee on Devolved Government but before a Committee of the Whole where we will ask her questions.

We should ask Commissioner Serem whether she understands the word devolution and what she wants to achieve. I think those are the things she does not understand. If she understood the meaning of devolution, we would have moved on. The county assemblies are requesting something that is not binding. They are saying that if they will not get their salaries today, they will wait. However, they should be given a period of when the salaries will come. They should also be given the way forward.

When someone is in a comfort zone, they do not think about someone else. That is the challenge we are facing as Kenyans. When we are in comfort zones, we do not even care about those who do not have jobs. I know that as Senate, we have stood firm

with the counties. You have fought for this course even when times were very difficult in terms of transferring functions and fighting for the existence of MCAs. I think it is time we stood firm with our 2,000 MCAs and ensure that they go back to work in a manner that is dignified. They should come back after reaching serious resolutions with Commissioner Serem on the package they will receive while doing their jobs.

I beg to move.

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for the opportunity. I also want to thank you for allocating time to discuss this important matter. I agree with the Mover that, indeed, this is a national crisis and we should not shy away from discussing it.

I want to remind Members of this Senate that our first responsibility, as a Senate is, indeed, to protect the counties and their governments. I remember a Member saying here and reading out our mandate. He said that our mandate is to protect county governments. However, he said that he did not know what to protect the county governments from. It is now coming out clear who we are supposed to protect our county governments from.

Mr. Speaker, Sir, the county assemblies are an integral part of the county governments. Therefore, it is our responsibility, as the Senate, to make sure that the county assemblies are well protected and functioning but when county assemblies are on strike, it becomes our responsibility to ensure that things come back to normalcy. I want to state that this is not the first time that this kind of Motion is coming to the Floor of this Senate. We have discussed this matter before; about the remuneration of MCAs. I remember that we all, in one voice, supported a Motion of adjournment and urged the SRC to sit with MCAs plus their leadership and make sure that this matter is resolved.

I am talking to Commissioner Sarah Serem and her Commission. Let Commissioner Serem be informed that under the new Constitution, the county assemblies cannot be equated to the old county councils that were there. I think that is the mistake that SRC is making.

Under the new Constitution, the county assemblies have been assigned a lot of responsibilities, legislative and others. Therefore, it is important that we pay them in accordance with the responsibilities that they have been given. A pay of Kshs79, 000 for a Member of a county assembly is a joke. We cannot pay them peanuts and expect them to carry out responsibilities that have been bestowed upon them like oversight of the governors and their budgets, legislation work, among other duties. It is high time that we stood up as the Senate and spoke with one voice so that this matter is resolved once and for all. Let us not make the Senate a talk show place. We want to take decisions here.

I want to agree with the Mover that Commissioner Serem should be summoned by this Senate so that this matter is discussed and resolved once and for all. It is a shame that this Commission has no respect for elected leaders in the country. Members of the County Assembly are very important people in the society. They are elected by the people and, therefore, must be treated with the respect that they deserve. They must be given a dignified package so that they carry out the responsibilities that they have been given to them by our Constitution.

I, therefore, urge Senators to support this Motion in full and to insist that Sarah Serem and her Commission appears before the Committee of the Whole so that she answers some of the questions that are burdening some of us.

I second.

Sen. Kittony: Thank you Mr. Speaker, Sir. I seem to see a stranger in the House. Is it in order for the Senator for Mandera to be here while he is not properly dressed?

Hon. Senators: No, it is the Senator for Wajir.

The Speaker (Hon. Ethuro): Order, Senators! The Chair listens very carefully. I was looking for the Senator for Mandera but I cannot see him around.

Sen. Kittony: Mr. Speaker, Sir, I meant to say the Senator for Wajir. Is he properly dressed?

The Speaker (Hon. Ethuro): Can we have a look at the Senator? Come and explain yourself.

(Sen. Abdirahman walked to the Dispatch Box)

Sen. Abdirahman: Mr. Speaker, Sir, first of all, I do not come from Mandera. I come from Wajir as you have rightly put it. I am very much in order although you are here to guide. This is a day that Muslims are celebrating Eid-ul-Adha, a very important day. I ordinarily dress like this any other days. This is a dress that covers the body properly. This is a practice that is there. However, you are there to guide us. I am not here to challenge you.

The Speaker (Hon. Ethuro): Order, Senators! For the benefit of Sen. Kittony, the Senator from Wajir County also happens to be the Deputy Minority Leader and now the Acting Senate Majority Leader. He is not only properly dressed but also dressed for the occasion. So, let us leave it that way.

(Question proposed)

Sen. Kembi-Gitura: Mr. Speaker, Sir, I want to start by thanking the Chief Whip, Sen. Elachi, for bringing this very important Motion. We, as Senators, are the custodians of the counties and county governments. All of us at the Senate agree that devolution is the future of this country. Devolution in plain English is the movement of responsibilities from a higher level to a lower level and the lowest level of the county government is the county assembly. I am a very strong supporter and defender of devolution and I sincerely believe that the future of this country, the development of this country and whether or not we shall achieve our goals and dreams as enunciated in Vision 2030 will very much depend on how serious we take devolution.

I believe that devolution is the catalyst to the development of this country and it is the link that we have missed for so long. It is what we need to nurture and take very serious care of, if we want to achieve our dreams, our visions and our goals.

The people dealing with devolution, the most important thing in the wheel of devolution, in my very considered opinion, are the Members of the County Assembly (MCAs). If we lose that link in the chain, then devolution is going to be very adversely

affected. All of us know that very little is happening in the counties at this moment. The reason is what we are talking about; because of the Sarah Serem situation where she has almost completely refused to listen or engage the county assemblies so that they can reach a compromise, a middle ground level or reach an agreement on what the MCAs need to be paid. This is not a small issue because if the MCAs are demoralized or go on strike like they are doing now, it means that the county governments led by governors do not have anybody carrying out oversight role over them. If there is no oversight to the governors, then you can be sure that they will do what they want. They will rampage in the counties and they are going to do what they want to do because they know that nobody is doing oversight above them.

Mr. Speaker, Sir, what is this oversight role and why is it so important? I submit that that is the most important role that we can deal with because in the same way that the National Assembly does oversight over the national Government, that is, the National Assembly has power to summon Cabinet Secretaries to explain themselves in the way they are running the national Government. It is the same way that the Members of county assemblies have that role and the power to call the executive officers of the county so that they are answerable to them on the budget and the way they are running counties. If they are not doing that, then how are we sure that the counties that we represent are proceeding in the way they ought to. This matter should be taken care of so that the people we represent have the necessary representation.

At the beginning of this Senate, we said that we do not want or even wish to be seen to devolve corruption to the counties. If we do this, then we would have lost everything. Due to the little salaries paid to MCAs, they are tempted not to deal with the issues of the county but instead concentrated on other issues so that they can also make a livelihood. If this happens, then devolution is going to be adversely affected and in my considered opinion, we shall have lost the dream for which we passed a new Constitution in August, 2010 which was to bring services closer to the people, bring governance closer to the people and to grant to the people that position or ability to be part and parcel of their own governments. The link between the people and the county government are the MCAs.

Mr. Speaker, Sir, in supporting this very important Motion, I want to again urge the Commissioner in charge of this Commission, Commissioner Sarah Serem, that this is an extremely important issue and that dialogue is the only way out and she cannot wish away MCAs or assume that this problem is going to go away because it will not. She has to deal with it because she is the only person at the moment empowered to deal with it, she would better take the bull by the horn, bite the bullet and sit down with them. We know for sure that if there is a will, there is going to be a way. Dialogue is the only way out. The solution is not to run away from this very important issue. Somebody has asked where the money is going to come from. With respect, that cannot be the correct question to ask at this time because the counties have budgets. If MCAs have to be paid from that budget, then it needs to be budgeted for.

All the counties need to tighten their belts so that at least the MCAs are able to get a substantive and equitable remuneration for a day's work. All of us agree that what they have been paid now is not and cannot be said to be decent pay for the work that they have

been elected to do. We are not talking about councillors. We are talking about MCA, who are essentially like Members of Parliament and who are representing much larger constituencies than councillors did at that time. These are people dealing with issues of devolution including how money is going to reach the people that they represent, be it school bursaries and other development issues. So, how are they going to do it considering what is happening now because they are not in office? I think this is a matter of national importance and I think this is an issue that we, as the Senate, need to take with a lot of seriousness. We should make Mrs. Sarah Serem understand that we are talking about continuity and the essence of that thing that we, as Senators, swore to protect, that is, how well the counties are going to run.

Mr. Speaker, Sir, I want to end by saying that I do not believe that the money the MCAs are currently getting is decent pay. I want to believe that they are reasonable people and have been reasonable people who are willing to meet and agree on what is reasonable. But it cannot be that the person telling them what is reasonable is the same person setting those limits without giving them a chance to even talk about it themselves. When was the last time she had a chance to sit down with the representatives to discuss this important issue? Why has she decided to look at them contemptuously and refuse to engage with them? Why does she think that this is not a very important issue? How does she expect the counties to run now that the MCAs are not going on with their normal work? How does she think her actions are affecting the future of this great nation? Those are questions that she must answer and think about. Once she does that, she will find that it is not about individuals anymore but it is about the future of our country, the future of devolution and the cement that binds this nation. My submission is that it is at that level of representation in the county where the cog of devolution is at its most important.

I support this Motion very seriously and I want to believe that although we will not come up with a resolution because this is a Motion of adjournment but the Salaries and Remuneration Commission (SRC) is going to take this very seriously. The Senate adjourned its business not to discuss her but to discuss this very important issue that she has put on hold, therefore, putting the whole nation on hold.

With those few remarks, I beg to support.

The Speaker (Hon. Ethuro): Hon. Senators, I am happy the Deputy Speaker has ended the way he did because I was getting concerned on the many questions being post to the “she”. So, I want to make an appeal that we look at the issues and interrogate the Commission. Of course, we know who is where in the Commission in terms of corporate identity but because we are relating as an institution and also for the good reasons he has said about us being custodians of many things, we are also custodians and promoters of dignity, respect and appreciation no matter the circumstances.

The second issue where I need your leave, Standing Order No.33 (4), requires that in this Motion, we contribute for a maximum of five minutes. My feeling is that the Clerks-at-the-Table have been struggling to cut people short but I think it is important to allow those who wish to ventilate a bit more to have that kind of latitude. I need your leave to raise it to ten minutes. Is that okay?

Hon. Senators: Yes!

The Speaker (Hon. Ethuro): Let me now give the opportunity to the Senator for Nakuru.

Sen. Mungai: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute this very important Motion by our Chief Whip.

Mr. Speaker, Sir, it is true that our country is almost at standstill because most of the county assemblies are apparently on the so-called illegal recess. I stand here to narrate what is happening in my County of Nakuru. It is very unfortunate because Members of the County Assembly (MCAs) in Nakuru are suffering a lot. I will try to explain a bit why this is the case. There was a feeling that the issue of the salaries for the MCAs was going to be looked into at an earlier date. Because of that feeling, the County of Nakuru went and guaranteed a Kshs2 million loan from the bank for the MCAs, which they took. When they took this money, the repayment was Kshs50, 000 per month. So, from the Kshs76, 000 that the MCAs are being paid, after repaying Kshs50, 000, they are left with Kshs26, 000. From this Kshs26, 000, they are supposed to run the vehicles that they bought and cater for their families. We, Senators, also know that we have a huge problem of harambees and the MCAs also have to contribute to these harambees and so many other things. So, the situation of the 55 MCAs that are in Nakuru, together with the nominated ones, is very pathetic. Most of them have been getting negative salaries and I agree that the action that they have taken is right, because if we are not sensitive to their plight, it means that they cannot fulfill their mandate. This is because they cannot continue suffering endlessly.

Mr. Speaker, Sir, since Nakuru has 11 constituencies, it means that there are MCAs who come from as far as Kuresoi, Subukia, Mai Mahiu and Maela. Those are very distant areas and if the MCAs have to commute to Nakuru during the time that they are supposed to be running business in the county, it is a big challenge. I have been supporting them and it is very difficult for me to continue doing so. So, it is important that the relevant bodies that are mandated to look into the remuneration of the MCAs in our country and within the various counties be sensitive and human.

Mr. Speaker, Sir, someone said that Governor Kivutha Kibwana has high blood pressure and all that, because of the frustrations that he is getting, since maybe his county assembly is not running. If the governors are sick, then our MCAs are “dead.” If they are not “dead” then they are “buried.” So, it is important that we stand with the MCAs, so that they can continue with the confidence that they have been having with the Senate. This is because they say that we are their lifeline. It is important that all the Senators support this to ensure that we have MCAs who are comfortable and happy. By them being comfortable and happy, they will be able to perform their various duties in the manner that will benefit the electorate.

I beg to support this Motion.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, first of all, I want to thank my sister, Sen. Elachi, the Chief Whip of the many, for bringing this Motion. We, as the Jubilee Government, have assured Kenyans that we will use our numbers for the sake of the people of Kenya. So, when mighty is required, we will use it to ensure that our county assemblies are back to operation.

Mr. Speaker, Sir, this matter touches the heart of devolution. It is for that reason that this Senate exists. But what we have seen in the past few months is a cadre of institutions and officials who want to do things in such a way as to bring devolution down. I know that you have reminded us of Standing Order No.33 (4), and I will avoid mentioning names. But I cannot avoid saying that this is the business of the Salaries and Remuneration Commission (SRC). In my personal view – and I think that I speak for many of my colleagues – this conduct that we have seen in the treatment by the Commission in charge of this matter amounts to delegation of duty. I want to say, without batting an eye, that the salaries that the MCAs are earning are peanuts; meaning that the question of where the money will come from does not arise. It must come from somewhere, because we will not have an MCA earning Kshs79,000, which will be taxed and expect him or her to oversight a governor who is earning Kshs1 million and even some of the junior people in the county executive.

Some office secretaries are even earning over Kshs70, 000. I am not saying that, that is not a good job, but you cannot compare the work of an office secretary, who is servicing one officer somewhere, to that of an elected MCA responsible for a huge area, which is now a ward. So, this pay is very little. At the minimum, it should be pegged to the pay of the so-called ministers. There are some people in the villages calling themselves ministers, when the correct term both in the Constitution and County Government Act, for the avoidance of doubt, is “executive committee member.” That is a good correction to make, because one of the reasons the MCAs are being seen as lower than anybody else is because these other people who are associated with executive power have given themselves names. So, if you go somewhere, you will hear: “Mr. Minister, welcome.” The so-called “minister” is actually an executive committee member in charge of agriculture in the county. So, that recognition should actually go to the MCAs.

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. Is it correct for the Leader of the many, to suggest that the word “Minister” still has any meaning, when it is no longer in our Constitution? So, anybody who wants to use it, can use it as he wishes.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the Senator for Homa Bay is supporting me. The word “Minister” is not there. The word that is used is “Cabinet Secretary” which is the equivalent. My argument is that the officers who are serving as members of the executive committee are neither ministers nor Cabinet Secretaries. They are members of a committee, period.

Mr. Speaker, Sir, having said that, I also want to call for humility from public servants. I am saying this because in the last two weeks, we have seen the Senate, including our able colleague, the Senator for Nandi, being under siege from public servants and constitutional Commissions, who are using funerals and birthdays to try and interfere with the legislative authority of this House. I want to warn public servants that the Constitution says that the legislative authority of the Republic of Kenya is vested in the people of Kenya and exercised through Parliament, mainly the National Assembly and the Senate. On the matter of making law, we are not subjects to a public servant, Cabinet Secretaries or any Commission. We are only subject to the people of Kenya.

Mr. Speaker, Sir, in the interest of time, I want to say that without county assemblies, devolution is dead. We can as well forget devolution. We are not going to

allow devolution to die because if it dies, then the Senate is also dead. So, I want to send this message loud and clear; that going forward, the Senate will not sit idle and watch county assemblies grinding to a halt. So, we will do whatever it takes and is required to ensure that the county assemblies start operating immediately. So, we are requesting the Chair of the Salaries and Remuneration Commission (SRC) to do her job immediately. We are also requesting the Senate Committee on Devolved Government to make an arbitration effort. Before going through the adversarial system of summons, let us try to arbitrate between the SRC and MCAs, but within a very short period of time, so that if any party is not co-operating, then we can go to the next level.

Mr. Speaker, Sir, lastly, in view of the current standoff, I think that we should also ask ourselves whether time has come for us to review certain aspects of the Public Finance Management Act and County Government Act. This is because I think that part of the problems that the MCAs are going through today have been caused by a skewed legal framework, which is heavily in support of the county executive at the expense of the county legislature. So, going forward, I want to promise the people of Kenya and my colleagues that I will be looking at possible amendments that we can bring before this House, so that the county assemblies can be made stronger, more visible and empowered, so that they can do their role of overseeing the county executive. This will ensure that devolution works.

Mr. Speaker, Sir, with those many remarks, I beg to support this Motion.

Sen. Abdirahman: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very, very important Motion that touches on a very important segment at the lower level in terms of representation. I was elated when I heard my brother, Sen. (Prof.) Kindiki, say that they will use numbers to actually support the plea of the Members of the County Assembly (MCAs). We may not necessarily require big numbers; but we require a little tact, diplomacy and probably, goodwill from those who are at the helm of power.

Mr. Speaker, Sir, these independent Commissions, as much as they are independent, must be responsive to the plight of the people they are expected to serve. During my last visit to Wajir, I had a chance to talk to the MCAs on a range of issues, and the one that came at the top was actually their salaries. I do not think the brushing off of the MCAs will help this country. As mentioned by a number of colleague Senators who spoke before me, the MCAs are actually at the heart of development at the lower levels. These are not the ordinary councilors we used to have in the early days when we served in Parliament; these are people who represent a number of wards that were, in fact, merged. In places like yours and where I come from in particular, we have vast distances which these people have to cover. Paying a gross salary of Kshs79, 000 to MCAs is peanuts, as mentioned by a number of speakers. These are people who have to go round and talk to communities. These are people who have to oversee the budgets at the county level; and, these are people who have to help in planning for the necessary development we need at the lower levels. I do not think brushing them off just like what the Sarah Serem led Commission did and what we see on television is a sign of being responsive.

Mr. Speaker, Sir, I do not think this Commission has taken into account the various office holders as brought in by our new Constitution, even the Senate. I

remember listening to her during our induction workshop in Naivasha a few months ago, and she admitted that she did not know what the Senate job entailed; she accepted it and this is not a secret. She said these are jobs for which they had not done any job evaluation. If the Senate did not exist then, how would she know what the Senator's job entailed? Even the MCAs did not exist. We have failed to actually do evaluation of the various tasks or functions of the various office holders as explained or as rightly put in our Constitution. I think that instead of just saying a big "no" all the time on television, the Sarah Serem-led Commission must go to the ground, listen to the people and the various stakeholders and allow them to give their input. It is critical that she accommodates the views of the people who are affected, including the MCAs.

Mr. Speaker, Sir, MCAs have, time and again not been able to carry out their functions demanding that their plea is heard, and I think this is hurting our county assemblies. Work will not move as expected. Why do we want to hurt the common man that we are supposed to be serving on an item that can easily be sorted out? Sen. (Prof.) Kindiki has assured us that the Jubilee Government is going to do something. Can they do it tomorrow?

(Applause)

I want them to pledge that they will do that. But if they do not do it, I think we will do it because we are going to follow up on it.

Thank you very much.

The Speaker (Hon. Ethuro): Sen. Elizabeth Ongoro.

Sen. Ongoro: Thank you, Mr. Speaker, Sir. I rise to support this Motion and I want to thank the Senate Majority Chief Whip for bringing this Motion.

Mr. Speaker, Sir, this is a national crisis of such magnitude and with the capacity to actually derail the operations of this Government. This is because under the new Constitution and the devolved system of governors in this dispensation, if county governments are not going to be fully operational in the manner that was prescribed by the Constitution and if they are going to fail by any means at all, then I think it would be right for us to look at the example of the US. Sometimes taking issues lightly, overlooking them and wishing away certain issues, not confronting issues and tackling them in the right way can lead to such a big problem that sometimes, by the time we think of it and sit down to re-evaluate it, we will have lost so much.

What is the mandate of the Salaries and Remuneration Commission (SRC)? We understand their mandate is enshrined in the Constitution and, yes, it is weighty and extensive. Yes, we also accept that this Commission is acting within its mandate. We also accept that the scope of work of this Commission actually affects all public servants and that the MCAs fall within this category. But I have issue in the attitude of the office holder; the person of Commissioner Sarah Serem. Her attitude is one of high handedness as if she is dealing with some robots somewhere. I have an issue in the manner of communicating her decision through the Press. She is communicating to elected leaders of this nation, but the manner in which she addresses and communicates to them is wanting. I have an issue in the way she conducts business of that office. The only reason

why we have not had computers placed in offices where we feed in data and it gives us results, but instead we have human beings sitting and occupying offices is because the office of the kind that Sarah Serem has been bestowed with does not just need that you lead with your brains alone – maybe 90 per cent – but you should inject a bit of your heart and 10 per cent of emotions into it.

Mr. Speaker, Sir, I feel that Commissioner Serem has created this stalemate. Even if she was to be firm, duly respected by these office holders, conducted her business with a lot of decorum, held very many consultative meetings with the MCAs and listened to their views, I honestly believe that she would have collected enough data to communicate and convince the Executive and would have become the bridge between the MCAs and the Executive so that we can consider what these people are requesting for.

Mr. Speaker, Sir, let us take the example of Nairobi. An MCA who earns about Kshs79, 000 and, after tax, we are talking of about Kshs50, 000. Any house in Nairobi County – and I am not even talking of a house in Buru Buru or the likes; I am downscaling to Dandora, Kariobangi and such areas – we are talking of Kshs15,000. So, when you extract Kshs15, 000 from this Kshs50, 000, this MCA is left with Kshs35, 000. Take away his transport every day to town and back and his lunch, he is left with about Kshs20, 000. This person has got a mandate to represent the people. This person has got a wife or husband and children and other responsibilities. You expect him to sit in Committees and at forums that he is supposed to oversight an expenditure of Kshs12 billion or Kshs20 billion and to cushion officers who are earning Kshs1 million with entire motorcades and 50 *askaris* around them, whereas this man is perpetually and perennially broke.

An hon. Senator: Shame!

Sen. Ongoro: Mr. Speaker, Sir, if this person just decides to buy them lunch every day, what kind of decisions do you think we are going to get from these kind of county governments? Do you think anything is going to be interrogated? So, sometimes in attempting to save, we might actually lose more. We might think that, as a Government, we are saving by not giving these people just a small salary increment, but by extension, what we might lose as a Government by paying them peanuts runs into hundreds of billions. Because if you do not remunerate somebody well, you do not expect him, first, to give his best; secondly, to attend all meetings; thirdly, to interrogate effectively and, fourth, to report any misconduct when he finds one. Instead, if he notices anything, he will go to bargain with that to that officer and then he will be sorted out at a personal level, and then he leaves. That officer will squander Kshs1 billion and give this man Kshs200, 000. Since he needs it so much, the country loses a billion or something like that. So, really, let us relook at this issue.

Commissioner Serem is telling us now that she wants to undertake an evaluation; an evaluation of what? These people are office holders who have already been evaluated by the Independent Electoral and Boundaries Commission (IEBC) and found fit to hold those offices. Is she starting afresh? Are we reinventing the wheel? What is she going to evaluate? Is she going to come up with a proposal, for example, that they should be remunerated according to the varying educational levels? That will cause another stalemate and a bigger problem than this. I really want to communicate to Commissioner

Serem, if only she could open her eyes and understand that, that one office can actually derail devolution. It can actually bring this Government to its knees by simply refusing to facilitate and ensure that county governments are run smoothly. She should understand that every statement she makes affects every corner of this nation and almost every household, because we are dealing with MCAs who are really dealing with people at a closer level.

Mr. Speaker, Sir, I want to request her to rethink her strategy; to rethink her hard stand on these issues; to probably set up a small committee between all the various MCAs from the 47 counties – maybe a person from each county – to deal directly with her office and then they come up with some resolutions and recommendations that could then be presented to the Executive for consideration. Without that, I want to state that even as we speak on this issue, governors are expending. They are moving on without the arm that is supposed to interrogate their expenditure. So, by the time we probably sort out this issue, so much will have been expended without oversight or interrogation. Maybe somebody somewhere is really enjoying this stalemate because for them, it is even good. These people who were really giving them problems and were interrogating their every move are actually out of office for now and, so, they can implement the 90 per cent of the things that they really wanted to implement. By the time the MCAs come back to occupy their offices, there will be no money left for even interrogation any more.

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

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

I beg to support.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kiraitu Murungi.

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support this Motion. What we are seeing is a deliberate attempt to undermine devolution. One of the ways of killing devolution is denying people funds. We cannot hope to develop an effective system of participatory governance at the county level with underpaid, overworked and demoralised members of the county assemblies.

We are aware that there are some activities by mandarins of the Executive who are hell bent to make sure that devolution does not work. Some of these people are in those commissions. The commissions are part of the Executive. They are not as independent as you think even though they are independent arms of the Executive. We are seeing a very clear case of impunity. I think time has come for us, as Senators, who are guardian angels of devolution and the county governments, to stand up against this impunity. Time has come for us to say “no” to Sarah Serem.

There was a stand-off between her Commission and the Members of the National Assembly early this year. There was intervention from the Executive and the issue between the National Assembly and the Commission was resolved. Why can the same

process not be used to resolve the issues between Members of the County Assemblies and the Commission regarding salaries of the MCAs?

The fact that we are now six months down this crisis and no one is paying attention to it, it is very sad, indeed. The MCAs are very frustrated. Last weekend, I met the MCAs from Meru in Mombasa and this issue was discussed. I participated in the debate the whole afternoon. I listened to the plight of 67 MCAs. They talked about the difficulties they are having in sending their children to school. You cannot expect someone with such economic pressures at home to spend time overseeing budgets and overseeing processes of county executives. This is not a light matter. I am very happy that our Chief Whip, Sen. Elachi, had an occasion to talk to the Chairman of the Speakers of the County Assemblies. She understood their plight and that is why she has brought this Motion. I want to congratulate her for this.

Is this Senate important? We are the lawmakers. We are the representatives of the interests of the counties. Can we allow this crisis to continue? Can we allow devolution system at the county level to collapse as we stand by and watch? I say “no.” We have to say “no” to the machinations which are very clear. There was a letter which Sen. Elachi had which showed that MCAs met Ms. Serem. She told them to give her time to evaluate their jobs and said that she would get back to them. She got back to them by telephone and said that she had procurement challenges and that she had not found people to evaluate the job done by MCAs. Therefore, she cannot adjust their payments because she has not got procurement consultants to do it. She cannot evaluate them and, therefore, cannot pay. Seven months have gone by and she had not procured consultants to do it. For how long are we going to sit around and listen to such excuses? The Commission should have internal capacity to do such things. This is not brain surgery. How did she fix salaries of Members of Parliament in such a short time, without appointing procurement people to go and carry out job assessments?

Ms. Sarah Serem has acted in contempt of the Senate. We know there was a meeting in Naivasha and she had lunch with very senior Senators, the Emeritus Attorney-General. A very senior Senator, Sen. Wako, was one of those who had lunch with her. Since Senators were also being paid peanuts, he asked her whether she knew what she was doing when she was fixing the salaries and she admitted that she did not know what the role of the Senate was. She promised to do something about it. However, as I am talking now, the Senate has not been properly facilitated to carry out work in the counties.

We do not cover geographical constituencies effectively because we are treated by the same Commission as Members of the Lower House. The same allowances given to us by the staff are the same ones given to members of the constituencies covering only one constituency. Sen. Kiraitu Murungi, Senator for Meru, covers nine constituencies. However, the Member of Parliament for the constituency I used to represent gets the same allowance for covering his constituency as someone covering the whole of Meru County. What logic is there? Time has come for us to stand up against this *ad hoc*, irrational, haphazard and unconstitutional discriminatory behavior from the Commission.

If there is no action from the Sarah Serem Commission on the issue of MCAs, within the next 15 days, I would like to suggest that we, in the Senate, will bring a

Motion of censure against her. We should bring a Motion of no confidence and lead a delegation to the President so that the conduct of this lady who is undermining the Constitution can be discussed.

“Madam Speaker, Sir—“

The Deputy Speaker (Sen. Kembi-Gitura): I am not Madam Speaker.

Sen. Murungi: Mr. Deputy Speaker, I am sorry for referring to you as Madam.

The Deputy Speaker (Sen. Kembi-Gitura): Withdraw and apologise.

The Deputy Speaker (Sen. Kembi-Gitura): I have withdrawn and profusely apologized.

You may go on.

Sen. Murungi: On that note, I beg to support.

Sen. (Dr.) Machage: Asante, Bw. Naibu Spika. Wakati mbwa anapobweka usimlamu yeye, lakini mlaumu bwana wake. Mkurugenzi wa SRC, “Hasara Serem---“

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Machage, is that a new Kiswahili word?

Sen. (Sen. (Dr.) Machage: Ni jina la mtu.

Sen. Madzayo: Hoja ya nidhamu, Bw. Naibu Spika. Je, ni haki kwa ndugu yangu, Sen. (Dr.) Machage, kutumia neno “hasara” badala ya jina Sarah? Tunajua neno “hasara” linamaanisha jambo mbaya. Je, ni jina lipi lilo sawa ni Bi Sarah au hasara?

The Deputy Speaker (Sen. Kembi-Gitura): Just before he answers that, I asked Sen. (Dr.) Machage whether that is a new Swahili word. I do not know whether that is somebody’s name because he has not said so. I also do not know whether it is a title. Kiswahili is a difficult language to some of us. I would like to know whether by *hasara* he meant somebody’s name or a new word or a title in Kiswahili Language. I think that is important for the record.

Sen. (Dr.) Machage: Bw. Naibu Spika, wakati Sen. Kiraitu Murungi alipokuwa akiongea kwa Lugha ya Kiingereza, nilidhani Kiingereza chake ni tofauti kabisa na cha Sen. Kajwang. Matamshi ya lugha yoyote hutegemea mazingira anamokulia mtu. Si makosa yangu kuwa na ulimi mzito. Mimi sijui mnavyotamka jina la kwanza ya Bi. Serem. Mimi namjua kama Hasara Serem. Kwa hivyo, ni juu yenu kutafakari ninaongea juu ya nani. Hilo ndilo jina nilalolijua. Nikiliandika jina lake chini ni Sarah Serem. Lakini ninapolitamka linakuwa ni Hasara Serem. Hauwezi kuongea mambo ya *commission* bila kuongea mambo ya Hasara Serem. Tunamjua kama mama aliye na watoto na familia yake, lakini amekosa utu na---

Sen. Bule: Hoja ya nidhamu, Bw. Naibu Spika. Ningependa Sen. (Dr.) Machage atueleze anapozungumza juu ya *commission* kama anazungumza juu ya mama Sarah Serem. Neno “*commission*” katika Lugha ya Kiswahili linamaanisha nini.

The Deputy Speaker (Sen. Kembi-Gitura): Make yourself clear. I cannot understand what you are saying.

Sen. Bule: Bw. Naibu Spika, Sen. (Dr.) Machage akizungumza kuhusu *commission*, anamaanisha baba ya Sarah Serem au anamaanisha nini? Anamaanisha nini akilitumia neno “*commission*” katika Lugha ya Kiswahili?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Bule, you are out of order! Go on, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Ninakushuru sana, Bw. Naibu Spika. Pengine utaniongezea muda wangu.

Mbunge wa mashinani au Bunge la Kaunti anapata mishahara wa Kshs40,000 kwa mwezi. Pesa hizi ni za mahitaji yake yote. Wabunge wa mashinani hutembea umbali wa kilomita nyingi ili wafike katika bunge zao. Sehemu fulani wanatembea zaidi ya kilomita 200 na kila siku ni lazima wahudhurie vikao katika bunge zao. Tunajua sheria vizuri; ni lazima kulipa unapokula. Hakuna cha bure katika nchi hii. Ni aibu iliyoje kuwa mwisho wa mwezi, hawana chochote cha kupelekea familia zao.

Tume ya SRC imekosa heshima kwa viongozi waliochaguliwa na wananchi kule mashinani. Tume hii hughugulikia sana mishahara na marupurupu ya wanafanyikazi wa Serikali. Wafanyikazi hawa hawakuchaguliwa na wananchi kama sisi viongozi. Ikiwa wewe ni mwakilishi wa watu katika Seneti, Bunge la Kitaifa au kiongozi katika Serikali ya ugatuzi, unafaa kuheshimiwa. Tume ya Serem hujihusisha sana na mishahara na marupurupu ya watu wake. Wao hawakusikia uchungu kutembea hapa na pale ili wachaguliwe kama sisi. Sisi tuna kazi nyingi za kuwahudumia watu wetu. Kazi yao ni kukaa ofisini na kurudi nyumbani kwao jioni. Mafuta ya gari Gari hulipwa na Serikali. Chai ya saa nne asubuhi ni ya bure, wafanyikazi wa nyumbani wanapatiwa na Serikali. Pia, wanapatiwa nyumba za bure kutoka kwa Serikali. Wao wanaishi maisha ya kifahari. Maisha yao ni ya faraja. Kwa hivyo, hawajali jinsi watumishi wa watu huko mashinani wanavyoishi. Sisi huaibika sana tunapokwenda mashinani. Tutawaeleza watu wetu nini? Ningependa mama huyu aje hapa tumuulize maswali kuhusu mishahara ya viongozi wa mashinani.

Naunga mkono yote yaliyosemwa na mwenzangu aliyenitangulia hapa. Sisi tunafaa kupitisha Hoja ya kutokuwa na imani na Tume ya SRC. Makomishna wa Tume hii ni watumwa. Watumwa hawana makosa lakini wale wanaowatuma ndio wenye uamuzi juu ya mishahara. Ikiwa waliweza kusuluhisha suala la mishahara ya Wabunge siku moja kwa nini wasifanye hivyo huko mashinani? Kwa nini hawaoni jambo na kulisuluhisha mara majo? Wamekuwa vipofu na hawasikii. Kwa hivyo, Bi. Serem ametumwa na Serikali ya Jubilee. Kwa nini hamtaki tuseme ukweli? Pengine kiongozi wa walio wengi hapa Seneti ambaye ametoka upande wa Serikali ya Jubilee ataleta Mswada hapa wa kusuluhisha janga hili. Hayo ni machozi ya mamba wala si kulia bali ni kufurahia mlo. Sisi si washenzi, baradhuli au wapumbavu kutokuelewa na kuona linaloendelea. Pengine kutoka juu hawataki Serikali ya Ugatuzi. Wakati mimi nikipinga katiba ilipokuwa ikitengenezwa nikisema kwamba kuna gharama, wakamfunga Sen. (Dr.) Machage jela. Majuto ni mjukuu, huja baadaye. Lipa! Kwa sababu wakati huo tulikuwa tunatengeneza sera ya mtu kwamba akistaafu awe na jina kwamba alileta Katiba. Lipa basi. Kila kitu kina gharama yake. Mnataka watu wapige magoti kuwahusudu ili mradi wapate chakula. Kipengele cha haki ya binadamu ambacho kiko ndani ya Katiba ni kwamba kila mtu ana haki ya chakula, nyumba, maji na afya. Si sheria kwamba hao wenzetu wateswe, wasononeke, walie wakati wengine wanafurahia chakula. Sasa wamegoma na mabwenyenye sasa wanatengeneza mali kwa jina la gavana. Wakisikia kwamba Seneti inataka kuunda kamati ya kufanya maendeleo, wanalia na kusunoneka. Hawataki kwa sababu mbwa sasa una mfupa lakini ukitaka kuuchukua, anakukodolea

macho na meno. Sisi ndio watunga sheria. Kutokana na usanii wetu tukatunga sheria na kuwapa nguvu makamishna. Sasa tunajuta.

Wakati umefika kwa sisi kama viongozi tuketi na kutafakari kwa uangalifu na tuone vipengele kadhaa wa kadhaa ndani ya sheria ambavyo havistahili kamwe katika taifa letu la Kenya. Mojawapo ni kupunguza tume hizi. Kazi yao ni kufuja mali ya Serikali na hawana kazi ila kwenda kwa harusi, matanga na kadhalika kuropoka ropoka, kutukana walioteuliwa na kuwaita majina kwa hela ambazo tumewapa. Hayo hatutakubali. Muda wa wiki mbili ni wakati mwingi wa kumuita huyu Bi. Serem aje hapa. Mwenzangu Sen. Kiraitu amesema majuma mawili lakini mimi nasema waje kesho, kesho kutwa au mtondogoo. Tusingoje majuma mawili wenzetu wakiteseka kwa sababu waliambiwa na huyu Sarah Serem kwamba watafutwa kazi. Yeye amejichukulia madaraka ya wananchi na kuwaambia walioteuliwa na kuchaguliwa kwamba yeye ana uwezo wa kuwafuta kazi kwa sababu hawaendi kazini na ilhali yeye hawapi uwezo wa kwenda kazini.

Kwa hayo machache, naomba kuunga mkono.

Sen. Kajwang: Thank you very much, Mr. Deputy Speaker, Sir, for recognizing me. First of all, we can deal with this commission in two ways; either we disband it because it is not helping us and yet we are paying it a lot of money for doing nothing or we remove ourselves from this thing called state officers because we are not. I can see that the media is trying to say that if we do so, then we will pay ourselves the salaries we think we should earn thereby putting the public against us. But we were elected by the same public and they have confidence in us. We act and do things in the best interest of this country. Therefore, somebody cannot come from nowhere, sit in a commission and speak as if she is the Minister for Finance, or the Head of State. When you listen to her, I have never seen such amount of arrogance, belligerence and condescending attitude to Members who have been elected by the people of Kenya. These days you can check on somebody quickly just to know where they went to school, what they did and so on. So, I checked and wondered who evaluated her job to make her earn beyond Kshs1 million. Who made her number one when she was number “something” in the interview? Which job is she evaluating because it is set out in the Constitution? First and foremost, these are very serious people. We set it up in Article 6 that the Government at the national and county level are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and co-operation, not arrogance and belligerence. Who does she consult? Whom is she representing? Is it the national Government or herself at the Commission? These people were put there to get us where we wanted to go as a country. If you look at Chapter 11, Article 174 on Devolved Government, we said that we should give powers of self-governance to the people and enhance participation of the people in the exercise of the powers of the State and making decisions affecting them. We have given these people a job for self-governance. They are a government and yet you are saying that you are going to evaluate their job. Which job are you evaluating? Even we, as Members of Parliament, were not required to have degrees, form six certificate or P1 certificate. You are just required to be elected. One is only required to know a little Kiswahili and English languages. That is all that is required. So, how is Sarah Serem supposed to evaluate me with Sen. (Prof.) Anyang’-Nyong’o? Sen. (Prof.) Anyang’-

Nyong'o should be teaching, but he came here. So, if he came here, how are we supposed to evaluate him? Sen. (Dr.) Machage is supposed to be operating somewhere in Kenyatta National Hospital (KNH), but he decided to come here. So, how is Sarah Serem supposed to evaluate, the time, the effort and the expertise of the job of a doctor, professor and hon. Otieno Kajwang? There is another doctor here. So, how are you going to evaluate him? The job is one; a representative of the people in the Senate or a representative of the people at the county assembly. Let me tell you, their job is everything. Legislation and oversight is mentioned here, but there are other things, including mortuary services.

Mr. Deputy Speaker, Sir, let me take you back to where we were. At least now, she does not respect us, but we are better off. When I came to Parliament, I found Sen. Kiraitu Murungi. They were earning Kshs74,000. Before that, they were earning Kshs19,000. They were paying us in cash and when I saw the bunch of Kshs74,000, I was very excited. I was happy because I was now earning a salary because I never used to earn a salary. Then I took a loan of Kshs500,000 to buy an old Peugeot. The National Bank of Kenya (NBK) which was the only bank that would give us loans, said that we should pay Kshs33,000 every month. I deducted the money from Kshs74,000 and it came to Kshs31,000. I went and paid Kshs15,000 for rent and remained with Kshs16,000. Out of this, I was supposed to put fuel in that old car which most of the time got stuck on Jogoo Road. If you could check the parking space of Parliament those days, it was a garage. Every car was placed on a stone. There were very many mechanics who were allowed to get in to check on the cars belonging to hon. Members. Those days we used to push cars outside Parliament because they could not start.

Mr. Deputy Speaker, Sir, one had to pay Kshs33,000 every month for five years and live on Ksh16,000 for five years. The mileage which used to help us so much was Kshs5,000. I used it to fuel the car to go to Mbita, but the car could not reach there, because it was old. That amount was to enable me to see my constituents and still feel like a Member of Parliament. This is the situation where we came from and this is where our brothers and sisters are because as you have already seen, they are paying over Kshs50,000 for their cars. They must pay this because we have given them a position of dignity. We must allow them to do this service properly and in a dignified manner. They are already paying Kshs50,000 for the car and they remain with Kshs20,000. Those days, for those who were not living in Nairobi, used to live in some hotels in River Road from Tuesday to Thursday before they go back home. In River Road, you know what happens at night; there is a lot of noise, alcohol and loud music. So, when you wake up in the morning, people greet you as *Mheshimiwa* and you feel like hiding. One had to come to Parliament where he was supposed to debate in an informed manner. How do you study or research in that environment? So, this lady and her Commission do not understand. We gave her very senior people; people who understand Parliament. However, some of them have been told to shut up and now they are the biggest enemies of parliamentarians. We took them there, because they understood our plight. Let me suggest that we call this lady here, with her Commission if necessary, in the shortest time possible. She could very well come to our *kamukunji*. We can explain to her the situation in which we are. There is no job evaluation that she will do. The only thing that she can evaluate is how to fix the house allowance, because she can check Nairobi, Mombasa and Homa Bay. At least, the

rent could be different. That is the only thing that she can check. What we need to do is to tell her to work quickly on the house allowance based on which city or village a member comes from. That is all that she should evaluate and not the job.

Mr. Deputy Speaker, Sir, after she does that, she should fix proper salary. I do not think that somebody should have left his job to earn Kshs79,000. Some of them are engineers, lawyers and doctors. In fact, even the executive or what we call “the cabinet secretaries”, for lack of a better word, are earning very little money. Some of them are superior civil servants and scholars. In my own county, I think there are two professors. Why should a professor leave his job to serve his people and be paid about Kshs170,000, which is deducted and remains, Kshs120,000, and yet, he is supposed to travel to work and back home in a dignified manner? What we are trying to do, if we are not very careful, and somebody else has already spoken about it, is allowing these people to loot in conspiracy. They will sit down and say: “What are we trying to do here? We are going to kill ourselves. *Leta hiyo tender*.” We are going to fail just because we do not want to pay a salary. If you do not want to pay your cook, of course, you will not find food. Most of it will be eaten and carried away.

Mr. Deputy Speaker, Sir, let me finish by saying that we did not create constitutional office holders to undermine the same document that created them. This is because when you now say that you do not know what an MCA and the Senate do, then you are showing ignorance, but actually deliberately undermining the Constitution that created you. The best thing that they can do is to wind you up, because you are of no use to us. Salaries can be fixed the way we know. We have a Parliamentary Service Commission. We can have another salaries commission for the counties. They can deal with this in the best interest of the country.

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

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, allow me to use this opportunity to, first and foremost, congratulate the two Senators who have joined us this afternoon, Sen. Godliver Omondi and Sen. Njoroge.

Mr. Deputy Speaker, Sir, since the law is an ass, let me also use this opportunity to pay tribute to our two Senators, Linet Nyakeriga and Harold Kipchumba, who left us. In fact, it should not be lost to this House that before Sen. Kipchumba left us, he had already interrogated this problem. In fact, he had some matter before the Office of the Speaker, wanting that we pre-empt this matter, but he has left before it was discussed.

Mr. Deputy Speaker, Sir, most of my colleagues have spoken to Ms. Sarah Serem. Allow me to speak to Sarah Serem along with her fellow commissioners. The SRC was created with a specific objective that is very authoritative. However, it is being abused now. I will just take two of them. The first one is that this Commission, in discharging its mandate, is supposed to protect the sovereignty of the people. The second one is that it is supposed to promote constitutionalism. Now, if the purpose is to protect the sovereignty, which is exercised through the elected representatives; the President, Deputy President, Governor, Senator, Member of the National Assembly and Member of the County Assembly, then they are undermining the Constitution. If, as it is written in Article 249, it is supposed to promote constitutionalism, the fact that at the county government the principle of separation of powers is only exercised between the executive committee and

the county assembly, it means that they are undermining constitutionalism at the level of the county assembly and executive.

Mr. Deputy Speaker, Sir, what are the consequences? The first consequence is that, unfortunately, what we are going to achieve for the next five years, is that we shall effectively devolve grand corruption from Nairobi to Kakamega, Siaya, Homa Bay and all over the country. Petty corruption takes place all the time in the countryside, but the grand corruption that the Auditor General was speaking to, where we lose over Kshs300 billion every financial year, takes place in Nairobi. Now, we are taking it to the countryside. We cannot and must not sit down and allow that to take place, unless we were never in the struggle. It is not child's play. Some people look at this Constitution as an opportunity to make a kill and become the "big man" of Africa and make money.

Mr. Deputy Speaker, Sir, Ms. Sarah Serem is on a very short lease, because in her Commission, we have somebody who has been recommended by the Attorney General. That person takes brief from the Attorney General to go and tell her what to do. By the time the Cabinet Secretary responsible for Finance takes brief from somebody to go and tell Sarah Serem what to do, many things happen. But when Members of the National Assembly, who because of their famous tyranny of numbers, serve a very crucial role in sustaining the Jubilee Government, wanted money, the Executive was there and sorted it immediately. But the same Executive, when approached by the Members of the County Assemblies (MCAs,) the day before yesterday, the Deputy President told them that his hands were held because this is a matter in hands of the SRC. Surely, when I remember the work that we have done with the Deputy President, at least, as far as this Constitution is concerned, I wonder what changes when people go into office. It is not nice.

Mr. Deputy Speaker, Sir, we are not going to subject MCAs to the kind of disrespect that we show them today. It is true, as Sen. Kajwang has said, that members of the county executive earn very little. But when you compare that "little" with what the MCAs earn, then you just get confused. Who struggled more to convince, so as to be given an opportunity to serve? Was it an MCA or appointee of the county executive, who was, in fact, vetted by the MCAs? It beats me because I should be seeing a situation where either the members of the county executive are at par with the MCAs or the MCAs are getting more. The greater insult to these people is that we have structures that have been created under the county administration, where they are calling in some people called sub-county administrator, ward administrator and village administrator. The village administrator is in charge of several villages within a ward, and earns a basic salary of Kshs48,000, house allowance of Kshs20,000 and commuter allowance of Kshs8,000; all amounting to Kshs76,000. This person lives and works in that village. It is a shame. If you go to a massive county like Kakamega, I have an MCA from Khwisero, who has to take a motorbike paid for from Luanda Doho to Luanda Dudi. Once at Luanda Dudi, he takes another *boda boda* to go to Siaya. Once there, he takes another *boda boda* to go to Khumusalaba. Once in Khumusalaba, he takes another to go to Emalindi, from where he goes to Standi Kisa. From Standi Kisa, he takes another *boda boda* to Chavakali and from there, all the way to Kakamega. We are talking about a distance of over 100 kilometres. This person is being paid Kshs79,000. That is not the reason I

subjected myself to public service. I did so, not because I was looking for employment, unlike many of you in here, but wanted to make a difference in governance.

Mr. Deputy Speaker, Sir, now, we want to allow a go-slow amongst MCAs and governors and their ten appointees to run affairs without oversight and pass policies and plans for development without interrogation from MCAs. We are failing. If we fail the county assemblies, the Senate also fails. If we fail the Senate, the county governments collapse. If the county governments collapse, it means that there is no devolution. The take-off we all looked forward to in our economy, will, therefore, not take place. I urge the President to rethink. This is because the Constitution does not allow us, even if we pass a resolution here that we do not like the SRC, or the Chair. The best that can happen is that this recommendation be taken to the President who will then appoint a tribunal. So, it is at his pleasure. I appeal to him to ensure that there is efficiency in the management of governance in this country.

Mr. Deputy Speaker, Sir, Sen. Otieno Kajwang and Sen. Kiraitu will remember when we were crafting the Constitution we were saying that, probably, we do not want 47 counties, because it would be too expensive to run them. Some suggested bigger units of 22 counties and others 18 counties. But we were pushed to the brim and told that this was doable. So, instead of losing Kshs300 billion through corruption, this money could very well be put to good governance by paying Senators, MCAs and members of the county executive well, so that in accordance with this Constitution, the Sarah Serem Commission is supposed to discharge itself in a manner that will attract the best skills into the county governments for purposes of success.

Mr. Deputy Speaker, Sir, when I was in Kisii. I met two of my college mates at the University of Nairobi who are advocates and now are in the county assembly. They know that we are speaking to the issue right now. In the County Assembly of Kakamega, the majority leader is a pharmacist. He is my agemate, circumcision mate and we went to school together. They know that we are speaking to these things.

Mr. Deputy Speaker, Sir, I want to use this last point to appeal to governors. You are also the ones who are encouraging Sarah Serem-like behaviour. This is because governors no longer respect the MCAs. In fact, the Deputy Speaker of Kakamega County Assembly, Cleophas Malala, was assaulted outside the governor's office by his *askaris*, because he is an opponent by way of oversight of the governor. He has recorded a statement at the police station. Can you imagine that an *askari* of a governor now thinks that the Deputy Speaker of the County Assembly of Kakamega, who also deserves to be given *askaris*, can be molested? Those people have not been arrested. We have to rise, as Members of this Senate, and protect our juniors, the MCAs. I want to call upon our other juniors, the Members of the National Assembly, to also join us in making sure that we rein in order to be in the country.

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

Sen. Madzayo: Asante sana, Bw. Naibu Spika, kwa kunipa nafasi hii. Kwanza, nataka kumpongeza dada yangu, Sen. Elachi, kwa kuleta Hoja hii. Kitu ambacho nataka kufafanua zaidi ni upande wa Katiba. Mimi kama mwanasheria, nahisi kuwa kuna umuhimu wa kuthibitisha sheria za Katiba. Kulingana na Kipengele cha 96, kinasema kuwa jukumu letu si kuwakilisha peke yake, bali ni kulinda na kutetea rasilmali za kaunti

na serikali zake. Hiyo, kisheria, haina haja ya kufafanua zaidi. Kazi ya Seneti hapa ni kulinda na kutetea serikali za kaunti. Kwa hivyo, ni makosa kuona ya kwamba shirika linaloangalia suala la mishahara ya wafanyikazi wa Serikali halizingatii kuona ya kwamba wafanyikazi kama hao waliochaguliwa na wananchi wameweza kuishi katika hali ya kutambulika na kiheshima. Hasa nikizingatia zaidi ya kwamba waheshimiwa ambao wapo katika bunge za kaunti ni watu muhimu sana kwa sababu wao ndio wanaoshiriki zaidi, wakizingatia haki na kuwatetea wale walio huko mashinani ili kuhakikisha ya kwamba hali za maisha yao yamekuwa bora zaidi ya vile walivyo. Pia wanayo majukumu mengi kwa sababu kila wiki utaona ya kwamba mheshimiwa ambaye yuko katika bunge la kaunti ana mradi fulani anafanya. Mimi mwenyewe nimeweza kwenda nyumbani kila wiki na nimeweza kushirikiana nao upande wa kugharamia mazishi, gharama ya hospitali, karo za shule na basari. Na ukiangalia zaidi, utaona kwamba ule mshahara wanaopewa haufai hata kidogo kwa mtu kama yule kuitwa mheshimiwa. Ukiangalia mshahara wanaopewa wa Ksh79,000, ukikatwa kodi, unabaki kama Ksh50,000. Je, pesa hizi zitamsaidia mtu huyu namna gani kujikimu kimaisha na kuweza kuwasaidia wengine? Jambo hilo halitawezekana.

Bw. Naibu Spika, tunamheshimu sana mama huyu kwa sababu analo jukumu kama Mwenyekiti wa Tume la kuangalia mishahara ya wafanyikazi wa Serikali. Lakini ikiwa yeye atakuwa kama yule mnyama anayeitwa mbuni, ambaye tabia yake ni kuwa akiona adui anakuja, anachimba chini na kuzika kichwa chake halafu hataki kusikia kama kuna kelele ama kuna nini maanake mwili wake unaonekana kama kichaka. Nafikiria wakati wa mama huyu kujificha kama mbuni umekwisha. Kunao umuhimu wake kukaa na kufahamu ya kwamba ikiwa yeye anapata mshahara wa mamilioni, basi kunao waheshimiwa katika bunge za kaunti ambao wanapata mshahara wa Ksh79,000 kwa mwezi; na kunao umuhimu kuona ya kwamba zile pesa wanazopata zimeongezwa. Tunajua kabisa kuwa sheria za leba za wafanyikazi zinazosema ya kwamba mfanyikazi anayelipwa vizuri huwa pia anayo bidii ya kufanya kazi. Lakini mfanyikazi ambaye humlipi vizuri hana budi kukuibia wewe mwenyewe kama tajiri. Tunaanza mfumo ambao ni wa kusikitisha kwa sababu ikiwa hawa tumewapatia jukumu kama waheshimiwa katika bunge za kaunti, na mapato yao ni Ksh79,000, na pale kuna zabuni zinapeanwa na wao kama waheshimiwa wanaokaa katika ile bodi ya kugawa zabuni, ni kitu gani kitamfanya asiwe mpotovu akakubaliana na maneno anayoambiwa akapeana zabuni ili apate pesa zaidi za kujimudu? Hatutaki mambo ya ufisadi. Kwa hiyo, mimi naona ya kwamba hizi pesa wanazopata, Kshs79,000, hazina heshima hata kidogo kwa wao kuitwa “waheshimiwa.” Pesa hizi zinafaa ziongezwe ili waweze kusaidia wananchi wa huko maeneo ya chini.

Ugatuzi unamaanisha kwamba mamlaka yatahuka chini na yataenda mpaka kwa mwananchi; na mwananchi atakuwa na haki ya kujua serikali yake inaendelea namna gani. Na wale ambao wanatekeleza jukumu lile na kuwaambia wananchi mambo kama yale. Hawa si wengine bali ni waheshimiwa wa bunge za kaunti. Ikiwa Serikali hii ya Jubilee inazingatia mambo ya ugatuzi, basi haina haja ya sisi kuilazimisha kuona ya kwamba wamefanya kitu kama hiki. Nashukuru sana kwa sababu Hoja kama hii imeletwa; na si lazima kuletwa na mtu ambaye anatoka katika upande wa Jubilee ama upande wa CORD. Hili ni jambo muhimu sana ambalo linahusisha taifa nzima. Kwa

hiyo, mimi naona kwamba Hoja hii ni nzuri na kuna haki kusema kuwa Tume ya Sarah Serem aidha ikae chini kwa wakati mfupi na kuzingatia mambo haya, ama sivyo, serikali za mashinani zitaanguka kwa sababu hivi sasa zimekwama. Ukiangalia gavana ni mtu ambaye hivi sasa hana yule ambaye anamchungu. Ikiwa magavana hawana watu wa kuwachunga, basi baadhi yao wanaoweza kutumia mamlaka hayo vibaya. Ikiwa sisi tutatetea haki za kule mashinani kama Seneti, basi kuna umuhimu kuona ya kwamba waheshimiwa hawa wameongezewa mishahara yao.

Jambo la kusikitisha ni kwamba ikiwa sisi hapa katika Seneti kazi yetu ni kulinda maslahi, rasilmali na serikali za ugatuzi, hiyo ikiwa ndio sheria ya kwanza ya Kipengele cha 96 katika Katiba, itakuwa tunafanya nini sisi kama Seneti hapa ikiwa hatuwezi kulinda kipengele hicho?

Ni lazima wale waheshimiwa wa bunge za kaunti wawe kama waheshimiwa wa bunge za kaunti, na waongezwe mishahara wao na Sarah Serem katika muda mfupi unaokuja.

Bw. Naibu Spika, ninaunga mkono Hoja hii.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. In my case, I must say that although I agree that this was a timely move, we must admit that we have waited for far too long as the Senate to debate or raise this issue. Maybe as a result of waiting for too long, a county like Makueni has grounded to a halt. As a result of this issue and many other issues, even my governor is threatening to resign.

Mr. Deputy Speaker, Sir, but more importantly, it is timely that we, the Senate, have adjourned so that we can discuss this issue because I now believe very strongly, as a Senator for Makueni, that the whole country has treated and continues to treat the MCAs with absolute contempt. We are treating these people to what I would call “step-child treatment” and possibly, we are treating them as junior partners in devolution. From my own very little experience in the last few days, it is now confirmed that, in fact, the real agents of devolution under the County Government Act are actually the county assemblies. If these people are to be given the respect they deserve, I dare suggest that this Senate must move with extreme speed. The country must then understand that these are not mere promoted councilors. These are MCAs. We have given them a mandate to even pass legislation under Articles 185 and 186 of the Constitution. Therefore, we have expanded their mandate.

Mr. Deputy Speaker, Sir, I had an opportunity about two weeks ago to look at the payslip of MCAs. They came to see me. One of them produced his payslip and asked me to keep it. I refused to keep it because it was traumatizing to keep such a document. It is a tragedy. In fact, this has taken so long to be addressed; that it is a tragedy that the MCAs continue to be treated with contempt. It is one of the reasons I say that even some governors are treating these MCAs in a manner to suggest that they are junior partners in devolution. The County Government Act puts the county assembly and the county executive under the same Act, gives them complimentary roles; gives them oversight roles in so far as devolution is concerned. There is no reason whatsoever why MCAs should watch as the members of the county executive and the executive themselves ride

around in nice, big cars, enjoy very many perks and yet, they are treated in such a manner to suggest that they are almost junior employees of the county executive.

Mr. Deputy Speaker, Sir, I have a good example. The MCAs of Makueni have now relocated their sittings to a town called Maleli. Why have they done so? They have done so, because they are saying that their lives are in danger and they do not have security. Two weeks ago, the County Assembly of Wote; that is in Makueni, was invaded in the public gallery where people were throwing bottles, weapons, *et cetera*. Why would we allow, as Senate, for people who we refer to as Members, and people who we consider as agents of devolution, to be treated in such a manner? Why would the county executive particularly watch such an action happen? It is my submission that, in fact, we ought to go a little further and insist that these people ought to be treated with respect because they are elected representatives and not selected representatives.

Mr. Deputy Speaker, Sir, in support of this Motion, I think also we, as the Senate, ought to consider something else that possibly the Senate Majority Leader mentioned. We need to look at the County Governments Act and see whether or not there is reason to amend it. Why do I say so? These people, during their campaigns, and I am calling them MCAs, went and campaigned in the same manner as the governors, Senators and Members of the National Assembly. When it comes to implementation, they have no role in implementation and they have no budget for implementation. However, when they go to the grassroots level, people expect them to build roads, pay bursaries *et cetera*. We, as the House of great ideas and as the people who are supposed to protect devolution, and as agents who are serving county interests, should go a step further to look into this Motion for purposes of ensuring that devolution works.

There is something else that is more important. The Members of the Speakers' Panel as far as MCAs are concerned had similar concerns which were addressed very quickly. Members of the National Assembly had similar complaints but were addressed very quickly. Why would we take very long to address issues concerning MCAs?

As we debate this, we, as the Senate, should not quietly turn a blind eye to what is absolute discrimination and skewed manner of dealing with agents of devolution of people who have been elected to positions of very sensitive nature.

I had an occasion to talk to some of them and they told me that I was very lucky. Every weekend, they have to attend funerals, weddings and many other functions. They say that they have five cards, at any given time, for harambees. The only way to address this is not to go out of their way, but to run away because they cannot manage the expectations of the people.

The other day, we debated some amendments that were made, it is fair that I mention this, to the Budget of the Turkana County. I will pick one aspect; the one that the Governor got an excess of Kshs200 million for the purpose of a residence. This reinforces the point that was raised by Senators that, in fact, the question whether or not there are funds available to pay MCAs is not an issue. This should not be an issue and should never be raised as an issue. It should be sorted out as quickly as possible.

These people are also supposed to oversee the disbursements of Kshs4 billion or Kshs5 billion in the counties. That amount of money goes through them. They see where the county executives are paying themselves monies which are not commensurate to what

they are earning and yet, we expect them to pass the budgets with a blind eye and not do anything about it. I suggest that we, as a Senate, must with one voice state clearly that we do not allow discrimination and skewed management of counties, especially when it comes to counties *vis-a-vis* the county assemblies.

My last point is that under Article 230(7), the Senate acts on behalf of the county governments. This debate is overdue. We should enforce the provisions of the Constitution as far as our role is concerned with regard to remuneration of public servants who are working extra hard to make sure that devolution comes to the fore.

Lastly, I will associate myself with sentiments made by several Senators about movement of these people. For example, in Makueni, these people must get to the County Assembly in Wote. Some of them come from Kibwezi which is 150 kilometres away. They are also expected to attend all the sittings. How do we expect them to serve this nation and find their way to the county assemblies to do legislative work when their fuel allowance is not catered for? These are people who are expected to work extra hard so that counties are functioning.

The expectations we, as the Senate, have put on the county assemblies under the County Governments Act, are tremendous. They are huge. It is only just that we pass this Motion and go a little further and ensure that MCAs, all over the country, do not get to a stage where they go on a go-slow because it is an antigen to devolution.

The MCAs are now on forced recess. In most counties, the legislative agenda has not begun. They have not passed any law. For instance, Makueni County has not even passed the Finance Bill. As a result, there are no collections that have been done in Makueni for the last three weeks. This matter is urgent and we are in a crisis mode. I agree with Sen. (Dr.) Machage that 14 days is too long.

I support.

Sen. Ong'era: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Motion. First of all, I would like to commend by sister, Sen. Elachi, for bringing this Motion to this House.

Commissioner Sarah Serem's story has turned to be the story of the camel and the Arab. In this tale, we know that the camel became very arrogant when it went inside the tent. It got inside the tent, found it to be very comfortable and decided to kick out the Arab. Parliament is the very body that created the Sarah Serem Commission. However, this camel, if I can use this as an analogy, has decided to become the owner of the tent. Therefore, it is high time that we, Members of Parliament, kicked out this camel if not to kill it.

I need not repeat the suffering that MCAs are going through. Distinguished Senators in this House have eloquently described how MCAs are suffering. In my County, Kisii County where I come from, the Leader of my delegation, hon. Chris Obure, can bear me witness, that we have many MCAs who are travelling many miles. There are some from South Mugirango who go all the way to the Kisii County Assembly. They travel on motor cycles because of the terrain of the roads. They go for almost 20 kilometres before they can take *matatus*. Owing to this, many of them have been reduced to paupers. In fact, there is a joke that they crack to the effect that before they get into the

Assembly, they have to look for shoe shiner to polish their shoes because they are often very dusty.

That is not the state at which we should reduce Members we are referring to as honourable. The Sarah Serem Commission should not tell us that we need to evaluate jobs of the county assemblies. As hon. Sen. Kajwang told us, it does not require a rocket scientist for constitutionally established job to be evaluated.

I will borrow the words of Sen. (Prof.) Nyong'o, ocular proof. What ocular proof do you need other than the Constitution which is very clear?

The Deputy Speaker (Sen. Kembi-Gitura): How do you spell that?

Sen. Ong'era: The word is spelt as ocular and it means maximum proof.

The Deputy Speaker (Sen. Kembi-Gitura): Is it an English word?

Sen. Ong'era: Yes, Mr. Deputy Speaker, Sir, it is an English word. It does not require a rocket scientist to tell us the roles of a county assembly. We know that their job is to oversight, legislate and represent people.

We are reducing them to paupers. In fact, we are making them worse than when they were councillors and I suspect that this is deliberate on the part of the governors. Most of them are giving them handouts, so that they are reduced to paupers so as to get support for their Motions.

I find that this Motion very timely. What is the purpose of the executive giving MCA bodyguards when they do not even have vehicles? Will they ride on motorcycles with bodyguards?

This Commission, if allowed to go the way it is going, will become loose cannon. Very soon, even the mandarins at the Treasury who are busy controlling them will not control them. I suspect and repeat that this may become the story of the Arab and the camel. The ones at the Treasury may not be safe because they may be kicked out of their new offices. Let us not allow Sarah Serem to thrive.

I urge Members of this distinguished House to support the Motion that will be brought from the Lower House in which the National Assembly is requesting for an amendment to the Constitution to remove us from the list of state officers. We all support it and do away with these commissioners who are busy politicking because they know that their terms are just about to come to an end. Some of them are desiring to come to Parliament.

I support.

Sen. Leshore: Thank you, Mr. Deputy, Sir, for giving me an opportunity to contribute to this Motion.

I have been sitting here since 2.30 pm. All my colleagues, some senior, some junior to me--- Dr. Khalwale is my junior and should know I am his senior in politics although he likes referring to others as his juniors – talking about the suffering of the MCAs. I do not want to repeat, but I think they have become a source of mockery. When you go down there, you will find people referring to them as *waheshimiwa* and yet, they have no money in their pockets. They are not *waheshimiwa* in the pockets.

I asked myself when the SRC was set up to by an Act of Parliament, what did Members have in mind? I wish hon. Kajwang had not spoken before me because I would

have asked; what did the Tenth Parliament have in mind when they created the SRC? Did they create the SRC to kill devolution or to oversee other constitutional commissions?

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

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to be informed?

Sen. Leshore: Yes, Mr. Deputy Speaker, Sir.

Sen. Kajwang: Mr. Deputy Speaker, Sir, this one was created by the civil society. We did not need it and we do not need it. However, somehow, the civil society wanted to control the salaries of Members of Parliament and that is the only way they could do it.

Sen. Leshore: Mr. Deputy Speaker, Sir, I was coming to that. The SRC is only targeting politicians; people who have been elected from the grassroots level to work as Senators and hon. Members. You have not even earned your responsibility allowance because of her. Or have you?

Hon. Senators: No, we have not!

Sen. Leshore: Mr. Deputy Speaker, Sir, I am the Chairman of the committee that takes care of the welfare of Members of Parliament. For the last two months, we have been seeking to have an appointment with the SRC. I do not want not to mention my sister Sarah Serem. We wanted to set sitting allowances for you, Mr. Deputy Speaker, the Whips, for the Senate Majority Leader and for the Senators, but we have failed.

The SRC has, however, given leeway to the Judicial Service Commission (JSC) to set their allowances at Kshs80,000 per sitting while the SRC people earn Kshs40,000 per sitting. However, Members of the Parliamentary Service Commission (PSC) which is constituted by the Constitution, earn Kshs10,000. Is that fair?

Members of Parliament are nervous because we must engage the SRC. If we need to change the SRC Act, we shall initiate the law in the Lower House and then amend it here so that SRC is not seen to kill devolution or to be seen to have been created to tame politicians. We are responsible leaders who have been elected more than three or four times. If we are irresponsible, the people of Kenya would not have elected us.

Mr. Deputy Speaker, Sir, lastly, I would like to thank Sen. Elachi for bringing this Motion albeit a bit late, but I think it is timely. We need to move fast and even see the chief executive of this country so that devolution is not killed just because SRC has refused to evaluate the work of the MCAs.

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

Sen. Sang: Mr. Deputy Speaker, Sir, I want to take this opportunity to thank Sen. Elachi for bringing this Motion. It is quite sad that we are discussing the same Motion that we discussed three months ago. Therefore, we cannot complain that this Motion has been brought too late in the day. This goes a long way to show the kind of contempt that the SRC has on the resolutions of a House like this. We discussed in this House immediately the MCAs raised the issue. We had an extensive discussion in this House, made recommendations and hoped that the SRC was hearing us, but apparently, nothing has taken place. We cannot over-emphasize the responsibilities that are bestowed on MCAs. We cannot have a county government that runs without checks and balances. The sole constitutional institution that will provide checks and balances at the county level is the county assembly. It is absurd to imagine an MCA earning Kshs79,000 per month and yet playing an oversight role over somebody earning over Kshs1 million. It is even more

absurd to expect an MCA to summon members of the county executive committees to question them with regard to their performance when executive committee members earn almost four times what the MCAs earn. So, we ask ourselves, because the sole mandate of the SRC was to rationalize salaries in this country: Have they done so? Sen. Leshore has mentioned that within this country, it does not matter in which arm of Government, we have individuals earning sitting allowance of Kshs80,000 on top of their salaries and we still ask ourselves why we have the SRC in the first place. This is evidence that they have failed in their job and we have not heard them call press conferences to address the challenges with regard to dealing with issues at the Judiciary.

Mr. Deputy Speaker, Sir, it is important for this House to consider some of these things. We should not do so only through this kind of Motion, but design concrete steps to engage in. If we allow the county assemblies to go on for the next several months without sittings, then we are going to have a challenge. I want to appreciate that the MCAs in Nandi, though they are on recess just like all the others within the country, when serious issues requiring their attention have arisen, they reconvene and address them. I am not sure whether this is happening in other counties. So, it is very important that we continue engaging them with a view of finding a solution within the shortest time possible. We should see our MCAs getting back to their work places.

Sen. (Dr.) Khalwale gave examples. A village administrator earns close to Kshs70,000 in terms of salaries and house allowances, but MCAs are not given house allowance. Many of them had to get houses where they have their sittings. This means that we are subjecting our MCAs to circumstances where they are forced to take funny kind of housing that at the end of the day endangers their lives. So, we must be considerate enough as Members of the Senate while engaging in this matter with the purpose of pushing and getting a working solution. We should not just engage through this kind of a Motion, but also engage one of the committee of the Senate which will pick up this matter and follow it to the logical conclusion. It is very important because most of the MCAs are learned people. In my county, for example, I have an MCA who has a masters' degree and he represents Kaboi-Kaptumo Ward. There is another one who is clearing his masters degree. These are people who are learned. So, we cannot demean the status of elected offices. If you look at the tendencies of SRC, I think they are working towards demeaning the status of political and elective offices. I do not think we need to do that. We are representatives of the sovereignty of the people. The sovereignty of the people is exercised through elected leaders. At the county level, we have the Senator, the Governor and the Women Representative. At the ward level, we have the MCAs. We must look at their welfare and ensure that we address some of those things.

We have raised issues with regard to the Chair of that Commission. To be very fair, we need to look at the institution as a whole. As a matter of fact, I do not think we need to focus on the Chair. Of course, the Chair has to carry the political wrath of this House because she appears on television to give controversial statements. It is important to look at it from the sense that the Senate has a role to play. We need to get directions. We should send one person to look at the interest of county governments and county assemblies in the SRC. If we have not done that, then we have failed as a Senate. So, it is important that we revisit that issue. We have a representative who is a commissioner with

SRC. So, we need to summon him and ask him what he is doing in that Commission to ensure that he advances the interest of the constituency that he is representing there. So, I think it is important that we are able to look at it from a wider perspective and ensure that we find a solution to this problem.

Mr. Deputy Speaker, Sir, I want to state here that if we do not address the issues of county assemblies in the next one or so years, we will be dealing with massive corruption at the county governments, courtesy of the period or the lacuna that was created when the MCAs were out on recess. We must look at it from a greater perspective so that we can create working systems of checks and balances at the county level and be human enough to consider the challenges that MCAs go through.

With those few remarks, I beg to support.

Sen. Obure: Mr. Temporary Speaker, Sir, I stand to support this Motion and say that we are actually staring at a crisis which has the potential to derail devolution. This is a crisis which could shutter the dreams of Kenyans and their aspirations. The questions people are raising out there is whether the SRC is an agent sent to destroy devolution. That is now what is on people's mind. We, as a country, all agreed that we need devolution to work so that we could achieve fair distribution of resources across the country. Through devolution, we can achieve faster and more efficient system of delivering services to the people. Through devolution, our people would be allowed to participate fully in matters affecting their own welfare. We know that through devolution, we could also achieve faster rate of development. In so doing, we reduce the high levels of poverty among our people.

Mr. Deputy Speaker, Sir, in debating this issue, we really need to understand the actual role of MCAs. These MCAs are elected and enjoy the confidence of the people. They are fully mandated by the people to articulate the people's views, challenges and aspirations. The MCAs are mandated in particular to oversight the executive and ensure that there are adequate checks and balances at that level. They also scrutinize and interrogate the budget. They also interrogate plans of the county assemblies and make sure that they are within acceptable limits. They also co-ordinate development activities within their wards. They also make laws for the county. More importantly, these are the people who provide the link between the county government, the national government and the people at the ground. This is an important link because we are all serving people at the ground. We need to understand their challenges and aspirations. We need to listen to their voices which come through the people they have elected.

Mr. Deputy Speaker, Sir, I, therefore, want to say that the Serem Commission should be made to stop this arrogance. They are too arrogant. They should instead start to appreciate the predicament facing the MCAs. They should begin to appreciate that the MCAs are actually discharging a constitutional mandate. Therefore, they should understand the context, the background and the environment in which the MCAs are operating. I strongly feel that the remuneration package for the MCAs should be increased to be commensurate with the increased mandate. These members now represent vast areas. Many of those earlier wards were amalgamated to form much larger units. They represent a bigger number of people. I am aware of MCAs who represent populations of up to 50,000 people. Therefore, the challenge of doing that kind of work is

immense. I am, therefore, one of those who strongly feel that their remuneration packages should be increased. In fact, to enable them to perform their work effectively, the State should buy vehicles for them. This will make movement easier for them, so that they can reach the areas that fall within their own jurisdiction.

Mr. Deputy Speaker, Sir, they should also be provided with offices. Right now, some of them are operating from bars. They meet people from their areas of jurisdiction in bars and their own houses. That is not appropriate. We need to provide them with an environment which is conducive and enables them to listen to their voters and serve them more effectively. We also need to provide them with housing or some kind of house allowance.

Mr. Deputy Speaker, Sir, finally, I think that the country cannot afford this kind of crisis. We cannot have a situation where elected people are forced to go on recess in some form of protest. The SRC must resolve this quickly, so that the country does not suffer anymore and devolution can effectively be achieved and realized for the benefit of all our people.

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

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, thank you for this opportunity to contribute to this very important Motion that has been moved by Sen. Elachi.

Mr. Deputy Speaker, Sir, first of all, I would like to reassure county assemblies that we, as the Senate, are with them. There is a flurry of worry from some of the counties, asking: "What is the Senate doing about this? Have you not heard about our problems?" We were in Mombasa over the weekend for a workshop and the same sort of concern kept getting raised by some of the speakers from these counties. There was a feeling of abandonment, but we also reassured them. Sen. Sang has stated here that this Motion was discussed about three months ago. We also told them that we were actually at the verge of discussing a substantive Motion by Sen. Harold Kipchumba who has since then ceased to be a Member of this Senate. So, by and large, we are really in support. This is because we are all tied up like an umbilical cord, from the county assembly, county governments and through to the Senate. Their problems are directly our problems. So, we are really interconnected.

Mr. Deputy Speaker, Sir, maybe what we have not done as the Senate is to quickly find a way of responding and showing that interconnectedness. Maybe what we need to do is to find structures, as the Senate, to be able to do that effectively. This is because it is true that MCAs have been stressed and discussed this. If governors can be stressed to the point of thinking about resigning, then what about the MCAs, who, probably, have few resources and are completely linked at the grassroots level? I remember some of the MCAs in seminars whose cars, for example, are now used as ambulances in their counties. They are completely at the mercy of their electorate and their money has to be given for anything and everything in the county. There is absolutely nothing that they can do in terms of their helplessness and even the capacity to deal with the demands from their electorate. So, the expectations from the grassroots level and electorate are very high. I think that they are reaching out to everybody and anybody, right from the MCAs, Senators and governors. Maybe Senators and governors are a little bit distant. So, it is not very easy to get to them directly. But I am sure and I

have heard also Senators and governors saying they have had their share of being queried about this and that, and being asked for this and that. A sum of Kshs79,000 is not enough. If we double it, it may not be enough and even if we were triple it, it might not be enough. If we are trying to attract the sort of professionals who we ought to think about attracting back to the grassroots level, then we have to think about the remuneration package that will enable us to distill back into the counties the skills. Many professionals will not leave their professions and become the MCAs with such remuneration. Therefore, we are losing out on skills, ideas, motivation and people who, probably, have such low morale and low levels of self-esteem and yet so much is expected of them. So, it is just putting too much on everybody. We need to watch over each other as the specific bodies in charge of devolution right across so that we are actually watching each other's back. What is happening in the Senate? What is happening to the governors? We cannot just afford to delink, so-to-speak. If we do so, we are going to have a culture of corruption being devolved back again into the counties. I think that is exactly what we are avoiding and that has been alluded to earlier.

Mr. Deputy Speaker, Sir, there are deliberate attempts to kill devolution from various sources. How come other stakeholders have not queried about this? How come the problem has stayed on for so long without anybody really coming in with a firm action? Where is the Executive and the Commission for Implementation of the Constitution (CIC)? We have not heard someone coming up strongly to address this issue. Another institution that is, probably, on the verge of being disbanded or being transformed in such a way that we are not sure whether it will work for devolution is the Transition Authority (TA). There is a pending Bill to change it into a committee. So, we are thinking about all the organs that are so necessary to devolution. Devolution is a process. Devolution is such a complicated and complex process. Therefore, all the organs that have really been given a mandate need to be supported to ensure that, that mandate is actually upheld. So, I think somewhere along the line, this country has to begin to have a very serious discussion and discourse about whether we are pro-devolution. If we are, we need to support all the institutions that are key in ensuring that devolution works. We cannot afford to have a scenario where we seem to be talking from two different levels. We have one arm pulling on the right and another one pulling on the left and causing so much confusion across all the various bodies that are so key for the implementation of devolution right from national Government up to county governments. We need to have that serious conversation in order to find a way forward.

The SRC has taken so long to solve this problem. It is really a question of engagement. They have the capabilities to already have engaged at the various levels to try to find a solution. But the silence has been too profound and it has not been good for the country. We, therefore, need to find ways of just engaging. Various proposals have been given and I think the proposal to directly engage with SRC either in the Committee of the Whole or even to come up with more drastic action, because I think we would really be judged very harshly as the Senate. I remember the Speaker of the County of Kilifi calling directly and asking "what are you people doing about it?" Other counties have also been alluding to the same; "what are you, people, going to do about it?"

Mr. Deputy Speaker, Sir, it is time to act now; it was time to act yesterday.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir for giving me this opportunity to summarise what my colleagues have been saying.

I stand here to support this Motion very strongly and to thank Sen. Elachi for bringing this Adjournment Motion where we can articulate and discuss issues that touch directly on our counties. Before I continue, I would like to send my best wishes and quick recovery message to our colleague, Governor (Prof.) Kivutha Kibwana, who is in hospital. He does not only require the regular medication, but he wants to hear that his MCAs in Makueni are happy and ready to work. I am sure he will recover and get back to work.

Therefore, I wish him well. His ailment is a consequence of the behaviour of the SRC that has affected the MCAs and eventually caused the problems we are facing.

Mr. Deputy Speaker, Sir, the role of the MCAs has been highlighted many times in this House. If the work of the MCAs is compromised, then the essence of devolution is also compromised. In fact, the total loss that will occur as a result of compromising the MCAs far outweigh anything else because there is nothing as bad as working with officers who are lacking enthusiasm and have no passion as a result of the working environment they are in. The cost will be tremendous. At the moment, we may say that MCAs are not engaged in any work and that they are idle. We know that when people are idle, bad ideas start coming into their minds. One thing that I know will come to their minds is the conflict of interest. Therefore, the MCAs will start to participate in activities that are detrimental to the counties and eventually to the whole essence of devolution.

We know that there are MCAs who are involved in supplies and other activities that are meant to generate a livelihood. This is not very good for the development of our counties. Perhaps, we need to ask ourselves where the buck stops with regard to salaries of the MCAs. Could the buck be stopping elsewhere other than the SRC? If it is, then I think it is important that we address these issues. Otherwise, this problem will continue for a much longer time than it has already done. I also think that SRC are, perhaps, slow thinkers. If they are, I suggest that they start giving us interim solutions to this even if it means giving allowance to the MCAs so that they get back to work as we continue to think of a way out. The Senate is in the best position to address this matter and give forward.

With those remarks, I support very strongly, that MCAs remuneration is improved in tandem with the amount of work they are doing and the pillar they are holding in terms of devolution.

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Senators! That brings us to the end of today's business. You will appreciate that the Speaker had ruled that this goes for three hours. It is only 15 minutes to time.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Since there is no more interest in the debate, we will now adjourn the Senate. Therefore, the Senate is now adjourned until tomorrow, 16th October, 2013 at 9.00 am.

The Senate rose at 6.15 p.m.