

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Tuesday, 23<sup>rd</sup> September, 2014**

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

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

### PRAYERS

### MESSAGE FROM THE NAIROBI CITY COUNTY ASSEMBLY

#### SECURITY OF MEMBERS OF NAIROBI CITY COUNTY ASSEMBLY

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication to make, which is a Message to the Senate from the Nairobi City County Assembly.

Hon. Senators, Standing Order No.42(1) of the Senate Standing Orders provides that, and I quote:-

“The Speaker of the Senate shall read to the Senate any message from a County Assembly to the Senate and such message shall be in writing and shall be signed by the Speaker of the County Assembly.”

By a letter dated 18<sup>th</sup> August, 2014, the Clerk of the Nairobi City County Assembly forwarded to the Clerk of the Senate a Message from the Nairobi City County Assembly to the Senate concerning the security for Members of the Nairobi City County Assembly.

Standing Order No.42(5) of the Senate Standing Order provides that:-

“If a message is received from a County Assembly at a time when the Senate is not in session, the Speaker shall forthwith cause the message to be transmitted to every Senator and shall report the message to the Senate on the day the Senate next sits.”

In the message, the Nairobi City County Assembly states that the Assembly had witnessed an increase in insecurity affecting Members of the County Assembly (MCAs) from vulnerable areas of the city.

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The Assembly further states that there had been threats to the lives of individual Members of the Assembly which had created fear and anxiety amongst the affected Members. The Assembly states that their efforts to have the matter addressed through the National Police Service (NPC) had not resulted in an effective resolution of the matter. The Nairobi City County Assembly, therefore, requests the Senate to look into the matter with a view to providing direction on the way forward regarding measures that the Senate may consider putting in place to safeguard the security of the Members of the County Assembly especially those from vulnerable neighbourhoods across the city and those whose lives are at risk, owing to the threats issued against them.

Hon. Senators, pursuant to Standing Order No.42(6) I hereby refer the message from the Nairobi City County Assembly concerning the provision of security to the Members of the said County Assembly to the Senate Standing Committee on National Security and Foreign Relations for consideration by the Committee.

Owing to the urgent nature of this matter, the Committee is hereby directed to table its report on the matter in the Senate on or before Tuesday, 7<sup>th</sup> October, 2014.

I thank you.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Standing Order under which you have quoted the message from the County Assembly of Nairobi City County does not provide that we comment on the matter. But it has been our tradition that whenever a Member of this House or the lower House has faced challenges of security, we have always given it the seriousness it deserves.

In view of that, I seek for your indulgence; that you allow me to observe that the issue of security is not only limited to the threats faced by the MCAs. Indeed, as late as yesterday, the life of a Member of the National Assembly was saved after a would-be attacker was shot by the MP's bodyguard. Nobody is safe in Nairobi or Kenya. Even the President's limousine was stolen. The President received a signature of shoes, stones and other things in Migori County. We should look at this matter beyond the request by the Nairobi City County Assembly and admit as a House that the Jubilee Government is completely unable to give security to officers and members of the public at large.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I rise to disagree entirely with the Senator for Kakamega County, my friend, Sen. (Dr.) Khalwale. He is giving the impression that we should deliberate on this matter now because the security of MCAs is in question. I want him to know that the security of all Kenyans is as important as it is for Members of this Senate and even other elected leaders. But---

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri. I thought that was the same point that Sen. (Dr.) Khalwale was making. I do not see why you are diasagreeing.

**Sen. Khaniri:** Mr. Speaker, Sir, Standing Order No.42(6) under which you read this message is very clear. It gives you three options. Either you direct the matter to the relevant Committee or you decide that we deliberate on it now or you appoint a day for

consideration of the message. Those are the three options given by our Standing Orders. What Sen. (Dr.) Khalwale is asking goes beyond the ruling that you have given. You have directed this matter to a committee. Therefore there is no point to deliberate this message because we will be talking on a matter that you have already assigned a committee to deal with.

**The Speaker** (Hon. Ethuro): I think that is the real point of departure between you and Sen.(Dr.) Khalwale, which I want to agree with. But for the purposes of the message, I have directed that the Committee on National Security and Foreign Relations submits their report to the House on 7<sup>th</sup> October, 2014.

For the matter that you alluded and also Sen. (Dr.) Khalwale made reference to, you still have plenty of options to raise that matter sooner than later in the sense that you have actually broadened it. So, you can bring a Motion of Adjournment or use the other appropriate Standing Orders to do so.

Sen. Obure.

**Sen. Obure:** Mr. Speaker, Sir, I appreciate your direction on this matter. Of course security is an important matter. We should all be concerned every time the life of a Kenyan is threatened. In the case of the Nairobi City County Assembly, I wonder if I am in order to suggest that we should have been provided with more information and instances of what happened so that we appreciate fully what we are dealing with.

**The Speaker** (Hon. Ethuro): Indeed, Sen. Obure, that is why if you look at Standing Order No.42(6), there are three options. The reason we did not exercise the other two is because we would like the Committee to look into those kinds of details that you are referring to because there will be specifics. The message is about the number of MCAs who have been threatened. The Committee will look into this and when it will report, it will also report on the same. The report will be available to each and every Member.

Next Order!

### PAPERS LAID

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 23<sup>rd</sup> September, 2014.

#### REPORT OF THE SEVENTH AFRICAN EVALUATION ASSOCIATION CONFERENCE

Report of Seventh African Evaluation Association Conference held in Yaounde Cameroon from 3<sup>rd</sup> to 4<sup>th</sup> March, 2014.

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ANNUAL COUNTY BUDGET IMPLEMENTATION REVIEW  
REPORT 2013/2014

Annual County Budget Implementation Review Report 2013/2014

DRAFT EQUILISATION FUND REGULATIONS.

Draft Equilisation Fund Regulations.

*(Sen. (Dr.) Machage laid the documents on the Table)*

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 23<sup>rd</sup> September, 2014:-

REPORT OF THE ANNUAL INVESTMENT MEETING  
HELD IN DUBAI

Report of the Annual Investment Meeting Held in Dubai, (United Arab Emirates) from 8<sup>th</sup> to 11<sup>th</sup> April, 2014.

*(Sen. (Eng.) Muriuki laid the document on the Table)*

Mr. Speaker, Sir, this Paper, being similar in nature to the first Paper laid by Sen. (Dr.) Machage is of a very unusual nature compared to the normal Papers which we have on the Floor of the House. Would I be in order to request that the Chair allows me half a minute to say what it is, so that when it eventually comes for debate, Members will have been encouraged to look through.

**The Speaker** (Hon. Ethuro): Why are you assuming that Members are incapable of reading the reports?

**Sen. (Eng.) Muriuki:** I am quite sure Members read a lot. But they receive a lot of papers; a lot of documents and reports. When there is something a little bit off the normal, my request is that half a minute or so would help in just saying a word. The title is not very clear.

**The Speaker** (Hon. Ethuro): Okay, proceed for one minute.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, you will recall that sometime in April you appointed five Members of the Senate and one Secretary to attend the Annual Investment Meeting in Dubai. This is a meeting, but it is also a large conference where world investors, organizations and governments who have money to invest go to say they want to invest in this or that sector. At the same conference, government institutions, individual bodies like cities in various countries go there saying they are looking for investments in this or that. Whereas, we, the Senators formed the opinion that the

conference was very useful, we also at the same time formed the opinion that Kenya as a county gained very little. What is contained in this paper is our observation as to what we think went wrong as far as attendance by Kenya is concerned and a host of recommendations on how we think Kenya should approach such similar investment meetings.

**The Speaker** (Hon. Ethuro): Thank you; although you would have still raised those issues when the matter is debated.

Before we proceed to the next Order, I want to confirm if there are other Papers to be laid. The Chairperson of the Committee on Finance, Commerce and Budget or a Member of the Committee?

*(The Speaker (Hon. Ethuro) consulted  
the Clerk-at-the-Table)*

Sen. (Dr.) Machage, I am informed that you laid papers under (i), (iii) and (iv). Let us proceed.

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON THE SEVENTH AFRICAN EVALUATION ASSOCIATION CONFERENCE

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

THAT, this House adopts the Report of Seventh African Evaluation Association Conference held in Yaounde, Cameroon from 3<sup>rd</sup> to 4<sup>th</sup> March, 2014.

#### ADOPTION OF REPORT OF THE ANNUAL INVESTMENT MEETING HELD IN DUBAI

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Annual Investment Meeting Held in Dubai, (United Arab Emirates) from 8<sup>th</sup> to 11<sup>th</sup> April, 2014.

**The Speaker** (Hon. Ethuro): Hon. Senators, I want to bring to your attention the fact that we have a Supplementary Order Paper. However, that will take effect from Order No.8 but I want to give you notice.  
Let us move to the next order.

## STATEMENTS

STATUS OF BONUS PAYMENT TO SMALL SCALE TEA  
FARMERS UNDER KTDA

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lesan, it is your turn.

**Sen. (Prof.) Lesan:** Thank you Mr. Speaker, Sir. I am the one who is expecting a report from the Chairperson of the Committee on Agriculture, Livestock and Fisheries.

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

**Sen. Murungi:** Thank you Mr. Speaker, Sir. I would like to make the following interim response. This is about a statement being sought by Senators regarding the crisis in the tea trade in this country.

My Committee is aware that there is a serious crisis in the tea sector which is caused by the shocking fall in tea earnings which has been the worst in the last two decades.

I am aware, as the Senator for Meru County, that tea farmers have rebelled and boycotted the picking of tea in the last one month. These farmers, in their anger, have humiliated directors and purported to sack managers of tea factories. There is a real crisis in this sector which needs to be dealt with in a wholesome manner. So, we need a comprehensive address to the crisis in the tea sector.

In view of the magnitude of this problem, my Committee has decided to organize a national tea stakeholders' conference to be held on 10<sup>th</sup> October this year. We are inviting all tea directors from the 52 tea factories in the country. We are also inviting the directors of the Kenya Tea Development Agency (KTDA). We are also inviting the managers of the tea auction in Mombasa. We will also invite the Minister, his team and members of the tea board. We are also inviting Senators from the tea growing areas so that we meet and discuss this crisis.

That way, we intend to seek lasting solutions to the crisis. Therefore, I request my brother, Sen. Lesan, to prepare himself and come with his tea directors to this workshop so that in the process of addressing this as a national issue, we can also deal with the matter of Kericho County.

**Sen. (Prof.) Lesan:** Thank you Mr. Speaker, Sir. I thank the Chairman of the Committee on Agriculture, Livestock and Fisheries for the wise decision. He has, first of all, recognized that there is a serious crisis in the tea industry at the moment. Upon that realization, I want to agree with him on the path that he has taken. We really want to get to the root cause of this problem owing to the significance of the tea industry to the Kenyan economy and more particularly as to the livelihoods of millions of Kenyans. We are aware of some of the challenges facing the industry. We need to address those challenges.

Mr. Speaker, Sir, we know that the tea industry is being strangled by the hands of greedy manipulators at the tea auction floors or offices of tea managers with their

nonchalant and “don’t-care” attitudes about the survival of farmers. It is important, therefore, that we take the route that the Chairman has suggested so that we get to the root cause of the problem, considering the expectations of many farmers who rely on tea for their survival, progression and betterment of their lives. I hope that we will converge, deliberate and once and for all address the problems of the tea industry in this country.

**Sen. Murkomen:** Mr. Speaker, Sir, first of all, I would like to congratulate the Chairperson of the Committee on Agriculture, Livestock and Fisheries for coming up with very innovating ways of solving problems. When you have a problem of this nature it is useful to sit with stakeholders than to come up with an answer written by a Cabinet Secretary or a Permanent Secretary. This is a good example for the rest of us who are in other committees in the Senate.

The Chairperson talked about the people they have invited. I would like him to consider inviting Governors of counties that grow tea and the County Executive Committee Members (CECs) in charge of Agriculture. I am saying this because agriculture is a devolved function apart from the policy. County governments play a major role in terms of finding new markets for this tea and working with farmers wherever they are.

Mr. Chairman, consider inviting the Governors and Deputy Governors.

**The Speaker** (Hon. Ethuro): You are being repetitive.

**Sen. Murkomen:** I have been advised by the Senate Majority Leader that he should also include the multinational companies that are playing active roles in matters of tea.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I also want to join my colleagues in thanking the Chairman of the Committee, Sen. Murungi. As he has collectively put it, there is, indeed, a crisis in the tea industry in this country today.

As you are aware, some petitions have been made regarding this issue. Indeed, other questions have been raised. There are many problems that tea farmers in Murang’a County, which I represent, are facing. They have made a petition which I will be presenting to this Senate.

I hope that when the committee finally sits to consider these issues, it will invite all stakeholders and not only those who have made a petition. It will be a sad day, indeed, if for any reason the tea industry in this country was lost to squabbles or misunderstandings between the KTDA and farmers. What the Chairman has said is most welcome. I want to assure him that those who come from tea growing areas will give him all the support that he requires so that we have a lasting solution to the tea sector in this country, which is very important to the economy of our country.

**The Speaker** (Hon. Ethuro): Order, hon. Senators. Since you have all been invited to the conference, you should wait for that time. However, since there seems to be a lot of interest, let me allow the last three on my screen; Sen. Khaniri, Sen. Ong’era and Sen. Obure.

The Chairman asked Sen. Lesan to bring the names of his directors. I do not think that is the work of the Senator.

Proceed, Sen. Khaniri.

**Sen. Khaniri:** Mr. Speaker, Sir, those of us who come from tea growing areas and who represent tea farmers know precisely what our constituents are going through. I am personally a tea farmer and I have experienced this problem first hand. Therefore, I want to take this opportunity to thank the Chairman of the Agricultural Committee for the steps that he has taken to have a conference where all stakeholders will be invited but I am afraid he did not tell us exactly when because we want to alleviate this problem once and for all. He also did not give an indication as to when we would be congregating to discuss this matter.

**The Speaker** (Hon. Ethuro): Sen. Khaniri, speak for yourself. All of us heard it. Anyone in the neighbourhood of Sen. Khaniri can confirm the date given by the Chair.

**Sen. Ong'era:** Mr. Speaker, Sir, I would also like to thank the Chair of the Agricultural Committee, the King of Meru, for coming up with this innovative way of dealing with issue of the Senate especially when we are answering to questions instead of waiting. As Sen. Murkomen said, we should take the initiative and meet the real stakeholders. I come from a region in Kisii County where, because of the problems bogging the tea industry, farmers are actually uprooting the crop because it is no longer viable. Therefore, this is a welcome opportunity especially for the real stakeholders to meet and resolve these issues. I wanted to suggest that instead of only inviting Senators from tea growing regions, the Chair could consider inviting all Senators to this very important conference.

**The Speaker** (Hon. Ethuro): Sen. Obure, I said you will be the last one but I see the Senator for Kirinyaga asking. He will be the very last one.

**Sen. Obure:** Thank you very much, Mr. Speaker, Sir, for allowing us to make comments on this matter. First, I want to thank Sen. (Prof.) Lesan for his concern on this very weighty matter. I also want to thank the Chairman of the Agriculture Committee for the initiative, and for the very innovative manner in which he wants us to find a solution in this matter. I am one of those who brought a petition on the plight of tea farmers in my county. I am very happy because the Chairman of the Committee on Agriculture, Livestock and Fisheries and his Members have done everything possible to get to the bottom of this matter. I want to take this opportunity to appreciate his efforts and also appreciate the leadership of that Committee because of the various ways they are exploring in trying to identify solutions to this matter.

Mr. Speaker, Sir, the tea sector is very critical to this country. We are not only talking about livelihoods of people but the contribution of that sector to the economy of this country through foreign exchange. For a long time earnings from tea exports have made tremendous contribution to the economy of this nation. We cannot afford to see that go to waste. We cannot lose that opportunity. Therefore, I want to appreciate the efforts



by the Chairman and to urge him to get all the stakeholders together in this forum so that we can find a way forward.

**Sen. Karaba:** Mr. Speaker, Sir, much has been said by my fellow Senators, but it is also important to note that tea is not just a crop; it earns money when it has been processed and exported. That is why we need to get more Senators attending that conference. There are so many problems in the tea industry. Recently we have had cases of under-weighting of fertilizers. You find that a bag which is supposed to weigh 50 kilogrammes is sold when it is 45 kilogrammes. So, the difference in kilogrammes, multiplied by the number of bags delivered by the Kenya Tea Development Authority (KTDA), amounts to a lot of money. We need to get more experts to revive this industry because this is a very important crop for Kenya and, without it, we shall be doomed economically. I support that the conference should be held.

**The Speaker** (Hon. Ethuro): I said that would be the last person, but because of gender consideration, I would give exception to Sen. Nabwala.

**Sen. Nabwala:** Mr. Speaker, Sir, I would like to thank you for giving me this chance to add my voice to the report and the interest that the Chair of the Agricultural Committee has shown in the tea sector. I also extend the same to Sen. (Prof.) Lesan for organizing the conference that is coming up. I must say that tea has been a big contributor to our economy in the past few years. I would be interested to know by statistics how much it has dropped. It used to contribute a lot in terms of foreign exchange. Other contributors are coffee and tourism.

As Senators we need to check on these issues very closely because we look after counties. When our people are being affected due to drop in prices, we need to take an interest and find out why it is happening. We need to find out whether it is the prices in the world market or because of other local problems affecting our farmers---

**The Speaker** (Hon. Ethuro): Order, Senator. You are now organizing the conference. Wait for the 10<sup>th</sup> of October, 2014.

**Sen. Nabwala:** I just want to say that I am very grateful for what they have done. I would also like to see more Senators attending this conference because it is very important. It affects very many tea zones in our counties. Therefore, many Senators should attend including those who do not come from tea growing zones.

**The Speaker** (Hon. Ethuro): Order! You are being repetitive.

Finally, Sen. Wako, then Sen. Murungi.

**Sen. Wako:** Mr. Speaker, Sir, thank you very much for giving me this opportunity. I stand as a fellow Chair of a Committee to congratulate a fellow Chair of the Agricultural Committee in the manner in which he is dealing with problems facing this country. If we all grappled with the problems facing this country through such dialogue, I am quite sure, this country will get somewhere.

I would like this particular meeting that he is calling for to examine other issues affecting the marketing of tea. Whenever you travel outside, many people will tell you that Kenya is not earning its due share from exports. They will always tell you that tea

from Kenya is the best in the world and it is used to blend other teas from other countries. Tea from Sri Lanka is being marketed as Sri Lankan tea and tea from Jamaica is being marketed as from Jamaica but you do not see anything from Kenya despite the fact that we produce the best tea in the world. That shows that something is amiss. I would like to urge that on the agenda of this conference, we should consider how best we can exploit our tea markets.

Otherwise, I urge you to invite other people---

**The Speaker** (Hon. Ethuro): Order, Senator. You are being repetitive.

**Sen. Murungi:** Mr. Speaker, Sir, I want to thank the Members for the tremendous interest that they have shown in this particular matter. We are going to invite all the Senators because under Article 96 of the Constitution, it is our duty as Senators to protect the interest of the counties; which means protecting the people in the counties and some of those people are the tea farmers. So, we have every right to invite all the Senators to attend this conference.

Mr. Speaker, Sir, we are also going to invite the Governors and the Members of Parliament (MPs) who will be interested so that we do not have duplication in this effort. My request is that we are going to make the Hansard Report of the comments made by Members here available to the organizers of the conference so that all the issues are captured in the meeting. But my request is that usually, we have a struggle with the Clerk on the issue of the resources. I would request a special dispensation so that we can accommodate all the Senators and other interested parties in this conference. So, I need further support for this conference.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Murungi, the Chair can promise you that we will give you all the support that you need.

Next Statement!

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM RIABAI HIGH SCHOOL DEBATING CLUB, KIAMBU COUNTY

**The Speaker** (Hon. Ethuro): Before we take the next statement, we would like to acknowledge a delegation from Riabai High School Debating Club from Kiambu County, with a total of 48 students and two teachers. Let us welcome them in our usual manner.

*(Applause)*

Is the Chairperson of the Committee on Roads and Transportation here? He is not here. Is the Vice Chairperson present?

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Is the Chairperson of the Committee on National Security and Foreign Relations here?

Is the Chairperson of the Committee on Education here?

#### CHALLENGES FACING THE TEACHERS SERVICE COMMISSION

**Sen. Karaba:** Thank you, Mr. Speaker, Sir. I have a statement from the Ministry of Education which was sought by Sen. Liza Chelule regarding the constitutionality of the Teachers Service Commission. After going through it with my Committee, we found that it was not satisfying enough to be tabled in this Senate. So, we have further summoned the TSC officials to come the day after tomorrow so that they can give us a better answer, because this one is not adequate. I have already talked to Liz and she has agreed.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba! Who is Liz?

**Sen. Karaba:** Elizabeth; that is what she is called. She is Sen. Chelule from Nakuru County. She is here.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba! This House is very clear on how you address your colleagues.

**Sen. Karaba:** She is Sen. Liz Chelule.

Thank you, Mr. Speaker, Sir.

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

**Sen. Chelule:** Thank you, Mr. Speaker, Sir. I do not have any objection. If he is asking for one or two weeks, I think it is good for me to give him time because we need concrete answers on the same.

Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, I am Sen. Liza Chelule. So, it is the same as Liz.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Sen. Karaba, when do we get the statement?

**Sen. Karaba:** In the next two weeks, on a Thursday; I think that will be better.

**The Speaker** (Hon. Ethuro): Two weeks from now?

**Sen. Karaba:** Yes, Mr. Speaker, Sir.

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

What is your point of order, Sen. Elachi?

**POINT OF ORDER****SEPARATION OF POWERS BETWEEN PARLIAMENT  
AND THE JUDICIARY**

**Sen. Elachi:** Mr. Speaker, Sir, I stand on a point of order for guidance on a matter that has been going on and which has been occupying the media when we were on recess. This is the issue of separation of powers, with specific reference to Parliament. Of late, we have seen the Judiciary raise so much about Parliament by bringing in orders halting the work of different Committees. I just wanted guidance on how we can deal with the issue since it is affecting most of the work in this Senate and even in the National Assembly. I think it is time; when we were going on recess, I remember very well that we also talked about it, but we said let us give them time; maybe they will change. But I think when you look at the activities that are happening, it is becoming worse and I think, as a House, we need to deal with it. So, I just need guidance on how we can deal with it and maybe even give Members an opportunity to ventilate about it.

*(Sen. (Dr.) Khalwale spoke off record)*

**The Speaker** (Hon. Ethuro): Who was that? Order! Order, Sen. (Dr.) Khalwale! Employ technology; we ran away from those shouting matches. I am not seeing your request on the screen.

So, let us listen to Sen. Murkomen as Sen. (Dr.) Khalwale gets his act together.

*(Laughter)*

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I think the point of order raised by Sen. Elachi is very important. There is a growing trend that the Judiciary, an institution that we have a lot of trust and we are supposed to have a lot of trust in – is beginning to micro manage other institutions of Government, particularly this House. I have never seen anywhere in the world where judicial activism - however criticized it has been all over the world - has been exercised by the courts as against institutions that are carrying out matters of accountability.

Mr. Speaker, Sir, judicial activism is a new concept; it is about 20 years old all over the world, used more so in countries like India and to a great extent in South Africa, among others. But even all that activism has always been used to tilt in favor of public interest, particularly in situations where you are protecting the public. In India, it is in environmental cases; in South Africa, it is about issues of democracy and matters of race relationships, human rights and so on, and so forth. In Europe, it is the same; it is fostering matters of human rights. Actually, one of the most conservative judiciary in the

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world is the American Judiciary. But if you come to our Judiciary, which has adopted this activism of micromanaging other institutions---

I am shocked as a Member of the County Public Accounts and Investments Committee (CPAIC), ably led by Sen. (Dr.) Khalwale, that the courts of this country can even attempt to stop the Senate of this Republic from inviting any Governor to appear before this Committee. It even bothers me more for the simple reason that more than 80 per cent of the Governors we have invited have appeared either by themselves or their deputies. But at the request of less than 20 per cent of the Governors, the courts can be willing to stop the questioning of matters of accountability maybe at the behest of two or three Governors, as if there is a stratification of a class of Governors of this country; that there are certain Governors that are more important than others.

What is it that two or three Governors or the Chairman of the Council of Governors, the Governor for Bomet, have that is so special that the Governor of Tana River, the Governor of Elgeyo-Marakwet who appeared today or the Governor for Kwale, who is the Vice-Chair of the Council of Governors, do not have? What is this special category of Governors in this country that collude with the courts to stop this House from working? There were days when I was a student in the University of Nairobi. One of the things that Ahmednasir, who is a lawyer in this country, did was to resign from Law School to go and carry out some activism to remove certain Judges who were corrupt. At that time we were told that there was a situation where you needed to have the right Judge in the right court, who knows the right lawyer and you will get the right decision. I do not want to imagine that corruption is coming back to the Judiciary, but there is a particular trend that particular kind of people, using particular kind of lawyers are getting certain kind of decisions that are against this House, against accountability and the workings of the county governments.

Mr. Speaker, Sir, lastly, we will not be cowed as a House because we have a responsibility to interpret the Constitution. This House must continue with its responsibility to hold county governments accountable. If we have to go to jail for insisting on accountability, I will be the first person to go to Kamiti Prison on behalf of this House. If we have to go to jail because we are asking for accountability about taxpayers' money, I am willing to be arrested for contempt of court, for purposes of pursuing accountability. This is because there is something that this country has never understood; that if we love devolution we must not be cheated that devolution is the county executive. Devolution is a bigger concept. It involves this House and other institutions of Government. If there is something that we must be worried about going forward, it is corruption of the institutions that are involved in implementation.

Mr. Speaker, Sir, I want to ask the last questions. What is the Ethics and Anti-Corruption Commission doing? What is the Director of Public Prosecutions doing? What proactive measures are they taking to ensure that they complement this House in holding these county governments accountable? Let me give you an example. A Governor of a particular county paid a contractor before they got completion certificates of over

Kshs100 million. What do you call that? Some of the Governors are saying that they cannot be called by the Senate because they will be called by the county assemblies. Show me one Governor who has honoured summons of county assemblies in any part of this country! As a House, we will stand firm. We are willing to go the extra mile. No matter the amount of propaganda that they have made; that we are an idle House and have nothing to do--- For in the pioneer stage for a House like this one, they are lucky to have Senators like Dr. Boni Khalwale among others, who are willing to carry out robust accountability, because history will judge us positively. We will not be cowed or obey any court orders that are unconstitutional.

Thank you, Mr. Speaker, Sir.

*(Sen. (Dr.) Khalwale walked to the Dispatch Box)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am sorry my system has a problem.

Mr. Speaker, Sir, the issue raised by my sister Senator here from Kakamega is so serious that while we were on recess, I did realize as a layman that court injunctions could be dished out the way a parent dishes out popcorn to kindergarten children, or the way hotdogs are dished out at a restaurant when children are on a picnic. It is very sad that on serious matters, where there is actual evidence from the Auditor-General, Governors have chosen to face the country on podiums from various parts of the country, in the pretext that they are defending themselves, instead of presenting themselves before the Committee, so that the Committee can absolve them if they so deserve.

Mr. Speaker, Sir, Governor Isaac Rutto should stop practising trade unionism in the name of being the Chairman of the Council of Governors. He is my friend. In fact, we had breakfast with him three weeks ago and I put the same thing to him; that what became of him? He has gone to court; and as soon as the Auditor's Report in respect of Machakos County arrived on the desk of the Governor of Machakos, Dr. Alfred Mutua, with an invitation that he comes before us, he sent a delegation which told us that he was bereaved in the morning. In the afternoon, it came to pass that the same Governor was actually in the High Court trying to enjoin himself in the earlier ruling, which he succeeded. The Governor of Kakamega, my own good man, Hon. Oparanya, upon receiving our invitation, again, went and enjoined himself. The Governor of Wajir, Hon. Ahmed, did the same. The trend is continuing so that everytime we look forward to listening to Governors, they go and enjoin themselves. I would like us to condemn and refuse this. If some of the Governors thought that it was a joke, members of the public are becoming impatient.

Mr. Speaker, Sir, I am a neighbour to Nandi where people were signing war songs in town – I do not know for what reason – following a breakdown in order at a function. I heard people saying: - “Instead of this Governor asking for more money, he should go before Dr. Khalwale and account.” I was not behind it, but what is disturbing me is that as this happened, the Personal Assistant of the Governor was lying prostrate, bleeding,

almost dying. In fact, I am glad that Sen. Sang is here. He might have time to tell us what exactly happened. The Personal Assistant is now fighting for his life. These matters are very serious, because of the refusal of these Governors to come before us, before a visiting delegation of Tanzanians and the eyes of the Deputy President. Governor Isaac Rutto almost came to blows with the Leader of the Majority in the Lower House.

Mr. Speaker, Sir, over the weekend in Kiambu, four Members of Parliament and Sen. Wamatangi almost ended up exchanging blows with Governor Kabogo over the same thing of accountability. I understand that the same thing has happened in Makueni today. I want to condemn a man who calls himself a learned friend of Sen. Wetangula, in the name of Ahmednasir. Mr. Ahmednasir should know that the School of Law is not the only school in a university where people become professionals. That Mr. Ahmednasir can ever dare imagine that I am fighting devolution and pen a whole article in the newspaper about me, he is being contemptuous of me. I do not know which school of law he went to, but I will soon be visiting that school. I want to look at his resume and see how it compares to some of us, because he might be thinking that he is the smartest man on earth when, in fact, he was trailing behind very many people whose names I know in this country. Mr. Ahmednasir should not be taken seriously by the country because he is one of the lawyers who are being hired today, tomorrow and all the time, to benefit from the funds that these particular Governors are using to approach court.

Mr. Speaker, Sir, finally, I do not know how we can make an entry – and this is very serious – so as to interrogate the money that the lawyers demand of our Governors. I am afraid that the Governors might be paying legal fees from public coffers. I want this House to give me cooperation, so that I give you the report. I have reports showing how a Governor has bought a hotel in Nairobi; how a Governor has bought a house in Karen, we have reports showing how a Governor lives and sleeps in a bed which costs Kshs1.2 million; a bed which was sold to the county Government by his own daughter. I have reports which I am dying to table in this House where the Personal Assistant of a Governor collects between Kshs500,000 and Kshs900,000 every other day, to date, amounting to Kshs24 million. They are the same Governors, who then have offended the public.

The public is offended with them and because they are standing in the image of our beloved President, he ends up receiving shoes when actually the anger is meant to be directed at that particular Governor. These people will make us lose law and order in our country. We must have a situation whereby public servants account for funds that they are entrusted with. This House must speak; otherwise there will be no need of me chairing that committee because I will do nothing. Even President Kibaki, calm as he was, protective as he was, even as Raila was there and the two of them were fighting over power, when I was Chairman of the Public Accounts Committee, they gave me space; I had latitude to deliver. I am calling upon the President to give me latitude so that we stop the thieving of public funds.

Mr. Speaker, Sir, it must concern Members of this House that when these Governors speak with arrogance, they have been traditionally doing it in the presence of the Deputy President and in some cases in the presence of the President. Where are they getting this confidence from? Today I am happy and I want to say good things about Senators because the sword must cut both ways. We must also ask our colleague Senators here who every weekend are in helicopters flying from one harambee to another harambee where they donate millions of shillings every weekend, where are these young men getting money from if they are not getting it from the public? It is serious! If we want to build a country called Kenya---

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Khalwale. If I were you, I would stick to the initial issues because I think they are so important; you do not want them to get lost in the way you are moving.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. The reason why sometimes some of us get angry and we are swayed into commenting on some of the issues that the “sky team” of Jubilee specializes in; it is because of the high levels of poverty. Even the former beautiful Elgeyo-Marakwet that used to be, the Kericho that was a very nice place to live in, today these areas are just as poor as Ikolomani, Kabuchai and the traditional Teso areas of Luhya land. The leaders of this country must say “no”. My colleagues, I tell you, the sword will cut you. We will catch you.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. With all due respect, listening to the Senator for Kakamega, and reading between the lines, he has thrown Migori County into bad repute, whereas this is a respectable county which appreciates the magnitude of mistakes that they may do and have the courtesy to apologize---

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Machage, you stood on a point of order to challenge a statement said by Sen. (Dr.) Khalwale.

**Sen. (Dr.) Machage:** I am building it.

**The Speaker** (Hon. Ethuro): It is not an opportunity for you to start marketing your county.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, those are part of my duties as per the Constitution.

Mr. Speaker, Sir, I request that you give Sen. (Dr.) Khalwale the earliest opportunity to table this information that he has such as the Governor for Migori sleeping on a bed of Kshs1.2 million. We need this information like yesterday.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. While I agree with a lot of comments made by Sen. (Dr.) Khalwale, he mentioned the Governor for Nandi, Dr. Cleophas Lagat and yet I am not aware if his Committee has summoned him and the Governor has refused to appear before the Committee. Mentioning Nandi County together with the counties where the Governors have refused to appear before his Committee suggests that the Governor has refused and yet I know that if my Governor was summoned, he would appear before the Senate. Could he be clear on that?



**Sen. Murkomen:** Mr. Speaker, Sir, even while on that, the Senator for Kakamega insinuated that there are Members of this House who donate a lot of money. I am aware that the Senator for Kakamega donates between Kshs3,000 to Kshs3,500 in funerals in his place. That is a lot of money. But I will not hold it against him because not a single Senator here manages public funds and therefore we cannot also legislate against the generosity of any Member of this House. Some of us who have read the Bible so well know that it says that the more you give the more you receive. It also says in Micah: “Test me and you will see if I will not bless you”. For those of us who are not willing to test God like me, we must not be punished for giving our personal resources or be discussed negatively for giving.

Lastly, if you go to Israel, the difference between Lake Galilee and the Dead Sea is that the Dead Sea receives but does not give out water. You cannot drink the water of the Dead Sea. The Lake of Galilee receives from the River Jordan and has an exit to the Dead Sea. So, some of us have chosen to be River Galilee and, maybe, others have chosen to be the Dead Sea. So, why should it be an issue here? The only concern we have is that some of the Governors who are Members of the “sky team” which includes the Governor for Kakamega who has been flying from one county to another - we suspect they are using county funds in this business and that is why we are questioning.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I hear three points. The first one is that Sen. Sang would like a confirmation that his Governor has not prevented my Committee from summoning him. I have a copy of that court order which was signed on 18<sup>th</sup> and issued by Lady Justice M. Ngugi.

The first defendant is all the Governors represented by the Council of Governors. So, yours is included. The second one is Dr. Alfred Mutua, enjoined by Patrick Khaemba of Kitale, Ahmed Abdalla Mohammed of Wajir, Wycliff Opranya of Kakamega, James Omariba Ongwae and finally another non-existence Governor called Martin Nyaga Wambora.

*(Laughter)*

That rests your concern.

The second issue was raised by Sen. (Dr.) Machage. Indeed, I would not impute any improper motives against the Governor of Migori if I did not have my facts right. I have them. I have the audited report which shows the company that sold the bed. It tabulates the dates and the amounts that were collected by Mr. Kasper Abiero, the personal assistant of the Governor of Migori.

What do I do about that? I report to this House. That is the truth and that is my work. If you feel happy that those things happened, then you should clear them. If you are unhappy, then we will send you the same route that the National Assembly sent Amos Kimunya when he indulged in such kind of activities. That is the way it happens at Parliament.

The last issue is about the “sky team.” Why do we not collectively laugh it off? We should laugh off the fact that some of these young Senators who are Members of the “sky team” think they are millionaires. You are paper millionaires. Some of you are lawyers and I want to tell you that there is something called the Leadership and Integrity Act and another one called the Public Officers Ethics Act. If the Ethics and Anti-Corruption Commission (EACC) chooses to pursue you, you will end up in jail. Why can you not stop? These are public funds. You either get it from contractors or from somebody for whom you hold brief; whose political agenda you are trying to advance, the one who secures the aircraft for you. Please, let us not go there because we always speak from facts. I will not talk about the “sky team” again unless I am challenged to substantiate.

**The Speaker** (Hon. Ethuro): Order, hon. Members. I will start with Sen. Khalwale.

Sen. Khalwale, had you heeded my advice, you would be a very popular Senator and Chairperson as it had already been indicated. However, you have deliberately decided to take a route that you obviously know will invite the wrath of your colleagues which you can already see in them.

However, I want to persuade your colleagues. Sen. Khalwale has said that you should laugh it off. Two, some of you still want to contribute. Why can you not use this opportunity to challenge those issues? By the way, there is no matter before us that should invite this kind of altercation. I can easily terminate the issue. There is no issue and you are abusing the issue.

My idea was that you would ventilate the issues raised by Sen. Elachi so that you help me come up with some opinion. However, you have now made it an issue about several Senators. I do not think that was the intention.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir for your guidance. I totally agree with you that the time we have in this House is so precious that we should maximise on it by talking about issues that will help this country like accountability of public funds.

I find great difficulty that the Chairperson would allow my brother Sen. Khalwale to sit down and “laugh it off” after he stood at the Dispatch Box and said three things: One, that there are a number of unnamed Senators whom he refers to as the “sky team” but does not name them.

Number two, Sen. Khalwale alleges that the Senators are breaking the law. He cited a number of legal provisions that have been broken. Thirdly, he said that they are not only breaking the law on the Leadership and Integrity but are using money – which they have collected from contractors but did not name the contractors.

Dr. Khalwale should apologise because this is not a trivial matter that can be laughed off. This goes to the core of the dignity of the Members of this House whom he has not named. I request the Chairperson to direct Sen. Khalwale to either substantiate his allegations or he withdraws and apologises.

**The Speaker** (Hon. Ethuro): Sen. Khalwale did not mention names. That is what you should demand first. If some of you suspect to be “members” it is only fair to acknowledge then we deal with the matter at that point.

**Sen. Murkomen:** Mr. Speaker, Sir, I have made myself very clear. It does not matter whether Sen. Khalwale suspects me. He was looking at me while he was talking. I am a Member of that Committee and in my earlier contributions; you will see that I have maximum respect for Sen. Khalwale.

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

**Sen. Murkomen:** Unprompted, I had lavished on him a lot of respect because of his responsibility in our Committee. Sen. Khalwale is trying to say that there are some people in this House who are colluding with the Governors or with public officers who are messing up with public funds so as to steal funds. That casts doubt on the integrity of this House even if we do not name names. Some of us have gone all over the country to preach that the Senate will not entertain any pilferage on public funds. When he stands in this House and says that we should laugh it off---

I need to emphasize that unless it is happening in other counties, where I come from, I and other Senators have not been given the responsibility to manage a single cent of any Fund. Some people are saying that they want a CDF for the Senate. That is a different issue. We do not deal with public funds. The only institution that has the moral authority to question usage of public funds is this House because unlike the Lower House, we do not manage any Funds.

When a Member of this House makes such allegations and we laugh it off, that becomes the heart of the discussion of the accountability that we are accusing other institutions of doing. We are all paid, in this House, the same amount of salary. Some people choose to “drink” their salaries in the bar. Others prefer to go and buy plots. Others like Senators from marginalised areas are paying school fees from their own salaries. Others would choose to go donate money to schools in their areas because they feel not enough has been done.

You can choose to spend your generosity the way you like it. You can extend the generosity to woman in the bar or give it to a school in your county. You can also pay school fees for children in Turkana. That cannot be a basis for accusing somebody.

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen. The last contribution is worse than what you are accusing Sen. (Dr.) Khalwale of.

*(Loud consultations)*

Order Senators.

I had directed Sen. (Dr.) Khalwale earlier and if you heeded my directive, we would all be safe because you have also raised issues to imply improper motive on the unnamed Senators. The Senators also are implying improper motives on others who are

unnamed in sense of where they go to spend their money. This kind of discussion is not useful to the House.

Sen. (Dr.) Khalwale, since you are the originator - and I really want to agree with senator Murkomen, to the extent that you had earned a lot of respect across the political divide; each and every contributor alluded to that, and I think you would not want to squander that. So, just apologize, withdraw and proceed on the issues of accountability. Those issues are more important than the side shows we are engaging in.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I request that you allow me to apologize; but to withdraw so that it is no longer part of the HANSARD is to assume that what is going on today is not happening. The Ethics and Anti-Corruption Commission (EACC) has already written to Parliament asking what is going on about the issue that I have spoken about. Maybe, I should just apologize to any colleague who might think I referred to him, for example, the young Murkomen who thought I am looking at him. This thing is much bigger than we might be thinking about. Allow me to apologize to you if I made you uncomfortable but let it just rest there because the record will continue speaking. I apologize.

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

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, we need to make progress.

**Sen. (Dr.) Machage:** Yes, and I will do it in a better way.

**The Speaker** (Hon. Ethuro): Take us forward then.

**Sen. (Dr.) Machage:** The tradition of this House is that if somebody apologizes then he must withdraw. Standing Order No.94 is very clear on the procedure to be followed if somebody cannot substantiate his claims. I am a Member of the Kenya Airways sky team. Am I one of those being referred to by Sen. (Dr.) Khalwale? I am convinced that before Sen. (Dr.) Khalwale mentions the names of Members of this House, a substantive Motion is necessary. Otherwise, he should also withdraw. He has apologized, yes, but he must withdraw that remark.

**The Speaker** (Hon. Ethuro): Sen. Kajwang.

**Sen. Kajwang:** Mr. Speaker, Sir, I wanted to contribute but before then I could make a small contribution on what you are exercising your mind on.

**The Speaker** (Hon. Ethuro): No. You will continue with the other one. For one, we want to bring that to a close. It is up to Sen. (Dr.) Khalwale to sort out the mess he created.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Standing Order being quoted by Sen. (Dr.) Machage says that no Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon presentation of a specific substantive Motion of which at least three days notice would have been given. This is the law. I have not mentioned the name of any Senator. I need this Standing Order to protect me. I have said clearly that I am guided by facts that the EACC has written to Parliament over that matter. Since I have not mentioned anybody, I have apologized to anybody I have made uncomfortable. Surely, that is good enough. Sen. Murkomen knows how much I respect

him. He is only three or five years older than my son. So, in a way he is my son. I met his father and he is my *vakochi*.

**The Speaker** (Hon. Ethuro): Order. Sen. (Dr.) Khalwale, you are actually misreading that Standing Order. Initially, I allowed you because you had not dug deeper but you have gone further to confirm that you looked at somebody and mentioned him. You have even gone further to describe the differential in age. Therefore you have made a specific one, making the Standing Order more binding than you are appreciating. That Standing Order is still applicable when you are talking about any other Senator in the House. That brings disrespect to the House. If you wanted to bring evidence, there is a demand for a substantive Motion and three days notice and both of them are not applicable now. On that basis you should do a simple thing: Take forward your own words of laughing it off and terminating this. What is wrong with adding the word “withdraw” to the apologies that you have already made? In fact, I thought an apology is graver than the swallowing.

Sen. (Dr.) khalwale, you may be reminded that Winston Churchill once said that swallowing words has never caused him indigestion. You are a medical doctor, you will appreciate that.

**Sen. (Dr.) Khalwale:** I want to profusely and abundantly apologize.

Mr. Speaker, Sir, my conscience on the fight against corruption in this country does not permit me to withdraw something that the public knows is going on and I have not mentioned anybody. I find it difficult only this afternoon to go against you because then I will be admitting that my fight against corruption is conditional. I was saying that having talked about governors who are not here today, we should also re-examine our own hearts and say if there is anything we are doing, me included, who gives Kshs3,000 to Kshs5,000 in funerals; then I should make sure I give that little money from my own sources. That is all. Am I asking for too much? I have apologized but withdrawing matters of corruption, not today.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I have three things; one, the Standing Orders talk about withdrawing and apologizing as one option. The other option is that you bring a substantive Motion and substantiate, period. In fact, the more I listen to Sen. (Dr.) Khalwale, the more I am convinced that what he was trying to say as a by-the-way was actually his fundamental aim of standing here this afternoon. I am greatly offended because the second thing, other than the package of withdrawing and apologizing as going together, he said that he never mentioned anybody but he talked about Senators. Unless he was talking about Senators in the Republic of Congo or Guatemala, then he was referring to some of our colleagues. The Standing Orders do not say that you must name the Senator; it just says do not impute improper motives on any Senator. You do not have to name the person; the moment you say “some Senators,” that is enough to constitute imputation of improper motives.

Lastly, Mr. Speaker, Sir, the more I listen to Sen. (Dr.) Khalwale, the more I am convinced that he is completely out of order because he is talking about a letter that has been written to Parliament. So, unless he says he wants to produce a letter which has been written to Parliament about some Senators and about Harambees, I would be very uncomfortable if the Chair allows Sen. (Dr.) Khalwale to get away with this travesty of justice and the kind of remarks he has made against some Senators whom he has not named.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I rise on Standing Order No.110(1)(i). The orderly conduct of this House is actually dictated by the respect to the Chair. You have instructed as the Chair and the substantive Speaker of this House that Sen. (Dr.) Khalwale withdraws, and he has refused to withdraw. In my opinion, Standing Order No.110(1)(d)---

**The Speaker** (Hon. Ethuro): Order! Order, Sen. (Dr.) Machage! Just hold there for a while; resume your seat.

*(Sen. (Dr.) Machage resumed his seat)*

Order, Senators! This is a straight forward matter. First, I want to say that when you look at Standing Order No.90(4), it states:-

“No Senator shall impute improper motive to any other Senator---”

Standing Order No.91 on retraction and apologies states:-

“A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct. ”

So, I have already pronounced myself and I think that Sen. (Dr.) Khalwale needs to appreciate that the Chair has been really generous and sympathetic to his cause. But this House has procedures. We are not asking you to withdraw because you do not believe in the fight against corruption; all we are saying is that when you make remarks against fellow Senators, then you must substantiate. You know, there are procedures in which that is done and you are yet to comply with those procedures. It is under those circumstances that you wish to withdraw and apologize. When you want to produce the evidence and all that, you know what to do; you will do a Motion to the Speaker and I will approve it; and you will come and prosecute it here. So, I really think because the mood of the House is really favoring you as the Chairperson of the Committee, it does no harm in doing so. I really want to plead with Sen. (Dr.) Khalwale because I, like any other Senator, respects all our Senators. It is honorable to do the simple thing; because failure to do so, the consequences will also be there. So, I just want to give you one last chance just to withdraw and apologize. You have already earned 50 per cent; just complete it and then we proceed because we still need you for the remainder of the issues that are being canvassed before us.

Sen. Wetangula, I really want to conclude this matter. So, you have the Floor.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have been following this debate very closely and I do not quite understand why we are pinning Sen. (Dr.) Khalwale on the wall. Standing Order No.94 is very clear and I listened to what Sen. (Dr.) Khalwale said; he turned to the House and said “We, Senators.” But the Standing Orders talk of:-

“No Senator shall impute improper motive to any other Senator---”

This is specific, identifiable and nameable. It is not like when I stand here and say “many of us have logs in our own eyes and we are seeing specks in other people’s eyes.” That does not amount to improper motive envisaged and cited in Standing Order No.90(4). It is very clear. If I stood here – and I am not saying that I will say so – and said “my distinguished learned senior, Sen. Kiraitu has done this or that;” then I have imputed an improper motive. But if I say “some of us are conducting ourselves in a manner that is below the expectations of the public,” that does not amount to imputing an improper motive on any Senator because the Standing Order is about “a Senator;” not the Senate, not Senators, not an amorphous grouping, whether they are called “sky team” or “ground team” or “water team.”

So, Mr. Speaker, Sir, I think we are over stretching the issue about Sen. (Dr.) Khalwale and having apologized generally in the same general manner in which he had made it, it is unfair to demand that he withdraws allegations against nobody specifically because he has not maligned anybody; he has not imputed improper motives on anybody. I think my distinguished senior, Sen. (Dr.) Machage, is also over stretching the application of Standing Order No.110 because I do not think there has been any disorderly conduct in the manner that this debate has been going on.

Mr. Speaker, Sir, again may I urge the House---

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Wetangula! You saw me stopping Sen. (Dr.) Machage.

**The Senate Minority Leader** (Sen. Wetangula): Yes, you did.

**The Speaker** (Hon. Ethuro): I will do the same to you.

**The Senate Minority Leader** (Sen. Wetangula): Thank you.

**The Speaker** (Hon. Ethuro): Do not make reference to a matter that is not before the House.

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

Finally, Mr. Speaker, Sir, I do not want us to turn the instruments of orderly debate in this House into swords of tyranny, because that will amount to gagging Members from expressing themselves. We have seen it all happening in this country from Independence; some people who take money to Harambees on wheelbarrows; others in sacks; others cannot explain how they got their money. We know it; that we do not say it does not mean that we cannot say.

*(A Senator stood up in his place)*

**The Speaker** (Hon. Ethuro): Order, Senators! By the way, I am very clear on this one; I really thought that Sen. Wetangula, you were to help the House.

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

**The Speaker** (Hon. Ethuro): But you have miserably failed even to read the language.

*(Applause)*

If it is for any other Senator, assuming to borrow from your own understanding of one Senator – and you also admitted that he said “all the Senators” – is that not a greater multiplier effect which makes it even worse than when you are dealing with one?

*(Applause)*

By the way, you can say all the things that you want to say, but it depends on how you say them. However, when it comes to imputing improper motives on another Senator or group of Senators, then the rules are very clearly. That is really the problem. So, if we really want to help this House, we need to go the simpler route which your Chair has suggested. The other route is the one that Sen. (Dr.) Machage and you were trying to pursue, which you know that I am equally not inclined to pursue. So, if Sen. (Dr.) Khalwale does not seem to appreciate the balance of proportionality, then we will apply the rules. Unfortunately, I am the enforcer of the Standing Orders for now.

I also want to confirm that there is no terror in the application of the rules. There will be none.

Sen. (Dr.) Khalwale, really this is a small matter.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to agree with you that this is, indeed, a very small matter. Since we are all men and women of letters in this House, we know of some facts in history. I will remind some of my colleagues about the life of William Wilberforce, a Member of the House of Commons in 1500. He faced many moments of being belittled at the time he was fighting that the Abolition Bill becomes law. I believe in the fight against corruption. I want to disagree with the Senate Leader of Majority that I am breaking the law.

I have specified the Leadership and Integrity Act and the Public Officer Ethics Act. I spoke about this “sky team” with the full knowledge that the Ethics and Anti-Corruption Commission, which I consult from time to time, has written to this House. Since these are facts---

**The Speaker** (Hon. Ethuro): Order, Sen. Khalwale! I have consulted the Clerk and I want to confirm that I am yet to receive a letter from that institution that you are referring to.



**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. With due respect, I cannot be held responsible for the accuracy of that claim. It is only you who can confirm the truth or otherwise.

Mr. Speaker, Sir, since I believe in this so much, I want, as I apologize, to clarify abundantly that I do not want to disrespect this House by disrespecting you. This is because if you throw me out, any Member can say that I be named. I do not want that to go down in my Curriculum Vitae (C.V.) in the few years that I will be in leadership in this country.

Mr. Speaker, Sir, as I withdraw, I leave it on the conscience of the members of the “sky team.” This is because withdrawing, as I do, does not preclude me from coming here tomorrow and saying the events, amounts and registration and numbers of choppers, including over the weekend when they were in Navakholo in Kakamega. The Kshs10,000 that we sent through Dennis Odoto was cheered more than the hundreds of thousands that they donated.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Sen. Khalwale. Order all of you Senators! By the way, the Chair cannot be intimidated by a Professor of Law, tyranny of numbers or Members who want to make certain statements and want the Chair to disregard rules. Whatever you do here, it must be subject to the rules. It will uphold and hold that dear. I will bend backwards to accommodate you, as I have done, but will not break them. I know William Wilberforce and have also read about him and the great job that he did. But he had also to work within the rules of the House of Commons.

Proceed, Sen. Kajwang.

**Sen. Kajwang:** Mr. Speaker, Sir, on this matter now, I would want to be very clear in my mind that if I am asked to withdraw by the Chair, I would be asked to withdraw specific words that offend the rules of this House, so that you do not withdraw a speech. This is because, sooner than later, the HANSARD will be in a lot of trouble, knowing what is withdrawn and what is to be retained.

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Kajwang! Why are you challenging the Chair? This matter is settled. You appreciate what we are making references to. Even Sen. (Dr.) Khalwale himself, when he was withdrawing, made specific reference to what was being withdrawn. It was improper motive on fellow Senators and not the entire speech.

**Sen. Kajwang:** Mr. Speaker, Sir, I am quite clear about that, but that improper motive must have been expressed in certain words. Those words must be specific. We have to leave this House feeling that Sen. (Dr.) Khalwale said these words and withdrew these words. We cannot just leave here with “improper motive”. The phrase “improper motive” does not mean anything, unless it actually did impute improper motive. Those words must be clear, specific and withdrawn from the HANSARD.

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**Sen. Murungi:** Mr. Speaker, Sir, I want to thank you. I think that you are a great man and we appreciate your commitment to the rule of law and Standing Orders.

The issue that was raised by the Chief Whip, Sen. Beatrice Elachi, is very fundamental because it touches on the institution of the Senate. I would like you to allow me to go back to it.

**The Speaker** (Hon. Ethuro): That is the issue before us, Senator.

**Sen. Murungi:** Mr. Speaker, Sir, what I want to say is without prejudice to the great respect that I have for the Chief Justice of this country and many of the Judges who are working hard to promote the integrity and impartiality of the Judiciary in promoting constitutionalism and the rule of law.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Murkomen! You are better of being where you were. The same applies to Sen. Obure. You are allowed to consult, but you should know how to do it.

Proceed, Sen. Kiraitu.

**Sen. Murungi:** Mr. Speaker, Sir, with due respect, I think that there appears to be a judicial conspiracy to undermine the work of the Senate, paralyze it and destroy this great institution called the Senate. It is being done through the guise of the Constitution and the rule of law. Somebody said that when tyranny counted to America, it would come wrapped in the American flag. When judicial tyranny comes to this country, it will also come wrapped in the garb of the Constitution and rule of law.

Mr. Speaker, Sir, the legitimate legal processes of temporary injunctions have been abused by the Judiciary to frustrate the work of the Senate. This Senate has declared on two occasions that Governor Wambora is no longer the Governor of Embu County. But the Judiciary, through a series of injunctions has maintained Wambora in office.

He even attempted to appear before Sen. (Dr.) Khalwale's Committee the other day, but the Judiciary through a series of injunctions blocked those who attempted to appear before the Committee the other day. That is a shame. The Judiciary itself has undermined the Constitution by not concluding Wambora's case in good time. The Constitution clearly states that disputes which have been brought to the Judiciary must be determined in reasonable time. Five years might expire with the Judiciary illegally maintaining Wambora in office under the guise of injunctions.

Mr. Speaker, Sir, the Senate has attempted to summon several Governors on issues of accountability, but the Judiciary has frustrated the Senate in its constitutional mandate to ensure accountability of the county governments in this country. We are not taking this issue of the summons lightly and the Judiciary will one day account for the crimes they are committing under the guise of protecting the Constitution.

The Senate, in an attempt to implement its mandate under Article 6 through creation of the County Development Management Boards, has now been heavily

challenged and frustrated. Every Senator has been taken to court for doing what the Constitution requires him to do. Again through a series of injunctions, the High Court, the Court of Appeal and the Supreme Court, we are going to leave this Senate without those Boards being constituted. This is a very serious matter and I think the Senate should speak out.

Mr. Speaker, Sir, sometimes jurisprudence which is the philosophy of law says that sometimes the legal knots are too complicated to untie. In that case, it is allowed to use a knife to cut the knot. I think time has come for this Senate to cut these complicated legal knots. In the old days when the *Emeritus*, Sen. Wako was the Attorney-General, there was a law called the Government proceedings Act. Under that Act, no injunction could be given against the Government because the theory of injunctions is to protect somebody from suffering irreparable harm or irreparable damage. The theory was that Government is so powerful; it is so resourced that there are no damages it cannot pay. We need to revisit the powers we have given to the High Court through legislation. I am proposing that we cut this legal knot this way; that a law be passed and just like the Government Proceedings Act, we can call it the Parliamentary Proceedings Act which bars the Judiciary from issuing any injunction against matters which are either pending before any House of Parliament or any matter in which the effect of an injunction would prevent Parliament from exercising its mandate as per the Constitution. That would be an appropriate law and it will be in implementation of the Constitution.

Mr. Speaker, Sir, in the past, we have cut legal knots through radical surgery of the judiciary and such things. So, we are not really helpless. I am urging our colleagues that the people rely on us for solutions. Therefore, we cannot be the people who cry out every day that the Judiciary has done this and that. We should take some proactive action to empower ourselves and implement our mandate as per the Constitution. I want to thank Sen. Elachi for bringing to this House this very important matter for us to deliberate on.

Thank you.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I would like to speak in the same spirit with my colleague, Sen. Murungi, and to say something which I think the Judiciary is missing. I understand that the Constitution lays down the broad and general principles of governance in a Republic. It is the duty of the legislature to use those principles in establishing those laws regarding how those principles will be practiced in governance. I would like it to go on record and also to remind the Chief Justice that this is a very important Article with regard to the function of the Senate in the Republic of Kenya. Although the role of the Senate is summarized in Article 96, there are sub-articles which are pregnant in meaning and which require extensive legislation in Parliament for them to be realized in governance. Article 96(1) says:

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

Article 96 (2) says:

“The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided for in Articles 109 and 113.”

Mr. Speaker, Sir, these are extremely important principles of governance laid in the Constitution. It is then the responsibility of the Senate to come up with laws on how this will be applied in governance.

Mr. Speaker, Sir, when the Senate decided to amend the County Governments Act to establish County Development Committees, the Senate was acting in pursuit of Article 96(1) and (2) read together. Nobody in Christendom or any other set of beliefs can read these Articles any differently, including the Judiciary in the Republic of Kenya. So, for anybody to go before a court of law and ask for an injunction before a judge to stop the Senate from applying a law that Parliament has passed in line with Articles 96 (1) and (2), it does not need a judge to take a week to make a decision on the matter before him or her. Therefore, it can only be due to judicial filibuster that any judge can decide a case before him, that he hears the case, adjourns, has another hearing, asks for an *ex parte* hearing until kingdom come to make a decision.

Mr. Speaker, Sir, secondly, I do understand that within the Judiciary, there is something called Constitutional Courts. The Chief Justice had been lauded by my friend, Sen. Murungi, for having been very crucial and very key in the democratic growth of this country. Indeed, he deserves the position he is in because he did, in fact, write a book on constitution making which is a highly respected book.

Having said so, the Chief Justice knows that matters that came before him over the County Development Boards is a constitutional issue and should be heard expeditiously by a constitutional court. He should not allow any Tom, Dick and Harry in the Judiciary calling himself a judge to issue an injunction if he does not understand the Constitution and the urgency of making laws so that there can be good governance of this country.

Mr. Speaker, Sir, if you read the amendment to the County Governments Act which was extensively discussed and mediated by the two Houses of Parliament under the Chairmanship of none other than the Attorney-General *Emeritus*, and finally brought to the House under your Chairmanship, and passed and approved and signed into law by His Excellency the President---. Quite honestly, the Judiciary must be very arrogant that an important law like that which has followed the normal process of law making and has respected the Constitution, that then they should sit on a decision to implement this law for weeks, months and months and, therefore, mess up the accountability system in this country, especially when it comes to devolution which is an important plank of governance in this country and of the Constitution.

Mr. Speaker, Sir, the havoc and chaos that the act of the Judiciary has meted to this country can be seen in recent press reports. It is a shame that the Judiciary cannot understand and appreciate public concern. All arms of Government are there to serve the public because the people, under Article 1 of the Constitution, are sovereign.

Mr. Speaker, Sir, this should serve as a warning to the Judiciary because people are seeing the emergence of a second stage corruption in the Judiciary after attempts have been made to clean it. A new generation of corrupt judges has come up receiving kickbacks from Governors and so on to make horrible decisions in this Republic. We must say this. We know what is going on behind the scenes. The longer you delay a case, the more largesse you will get from those who want the case delayed and, therefore, mess up good governance in this country. This is a matter that must be taken seriously. I agree with my friend, Sen. Murungi that something must be done to cut the knot.

**The Speaker** (Hon. Ethuro): Hon. Senators, as you continue ventilating, I would like to bring to your attention, Standing Orders No. 90(1) and Standing Order No.92 on *sub judice*. Keep away from certain specifics.

**Sen. Ong'era:** Thank you, Mr. Speaker for giving me this opportunity to contribute. I would like to commend my sister, Sen. Elachi, for raising this matter which is very important in this Senate. We created the County Public Accounts and Investments Committee (CPAIC) in exercise of our constitutional rights under Article 96(3). It says:

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

Mr. Speaker, Sir, for this very reason, this is a mandate that cannot be shared with any other organ of State, including the Executive or the Judiciary. It is, indeed, a shame that the Judiciary continues muzzling and interfering with the powers of this Senate. A time has come for us to stand up and to refuse the muzzling and interference of any other organ of State. As you know, this is interference under the doctrine of separation of powers. This is unacceptable conduct from the Judiciary. I want to urge my friend, the Chief Justice, to tame the many rogue judges he has in his Judiciary.

Mr. Speaker, Sir, you are aware that we made a resolution on a rogue Governor of Embu. However, this ex-Governor purports to be a Governor. This makes this Senate a paper tiger. We are not really in control. I urge you to take up this matter very seriously.

Secondly, it behooves us, as legislators, to pass laws that can tame the Judiciary. I know that my brothers and sisters in the National Assembly are very willing to take up this exercise because we have been made, as legislators, to appear as nobodies. We cannot pass legislation every time and continue to have orders being issued left and right. I want to request the CPAIC led by Sen. (Dr.) Khalwale not to fear. They should continue to exercise their powers. Recently, the Committee was paralysed and stopped working. The Committee should not have accepted those orders. First of all, the order was in contravention of the rule of law which is clearly known. This matter saddens me. It is sad that some rogue Governors can put the Judiciary in their pockets.

I want to agree with Sen. (Prof.) Anyang'-Nyong'o that, indeed, we know what they are doing behind our backs. They are getting these orders left, right and centre as if they are receiving biscuits from a shop. We, as legislators of Kenya, should not allow this.

Thank you for listening.

**The Speaker** (Hon. Ethuro): Hon. Senators, please identify the areas that you want the Speaker to look into in the ruling.

**Sen. Kajwang:** Thank you, Mr. Speaker, Sir. The matter raised by our sister, Sen. Elachi has been eating me since I joined this House. Before I joined this House, I read the Constitution. Otherwise, I would not have come to this House. I read the Constitution again and again and realized that the sovereign power belongs to the people. That sovereign power is exercised by the people directly or through their elected representatives. Whatever we do here has been done by the people of Kenya. We transact business on their behalf. That is enormous power.

Mr. Speaker, Sir, the power to do anything in this country belongs to the people. The fact that we can do it on their behalf is enormous responsibility. I have been restraining myself from talking about this issue because I thought that our sister would come back early next week with a substantive Motion so that we come up with rulings and read through them so that the people of Kenya can appreciate what we are talking about. If read again in this House, you would shock the public that these are rulings and judgments of the courts of Kenya.

Mr. Speaker, Sir, I recently realised that all Senators had been enjoined in a suit and held in contempt of court. There is a case going on against us regarding matters that I do not know about. We do not know what amounts to that contempt. We may have exercised our powers as legislators and, therefore, are in contempt.

Recently, Sen. Murungi said that these courts may place an injunction on this House. I repeated that and laughed it off. By placing an injunction on the Committee of this House, your House has been enjoined, Mr. Speaker. In fact, it is you who has been enjoined.

If this House exercises its roles through its Committees which are the mini version of the Senate and which report to the Senate, then the courts have stopped the Senate from doing its work. Where do they derive that power from? Where does the court get the power to suspend the functions of the Senate and Parliament? What happens at the time when Parliament cannot function owing to a court order?

I do not know what is happening to our courts. However, as hon. Murungi has said, clearly, there was a time when we knew that you could not get an injunction against the Government. If you tried, you were told that the only time that you could get this injunction was when you showed that you would suffer irreparable damage. Now we are being told you can be enjoined for anything, including holding a rally even if you are exercising your right. I have seen some judge trying to do that. Later on, we were pursued for saying certain things in a rally. Unless we discuss this matter here properly and tell the courts that they have no power to enjoin Parliament or Government from doing its job, then we will not be able to function.

Mr. Speaker, Sir, let us look at it this way: We have been given some powers in this Constitution to impeach the President, assuming we did and reached the threshold

and the President goes to court to get an injunction, what will the country think of the court or institutions of governance in this country? They are eating at it slowly, but sooner than later, if we are not careful, there will only be one institution of governance; the courts. Therefore, if you want anything to be solved in this country you do not need a law to be passed by Parliament, you just go to court. We have to do something about it quickly. I do not know whether we need to pass a law, but I am almost agreeing that we should do so, to ensure that courts cannot injunct the Government or Parliament. What if they declare that the law we have passed is unconstitutional. That is even better; that they can declare it unconstitutional. However, in this one, they have not even declared it unconstitutional, but they are stopping it from operating. Where do they get that power from? You cannot declare that the law should not be operationalised and yet you have not decided whether the law is unconstitutional or not. What are we dealing with here?

Mr. Speaker, Sir, I want to thank you; that you have given us a little opportunity to speak, but we are speaking carefully because there is no substantive Motion to enable us discuss the conduct of the Judiciary in this country and particularly of certain judges because we will have evidence and we will table it here.

Thank you.

**Sen. Hassan:** Mr. Speaker, Sir, in due fairness, everything else must have been said, but I want to convey the public policy message. Men, women and institutions are judged in terms of character with respect to the judgements that they deliver and decisions they make. As much as we may not sit on the bench as judicial officers, we have people around the country with sufficient intellect and sufficient reason to make a determination whether a judgement has public appeal; it drives public policy or whether the judgement in its own manifestation is reasonable and accurate. What the Judiciary has continued to do over the years since its transformation under the new Constitution is to severely undermine its authority. My concern is that if the Judiciary continues to make orders to gag institutions that are constitutional, the authority of the Judiciary will be waned to the point where nobody will ever trust their decisions.

Mr. Speaker, Sir, I think we are faced with almost a constitutional crisis; that an institution is quite keen to frustrate the transactions of a particular arm of government. The public policy message that must be driven is that we are not summoning these governors for a cup of tea. We are summoning them on account of accountability of public resources. I think it is an extra-ordinarily narrow public policy message that the Judiciary is driving to the country that governors or public officers cannot be summoned by the Senate on matters of accountability. Even if the Judiciary exercises its mandate, it must be in tandem with public policy because the public believes that governors and State officers must account for resources. Therefore, for the Judiciary to say that in the interim as money is being embezzled the Senate cannot conduct its responsibility, is a blow to the Constitution.

The more the Judiciary keeps giving these types of orders which are not reasoned, are irrational, do not ascribe policy and illegal, the more it is opening itself to the

possibility of its orders being ignored. Sooner than later, you will find ordinary Kenyans not respecting the judiciary. Their respect must be earned by things that make sense and meet the threshold of public policy and the Constitution.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I once watched a movie called “the Star Chamber”.

**Sen. Hassan:** What is that?

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

**The Senate Minority Leader** (Sen. Wetangula): The star was Yaphet Kotto and Louis Coze Junior. In this movie, set in America, the country had lost faith in the judiciary and a group of patriots set themselves up as “the Star Chamber”. Every time the courts passed judgement, the Star Chamber would sit, review the judgement and decide what to do. Many of the decisions included capturing judges and taking them before the Star Chamber to interrogate and grill. In one incident, they even meted out some extreme violence on the judge in form of physical punishment. We do not want to take that direction. I do not think we need a Star Chamber in Kenya.

Mr. Speaker, Sir, the Judiciary is a very important organ in any functioning democracy. Its importance is under-pinned by a state where nobody disrespects the decisions of the Judiciary. Those who are aggrieved simply move to the upper chamber for appeal. I keep on giving an example of the Electoral Commission of India which recently conducted an election with over 750 million people voting. After the elections which took one full month, nobody raised a finger.

Nobody raised a finger on the conduct and integrity of the India Electoral Commission. This is a public institution that must, as of necessity, constantly feel the nerve and direction of society. Otherwise, if an institution becomes an impediment to progressive growth of society, you soon will have a Star Chamber.

Regrettably, Mr. Speaker, Sir, I think some of our judicial officers have not conducted themselves well. The basic tenets of law on injunctions, even a first year law student knows, you cannot grant an injunction unless damages are an inadequate compensation; the party is going to suffer irreparable damage and so on, and so forth. Those who are lawyers can remember the case of Giella versus Casman Brown that laid the fundamentals on when and how an injunction should be issued and should operate.

Mr. Speaker, Sir, in such weighty matters as injunctioning an institution as critical as a Senate of Parliament, common sense and judicial sense requires that no such orders should be given *ex parte*. This is because you go for an *ex parte* injunction when there is imminent danger that your house is about to be auctioned, it is a Friday and you must stop it so that the court can hear you on Monday after serving the other party. If not, you will suffer irreparable damage.

Mr. Speaker, Sir, when a Member of a devolved unit, like a Governor, has been asked to come to the Senate and account for public money placed in his control, what irreparable damage can he possibly suffer by appearing before a Senate Committee? None whatsoever! The moment you step into a public office, you subject yourself to a



higher calling where you must be called upon to account. Even if the call on you to account is malicious, you still have a duty to account because the funds placed in your hands are not your own.

Mr. Speaker, Sir, for a long time, even if you look at Erskine May, and go through the long established democracies such as the United Kingdom (UK), France and others – although France has had breaks here and there with people like Napoleon coming to disrupt democracy, there is no single juridical decision that you can find where courts injunct Parliament from performing their work. The most bizarre is when I saw a suit filed before the High Court suing each and every individual Senator, including you, the Speaker and the institution of the Senate for passing a law. I have never envisaged a situation where any court, whether contested or not, can entertain such a misguided suit. The High Court has unlimited original jurisdiction, including striking out a legislation passed by any House as being unconstitutional. But the High Court has no jurisdiction to entertain a suit against any Senator for sitting here to legislate. You cannot do that. That is why we are thinking that something is tragically wrong somewhere; that there is, probably, some disconnect somewhere that needs to be reconnected.

The Judiciary is independent. That independence is interpreted to mean that you are independent to the extent that nobody will come and tell you to decide a case either way. However, you are not independent because you are not part of the country or you are not part of the body fabric of the nation. At this rate, I will not be surprised for the courts to injunct the President for going to attend the United Nations (UN) meetings or going to address the African Union (AU). At this rate, we may be enjoined from visiting our counties; we may be enjoined from even entering the precincts of Parliament. It is not looking good at all.

Mr. Speaker, Sir, the new Constitution is so good that it even unfetters judges from being tied to the strict letter and spirit in the conservative sense of the law and gives them an opportunity for alternative dispute resolution mechanisms. This can even make the judge, upon seeing a misguided suit like suing the entire membership of the Senate, including the Speaker, to say “wait a minute; can you guys go out there and talk?” Where is the disconnection? That is what the Constitution provides for. Where have we lost our direction? This is not going to augur well for this country because if in every direction against the laid down principles of law and precedent practice, we are simply trying to truncate, frustrate, castrate and do everything against the flow of the grain of society, then we are going to have very serious difficulties. Just as this Senate cannot sit and direct any judge on how to discharge their judicial functions, equally the Judiciary has no capacity to direct this Senate on how to discharge our legislative functions. That is the balance of convenience and balance of issues in a democracy. I respect you; you respect me; when I do wrong and somebody comes to complain, you arbitrate.

Mr. Speaker, Sir, I want to urge you as our Speaker to exercise your capacity and ability to look at the alternative dispute resolution and reach out to the Chief Justice. He

is the head of the Judiciary. Even as he cannot tell a judge what to decide, he has a duty to tell judges what not to do when things are looking like they are looking.

For example, the case of Martin Wambora has turned this Senate into a laughing stock; literally, a circus. A governor is impeached and not on any frivolous issues, but he walks into court, obtains an injunction and now he is an injunction Governor. He is not a Governor exercising the mandate of the people of Embu anymore. He is a Governor exercising the mandate of the Judiciary. This is not good.

(Applause)

Mr. Speaker, Sir, my learned seniors; Sen. Kembi-Gitura, Sen. Kiraitu, Sen. Wako, Sen. Kajwang and my distinguished junior, can tell you that an injunction cannot be issued to exist in perpetuity. It serves a specific purpose and must very quickly be heard *inter parte* and determined. You cannot walk to court, like Martin Wambora – an impeached Governor – get an injunction, ring-fence yourself and go around boasting and saying how useless the Senate is. The matter is not even being heard or determined. A governor is invited to come and appear before the Committee, like what we heard, and he sends a Short Message Services (SMS), purporting to be bereaved, when, in fact, he is on his way to court.

Mr. Speaker, Sir, There used to be great judges in this country. There was a judge who every young lawyer loathed to appear before, called Justice Trainor. If you appeared before him for an injunction, he would not give you. He would tell you:-

“Go, serve and come back. I will hear you this afternoon. I am not going to dish out injunctions without hearing both sides.”

There was another Jewish fellow called Aragon. Every lawyer dreaded him. I can see the distinguished Deputy Speaker looking at me, because I used to see him with terrible fright when going before Justice Aragon. This is because he would not give you any injunction.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Sen. Wetangula to put my reputation as a lawyer on line, by saying that I was scared of judges, when he knows very well how strong I was in defending not just my clients, but the right things in this society? Could he withdraw and apologize?

(Laughter)

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I withdraw. It was a general comment that nobody walked before Justice Aragon and walked out with an *ex parte* injunction.

**Sen. Kajwang:** Mr. Speaker, Sir, on a point of information, if he agrees.

**The Senate Minority Leader** (Sen. Wetangula): Please, inform me.

**Sen. Kajwang:** Mr. Speaker, Sir, I also appeared before Justice Aragon. Justice Aragon would not even allow you to adjourn a case on the basis that your opponent was not there. If he thought that actually what you were adjourning was not a case after all, he would dismiss it and immediately say:

“Okay, I would have allowed you an adjournment, but unfortunately, your case is useless. So, I dismiss it.”

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is absolutely true and testimony can be borne by the distinguished Senator for Meru, Senator for Murang’a and Senator for Busia who appeared before these judges. At that time, we thought that they were overbearing. However, in reflection, they were actually very good judges. This is because they did not entertain frivolous issues. We also had, of course, the alternative. There was another *Mzungu*---

**The Speaker** (Hon. Ethuro): Sen. Wetangula, you had been challenged by Sen. Kembi-Gitura that he is not one of those lawyers who were scarred.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I can tell you for free that any lawyer who was waiting to enter the chambers of Justice Trainor or Justice Aragon had some degree of fright, probably, except Sen. Kembi-Gitura. In fact, lawyers would stand outside his chambers and when another comes out they would ask: - “How is the mood?” This happened to all of us. But at the end of the day, we got our clients justice.

Mr. Speaker, Sir, there were also some limping judge. I cannot remember his name, but he was a white man. Whenever you appeared before him for an injunction, he would not even wait for you to introduce yourself. He would say: - “Injunction granted as is on the file.” We do not want this kind of justice.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I think that we are ventilating on a point of order raised by Sen. Beatrice Elachi. The Senate Minority Leader is telling interesting stories, but will he tell these stories forever or there is some consideration of time?

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

**The Senate Minority Leader** (Sen. Wetangula): I am about to conclude, Mr. Speaker, Sir.

Mr. Speaker, Sir, I was drawing these parallels to put everything into perspective; that justice must be dispensed within the context of how our country is moving. We are in a new dispensation. We cannot have a situation where a group of people sit somewhere and even decide, boast and say:-

“If you hire lawyer so-and-so, the injunction is coming. If you hire lawyer so-and-so, something is coming.”

Some even stage-manage which judges to go before, to get these injunctions. It is not right.

Mr. Speaker, Sir, I am talking about judges in the past, because I do not want to bring names on the Floor without a substantive Motion. But I am sure that many Senators here have serious issues to raise if this matter comes up.

Mr. Speaker, Sir, in conclusion, as a head of a critical institution in this country, you know very well that the Executive draws its authority from laws passed by the Legislature. The Judiciary exercises jurisdiction and authority bestowed upon them by the Legislature. This is the grand norm of democracy. If the grand norm of democracy becomes a national darts board, then we are headed in the wrong direction. It is incumbent upon you and all of us to do something before things get too late.

Mr. Speaker, Sir, I thank Sen. Elachi for raising the issue and encourage her that if she brought a specific Motion, we will be more than available to discuss it.

Thank you.

**The Speaker** (Hon. Ethuro): Order, Senators! In the light of the suggestion by Sen. Kiraitu, which I agree with, we should conclude this in the next ten minutes or less. So, I will give a chance to only three Senators who have expressed interest consistently. They are Sen. Wako, three minutes; Sen. Kembi-Gitura, three minutes and Sen. Machage, three minutes.

Sen. Wako.

**Sen. Wako:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak on this very important matter raised by Sen. Elachi. It is, indeed, a grave matter. Some of us who have been involved in this process of Constitution making become very sad when we see some of the practices that were there in the past rearing their ugly heads.

We know that one of the purposes for the reform of the Judiciary on which we pinned our great hopes was because the Judiciary, at that time, was not seen to be pro anti-corruption. As you know, we brought a number of cases to court and injunctions and applications from one court to another was the order of the day. I am saying this on the authority of the commission which looked into the Goldenberg scam. They said that the people behind Goldenberg had identified a weakness in the Judiciary to prolong cases *ad infinitum*. Therefore, we thought that through the reform of the Judiciary and the new Constitution, this will be a thing of the past. However, it appears to be rearing its ugly head again.

We need to be reminded that one of the fundamental principles of the judicial function under Article 159(2)(c) is that; in exercising the judicial function, the purpose and principles of the Constitution shall be protected and promoted. Now, one of the purposes and principles of the Constitution is captured under Article 10. It is on national values and principles of good governance, transparency and accountability. Now, under the Constitution, the key institutions which are supposed to ensure that it happens, apart from the constitutional commissions, is Parliament; the National Assembly through the Public Accounts Committee (PAC) and the Senate through the Public Accounts and

Investments Committee. Therefore, for somebody to stand in the way of that key function of the Constitution is to draw us backwards.

I do support what Sen. Murungi said; that this whole concept of *ex parte* injunctions has been abused. This is an issue that has been there for a very long time. In fact, there was a time that we said that in the exceptional case that an *ex parte* injunction is granted in those cases that have been outlined by the lawyer Senators here, the hearing takes place within 14 days and that never happened.

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

**Sen. Wako:** Can I just make a point please?

**The Speaker** (Hon. Ethuro): Why did you not start with that very fundamental point? Just make it on the basis that Sen. Kembi-Gitura has given you one of his minutes. Proceed.

**Sen. Wako:** Thank you, Mr. Speaker, Sir. One of the things we are seeing is that a fundamental understanding of the role of the Senate by the Judiciary-- and maybe in addition to what Sen. Murungi proposed, if you bring up an Act of Parliament, it can be declared unconstitutional in view of the unlimited jurisdiction of the courts and, particularly the High Court. Maybe time has come when we should engage the Judiciary so that they can better understand what the role of Parliament is and what the role of the Senate is in this whole constitutional make up. I would urge you, if you can use your good office with the Chief Justice to ensure that this takes place as quickly as possible because some of these mistakes that are being made which are so obvious are being made unwittingly by young advocates. Maybe a proper dialogue between us and them will sensitize the judges when it comes to matters that relate to the functioning of the Judiciary.

Mr. Speaker, Sir, in my time, injunctions were never granted against Parliament or Government. That was a taboo. The only thing that you could grant against the Government instead of an injunction was an order for prohibition and you could not grant a temporary prohibition. Therefore that forced issues to be debated or to be argued on merit other than getting an *ex parte* injunction.

With those few remarks, I want to thank Sen. Elachi for having brought this issue to the fore.

**Sen. Kembi-Gitura:** Thank you very much, Mr. Speaker, Sir. I want to join the ranks of my colleagues who have contributed very positively to this important debate on the issues of the Judiciary as against the Senate.

The Constitution that we have in this country today is actually a lay man's Constitution; anybody can read it and anybody can understand it. It is actually not even difficult to interpret. Article 125 of the Constitution is very clear and I think it is important to read it so that one understands exactly what it says.

Article 125(1) says:-

“Either House of Parliament or any of its Committees has power to summon any person to appear before it for the purposes of giving evidence or providing information”.

Secondly, Article 125(2) says:

“For the purpose of clause (1), a House of Parliament or any of its committees has the same powers as the High Court-”

Mr. Speaker, Sir, then it gives the areas that it has the same powers as the High Court. This is important because what it means to me as a lawyer is that when a Committee of the Senate is acting pursuant to or under Article 125(2), it has the same power as the High Court.

Mr. Speaker, Sir, therefore it cannot be fathomed that the High Court is not sitting on appeal against what has happened in the Senate nor is it reviewing an order of the Senate because it does not have that power. So, the question is; on what basis can the High Court possibly say that the Senate does not have the power to summon a governor or any other person? Exactly where does the High Court get the authority to say under Article 125 that we cannot ask a governor to come before us? I think this is dangerous.

I am on record as having said that dictatorship is bad. It is wrong in all its forms. It does not matter where it comes from. Parliament can create a dictatorship of its own which is wrong. The Judiciary can create a dictatorship and that would be very worrisome because it has the instruments which can be very dangerous if they are not used properly.

Mr. Speaker, Sir, as I said, our Constitution is very clear and everybody can read it. Article 174 of the Constitution is the cornerstone of devolution. It is the Article which we look upon when we talk about the importance of devolution. How are we going to oversight if we are having Governors who are opaque in the way they operate and who, against the operations of the Constitution which has underlined the importance of public participation, do not allow anybody, leave alone the public, but the elected leaders from participating in what they are doing? Why does the nation think that the Sang’ Bill came into force? Was it not because of that opaqueness so that under Article 96(3) we are able to oversight and decide what is good for the people of this nation; so when we are pursuing Article 96(3), and talking about our oversight role and somebody interferes with that oversight role at whatever level, be it the Judiciary or anybody else, those are the enemies of devolution. I feel very hurt every time.

*(The amber light at the Clerk’s table was switched on)*

I would like to remind the Clerk-at-the-Table that Sen. Wako took a lot of my time, and you added my time.

**The Speaker** (Hon. Ethuro): Order, by the way, we are counting your time. You have done more than four minutes.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, with your permission, let me conclude and say this: The reason that the Constitution gives timelines even in a Presidential petition is for the nation to know where it stands. However, when a court adjourns a matter of great importance - I remember you standing up in this House and declaring the seat of the

Governor of Embu County vacant as of 12.00 midnight; that night, when we made a decision. Without a reversal of that, the people of Embu are forced to have a Governor they do not wish to have at this point in time. This is the danger that I speak about when I am referring to dictatorship at whatever level.

I thank you and thank Sen. Elachi for bringing this important Motion.

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

**Sen. G.G. Kariuki:** I think my name appeared on your screen by mistake. I will give my contribution later.

**The Speaker** (Hon. Ethuro): You have to take only three minutes.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, as I appreciate the hawk-eye of Sen. Elachi on this issue, I also take cognizance of the good and elaborate way that some parts of the law have been pointed out - especially Article 125 of this Constitution - by the Deputy Speaker. That leaves me to wonder whether this House is being hit by its own ignorance.

The law is very clear on what should be done. In any case, if you look at part I of Chapter 10 concerning the Judicial Authority and Legal System, you will see that it is clear under 2(d) that justice shall not be delayed. That is exactly what we are seeing now. Justice is being delayed with regard to matters of the Senate. It is very clear, in part (d), that justice shall be administered without undue regard to procedural technicalities. That is exactly what the courts are using left and right to hit at the Senate in trying to prolong the terms of people who have been confirmed to have misused public funds or those who have been involved in practices that are unacceptable for a leader in this country.

We have to open our eyes and look at the same Constitution to map out the latitude within which to operate. It is our fault, in some way, that we have not fought for our rights as per the Constitution. If this Constitution is deficient in terms of completely separating the powers of the three arms of Government, then we need a referendum. We need it and it is justifiable. We have this Constitution, but it needs some amendments. After all, as it was earlier thought, 20 per cent of this Constitution was not acceptable both by the “No” and the “Yes” camps in the draft discussions in the last referendum. I was in the “No” camp at that time.

These deficiencies, as being shown to us by the Judiciary, cannot be left to pass or be swept under the table. Otherwise, this Senate will be doomed to extinction. Where are we in the legislative arm of the Government? The Senate is being ignored left and right. Indeed, as it has been exemplified by hon. Senators in this House, people we thought should not be Governors are still serving as Governors despite the Senate saying “no.” They are even thinking of appearing before our Committee. This is wrong and not acceptable.

**PRELIMINARY RULING****PARLIAMENT CANNOT BE INJUNCTED WHEN  
PERFORMING ITS CORE BUSINESS**

**The Speaker** (Hon. Ethuro): Thank you, Sen. (Dr.) Machage, for faithfully doing your three minutes.

I have heard you. I want to thank each and every Senator who has made very valuable contribution. All of it will be considered. Sen. G.G. Kariuki can approach my Chambers and say whatever he wanted to say because he did not do it now.

Obviously, these are grave matters which will be considered. Most of you acknowledge that we are all constrained because some of these matters are active before the courts. We have the *sub judice* rule under Standing Order No.92. This is also under Standing Order No.90(1).

We cannot really discuss the conduct of judges unless we bring a substantive Motion. Those are the narrow confines in which we were deliberating.

Having said so, I want to confirm, in the interim that nobody can injunct Parliament and its Committees. For the specific matter of Sen. (Dr.) Khalwale's Committee, I showed restrained otherwise I would have sent him out this afternoon. You can only serve the Speaker and the Speaker is not Sen. (Dr.) Khalwale. You can only serve the Clerk on behalf of the Senate. You cannot serve the Committee Chairpersons.

Therefore, you need to disregard all that. You need to proceed with those invites and summons as the case may be.

*(Appaluse)*

I want to appreciate that most Governors have heeded to the summons of the Senate. So, we should not create the erroneous impression that all Governors have failed to come. We were told that this morning, the Governor for Elgeyo-Marakwet appeared. Last week, we had the Vice Chairperson of the Council of Governors, the Governor of Kwale County. They have been coming.

I urge Governors, instead of making expensive trips to the courts and to media houses to instead take cheaper routes. There is what has already been ordained in the Constitution. The sooner, they make an appearance before the Senate Committee, the better for the country. In fact, some of the matters being sought before court have already been dispensed with.

In the High Court of Kenya, at Kerugoya, Constitutional Petition No.8 of 2014, the court affirmed our position and said, in summary, whether the petition settled the relief sought.

In part 2 it says;



“We hold that the Senate can summon Governors, County Executive Members of Finance and County accounting officers to appear before it and answer to questions on County Government finances in so far as the National revenue allocated to the respective county is concerned, but such power should not be exercised in an arbitrary and capricious manner.”

The petitions before court are looking at qualification and not on the determination. The judges clearly said, in the body of the ruling, that the Senate could summon Governors. Governors cannot go to court to claim that they have been summoned in an arbitrary and capricious manner when the same said Governors have not appeared in the first instance. “Capricious and arbitrary” would imply where the process has been abused. However, when the commencement was being challenged from day one, the “arbitrary manner” cannot arise.

I wish the Judiciary was alive to public interest. You saw the kind of poisoned political situation we are in now. People in public places are holding demonstrations just because all arms of Government are not enforcing what needs to be done. I hope they take judicial notice to ensure that does not happen.

Finally, Members are at liberty. First, I want to confirm that I had already started discussions with the Judiciary on the same matters so as to resolve them before they move on ahead. However, of course, Senators are at liberty as they have already alluded to, to bring a Substantive Motion - this is in your Standing Orders - No.94 – to discuss the specifics if need be. It is my prayer that in the meantime, we will allow consultations to take place. I am convinced that both the Judiciary, the Senate and, indeed, Parliament will do what the law requires of us.

Sen. Wako already said that if you look at the purposes for which the Judiciary is established, you will see that one of them is to promote the purpose of the Constitution. One of our national values under Article 10 of the Constitution is transparency and accountability.

In the opinion number two, when the Senate went to court, the Supreme Court made it abundantly clear that the constitutional framework is such that you cannot have too many checks and balances. It is actually desirable. The argument that under Article 226, county assemblies can interrogate should not stop any other entity from interrogating the same. These positions are already appreciated by the Judiciary, but it surprises me that there is some disconnect where some judges do not read other’s rulings. I thought that was very binding. That is where we are.

I want to repeat that you cannot injunct Parliament. You have already demonstrated what it means; it means somebody will go to the court to demand that nobody should go to the county because somebody thinks that your presence in the county is not good to them. That is how absurd it could get. The principle of separation of powers is upheld by all entities for the sake of harmonious, peaceful existence of the citizenry of this great Republic.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I just want to thank you for the ruling you have just made. I want to highlight two things which you might have to reflect on. Until we see the end of this approach where the Judiciary thinks they can supervise Parliament like a parastatal, there would be need for both the Chair and our Legal Affairs Committee to think a little more around this issue.

I want to say two things. First, the supposed reliance on Article 226 by Governors is oblivious of the fact that it talks about accounting officers. Governors are not accounting officers. So, Article 226 talks about summoning of accounting officers by county assemblies. Our summonses to governors are based on Article 125 that talks about summoning any person. If the intention was to exclude Governors, then Article 125 should have said that we can summon any person, except Governors. That clarity needs to be given. The county assemblies can call their accounting officers, but we can call any person under Article 125. The second and last point is that you have properly guided that, indeed, Parliament cannot be enjoined. That is my position. In fact, I am preparing an academic paper to be published internationally and demonstrate how erroneous this crippling jurisprudence is not only to the Kenyan legal system, but to the Commonwealth legal jurisprudence.

Mr. Speaker, Sir, this is something for reflection, going forward. I have seen my seniors here; Sen. Wako, Sen. Wetangula, Sen. Kembi-Gitura and others. In my view, Parliament cannot be enjoined when it is performing its core business. Core business means oversight, legislation and representation. I say so, because in Parliament, there are many other things that happen of administrative nature which do not relate to our core mandate. For example, it is the work of the Parliamentary Service Commission to deal with human resource management, procurement and so on. So, you can issue out injunctions on those issues. However, you cannot issue out injunctions on the core business of Parliament.

Similarly, the other arms of governments cannot interfere with the Judiciary in its core business which is hearing and determining cases. That is why I find it ironical when the Judiciary tries to make itself immune from any oversight, including the oversight of Parliament even in non-core issues like the work of the Judicial Service Commission. The magistrates and judges who sit in that commission are not exercising judicial functions. It is just an independent constitutional commission just like the Constitutional Implementation Commission (CIC) or the Teachers' Service Commission (TSC) and others.

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Kindiki! That matter is exhausted and my intervention was in the interim. So, wait until the final one comes.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, think about the core functions of Parliament and that would save us a lot of headache.

**POINT OF ORDER****RE-ORGANIZATION OF BUSINESS ON THE ORDER PAPER**

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. I rise on a point of order under Standing Order No.39(2) where it says that business shall be disposed of in the sequence in which it appears on the Order Paper or in such other sequence as they Speaker may for the convenience of the Senate, direct.

I want to plead with the Speaker that for the convenience of the Senate, taking into account that we have less than one hour to go, there is a Bill on National Honours which can only take ten minutes because there is just one amendment. That is to make sure that the Leader of Majority and the Leader of Minority of the Senate are also members of the Honors Advisory Committee. It is for the benefit of the Leader of Majority and Leader of Minority that this passes very quickly. We can dispose of, it for the convenience---

**The Speaker** (Hon. Ethuro): Order! On such matter, you should have approached the Chair in good time so that I give you direction before you canvas it in public. Now I will be forced to ask Sen. (Prof.) Kindiki about his next order. There is a request by Sen. Wako that we bring Order No.9 ahead over Order No.8.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the information I have is that Sen. Wako's Bill is just like mine and both of them are coming for the second reading. Given the time, if Order No.9 is brought forward, I have had to detain the Seconder of my Bill way beyond any further patience that I could have drawn from him. If it is in order then Order No.9 can be last, subject to the direction of the Chair, I have no objection, I can move my Bill tomorrow.

**The Speaker** (Hon. Ethuro): So, I direct that the next Order becomes Order No.9 and there will be no other Orders entertained after the conclusion of that particular Order. Proceed, Sen. Wako; and take the remainder of the time.

**BILL***Second Reading***THE NATIONAL HONOURS (AMENDMENT) BILL  
(SENATE BILL NO. 16 OF 2014)**

**Sen. Wako:** Mr. Speaker, Sir, I beg to move that the National Honours (Amendment) Bill, Bill No.16 of 2014, be now read a Second Time.

Mr. Speaker, Sir, this is a very straight forward Bill. The National Honours Act established the Parliamentary Honours Advisory Committee. These are the national honours that are normally given to deserving Kenyans. According to our Constitution,

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Parliament is both the Senate and the National Assembly. Therefore, it is important that Parliament is given a voice in determining or recommending the deserving Kenyans who deserve to be honoured.

It is equally important that within the Parliament as an institution, that the Senate, being what it is, be given also an equal voice within that Committee. The Committee, as it is now constituted, although the Speaker of the Senate is a Member, the Speaker of the National Assembly is a Member, nearly all other Members are Members who come from the National Assembly. We have the Clerks of both the National Assembly and also the Senate being Members; the Vice Chairperson of the Parliamentary Service Commission and a Commissioner of the PSC. We know that the PSC is weighted against our representation. Now, the Leader of the Majority Party and the Leader of the Minority Party in the National Assembly are Members. I think logic demands that if the Leader of the Majority Party of the National Assembly is a Member, so should also our very hard working, indefatigable Senate Majority Leader. Also, if the Leader of the Minority Party of the National Assembly is a Member, it follows logically that the Senate Minority Leader should also be a Member. If the two become Members, then the composition of that particular Parliamentary Honours Advisory Committee will be balanced between the two Houses. I think that is the spirit in which we should have this membership.

Mr. Speaker, Sir, you will recall that it is because the PSC is not as balanced as we want this one now to be that we, Senators, have had a difficult time in pursuing what we think are our legitimate interests through the PSC because we are a tiny minority there; the majority is the other House and, obviously, they consider their welfare more than ours. Therefore, for now, more than one-and-a-half years, in terms of remuneration, we continue to have the same salary, same everything as if we are equal. I know that you cover an area of many more Members of Parliament (MPs); is it six, seven or eight? I cover an area covered by seven Members of the National Assembly and so on, and so forth. Despite the logic and force of the argument in favor of the senators in terms of their welfare and remuneration, but in particular in terms of the operational expenses regarding offices in Nairobi and in the county, and so on---. In spite of all that force of logic, we have not managed to move very far.

Mr. Speaker, Sir, it is important that where we have a PSC, that the issues be balanced. It is the same thing when you talk about the Mediation Committee, where a Bill originates from one House it is refused in the other. A Mediation Committee is appointed. The Constitution says that it should have three Members from each House. That way, again that balance is maintained. Therefore, the purpose of this amendment, as simple as it is, is just to ensure that the membership of the Parliamentary Honours Advisory Committee is also balanced between the National Assembly and the Senate.

Mr. Speaker, Sir, I beg to move and I would ask Sen. (Dr.) Khalwale, in the absence of my Vice Chairperson from the Committee, to second me on this one.

Thank you, Mr. Speaker, Sir.

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

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

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I rise to second the Motion that the National Honours (Amendment) Bill, 2014, be read a Second Time.

Mr. Temporary Speaker, Sir, as explained by the Mover, really, the gist of what we are doing in this amendment is to; once again, remind the country that after the promulgation of the new Constitution, 2010, Kenya became a bicameral Parliament. Therefore, any further piece of legislation, when it is being done, it should always be done with that proviso being clear at the back of the minds of the legislators. So, in the 2013 Bill No.11 of the National Honours, when they constituted this particular organ, they left out the two critical offices in the Senate; namely the Senate Minority Leader and the Senate Majority Leader. They were either being mischievous, or they had forgotten that Kenya had since become a bicameral legislature.

Mr. Temporary Speaker, Sir, this matter is so important that I want to say it here and now; that this is one of the glaring reasons the *Okoa Kenya* proponents for the constitutional amendments will not rest. To this extent – and I wish the Senate Majority Leader was here today – and I am glad that he is ably represented by the Whip of the Government side. You see, the 10<sup>th</sup> Parliament, because many of the Members of the National Assembly then knew that either they were unable to become Governors or Senators, being a tougher election, they chose to deliberately remove some of the powers and functions of the Senate from this particular Constitution. You will recall, as a Member of that Parliament – and Sen. Wako is here – he sat on the Naivasha Committee which deliberately did this. If you look at this Constitution and you look at the issue of offices of Parliament, that Committee in Naivasha deliberately removed what was in the Nzamba Gitonga's draft that provided for the Senate Majority Leader, the Leader of the Majority Party in the National Assembly, the Senate Minority Leader and the Leader of the Minority Party in the National Assembly, respectively.

Mr. Temporary Speaker, Sir, that it is not here and to pretend that because that it is not here, we can, therefore, not legislate for it, is a pretext to the extent that if we did not have Sen. (Prof.) Kindiki as the Senate Majority Leader; and Sen. Wetangula as the Senate Minority Leader, this House would not function. This is because the only position of leader of majority that is given to hon. Duale, he cannot come to this House and lead the Government in its Business for the reason that if he attempted to approach this Dispatch Box, he would be quickly declared a stranger. So, the Office of the Senate Majority Leader and the Senate Minority Leader, until we amend the Constitution very soon, will, therefore, be exercised *de facto*. We will make it *de jure* as soon as the new Constitution is realized when we do those amendments. I want to use this opportunity to ask Sen. Beatrice Elachi that you must lead your Government in supporting *Okoa Kenya* initiative for the amendment. This is because if we do not, your Government---

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**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Please, do not divert. Conclude, if you are about to finish.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I have not finished.

Mr. Temporary Speaker, Sir, I was saying something very important; that failure to recognize what I am saying is to pretend that the Government's business in this House can be led by hon. Duale. He cannot come here because he is a stranger. So, this position of the Senate Majority Leader must remain *de facto* and the amendment of the Constitution should be done quickly, so that it is made *de jure*.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): I see no further interest to discuss this Bill; I now call the Mover to reply.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I wish to thank all the Members who are here present who heard me and the Seconder. Obviously, we did our job so well that we made a perfect case. There was no need for more debate on the matter.

Therefore, I beg to reply.

**Sen. Wako:** On a point of order, Mr. Temporary Speaker, Sir. Taking into account the Members who are in the House---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Are you replying or you are on a point of order?

**Sen. Wako:** Mr. Temporary Speaker, Sir, I have replied.

**The Temporary Speaker** (Sen. (Dr.) Machage): Can you sit down?

*(Sen. Wako resumed his seat)*

*(Laughter)*

This is not a Bill affecting the counties. Therefore, I will put the Question.

*(Question put and agreed to)*

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

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, an order had been made earlier by the Speaker that this would be the last business on the Order Paper. Therefore, it is now time to adjourn the Senate. Therefore, the Senate stands adjourned until tomorrow, Wednesday 24<sup>th</sup> September, 2014, at 2.30 p.m.

The House rose at 5.55 p.m.