

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 6<sup>th</sup> May, 2014

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.3020 of 2<sup>nd</sup> May, 2014)*

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

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

### PRAYERS

*(The Speaker consulted the Clerk)*

**The Speaker** (Hon. Ethuro): Order! Order, Senators! Let us commence our business.

*(The Speaker consulted the Clerk)*

Order, Senators! I have a message from the National Assembly on the Division of Revenue Bill, 2014.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### CONCURRENCE OF THE SENATE ON THE DIVISION OF REVENUE BILL 2014

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to bring to the attention of the Senate that Pursuant to Standing Order No.40 (3) and (4), the Clerk of the Senate has delivered to me a message from the National Assembly regarding the Division of Revenue Bill. A message which is dated 25<sup>th</sup> April, 2014, was communicated to all Senators pursuant to Standing Order No.40 on 28<sup>th</sup> April, 2014. It states as follows:-

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“Pursuant to Standing Order No.142 of the National Assembly, I hereby convey the following message from the National Assembly; that the Division of Revenue Bill (National Assembly Bill No.13 of 2014) was published in the Kenya Gazette Supplement No.36 of 26<sup>th</sup> March, 2014 and was passed by the National Assembly on Wednesday 23<sup>rd</sup> April, 2014, in the form attached hereto.

And further that the National Assembly now seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.”

Hon. Senators, Standing Order No.148 requires that a Bill which originates from the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with our Standing Order No.129. As you may note, the Bill is listed for First Reading under Order No.5 in today’s Order Paper. I, therefore, wish to draw the attention of the Standing Committee on Finance, Commerce and Budget that pursuant to Standing Order No.160(3), the Senate is required to conclude consideration of the Bill not later than ten days after the Bill has been introduced. Consequently, upon committal of the Bill to the Committee, the Committee should facilitate public participation, conclude its consideration of the Bill and table a Report by Tuesday, 13<sup>th</sup> May, 2014, at 10.00 a.m. to enable the Senate concludes this consideration of the Bill by Thursday, 15<sup>th</sup> May, 2014.

I thank you.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Mine is just for the record. On the Order Paper, we have the Bill presented as Bill No.13 of 2014; but it has been presented as a document that indicates that it is Bill No.15 of 2014. Is it one and the same thing? This is just for the record.

**The Speaker** (Hon. Ethuro): I do not have that document.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, the Clerk’s Office has circulated a Bill and then we have the Order Paper.

*(The Speaker consulted the Clerk)*

**The Speaker** (Hon. Ethuro): Order, Senators! The point raised by the Senate Minority Leader is valid. I read the Message as transmitted from the National Assembly, which was indicating No.13; but the Bill itself of the same National Assembly is actually Bill No.15. So, the Message transmitted should be corrected accordingly to reflect Bill No.15 and not 13. I thank you for pointing that out.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, last year, this same process attracted a lot of acrimony between the two Houses. I was thinking, as a way of appreciating the new-found working relationship between the two Houses, that you convey our gratitude and appreciation to the Speaker of the National Assembly for finally respecting the rule of law.

*(Applause)*

**The Speaker** (Hon. Ethuro): While I appreciate the desire to appreciate, but I think things under the law are expected of all of us. However, I will convey the message on the spirit of working together.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. For purpose of the record, whereas I join my colleague, Sen. (Dr.) Khalwale in appreciating the other House for doing what is required by the Constitution, it is not true that last year they did not do the same. In fact, the same was done. The problem occurred after this stage. I wanted this for the record so that it does not look like last year it was different. It was the same but the problem occurred at a stage which is after this one.

**The Speaker** (Hon. Ethuro): That is correct. But I thought Sen. Murkomen, you would go further by saying that you do not expect the same to happen now. That will be agreeing with the observation raise by Sen. (Dr.) Khalwale.

**Sen. Murkomen:** Mr. Speaker, Sir, I think what Sen. (Dr.) Khalwale is doing is just to note the spirit with which we are working. We need to note that we arrived here as a result of a legal process. We had to go for an interpretation at the Supreme Court. We did that because of our love for constitutionalism. But it must be noted that there are still challenges ahead of us. This will be for another day because there are Bills which are still being signed that have never gone through the constitutional process. Therefore, when we retreat, in our usual manner, the way you lead us with a lot of wisdom, in that very important forum that we will have, you have always cautioned us that for comity of the two Houses, there are certain things we should not say in this forum. When we retreat, we will see how that relationship will be worked on to ensure that all the Bills go through the normal process that is required.

**The Speaker** (Hon. Ethuro): Thank you, Sen. Murkomen.

**Sen. Billow:** Mr. Speaker, Sir, I appreciate. We hope to discuss the Bill that was referred to the Committee on Finance, Commerce and Budget. We have a meeting that has been convened tomorrow. We hope that before the dates that you have announced, we will be able to conclude this matter and report to the House.

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

**The Speaker** (Hon. Ethuro): Sorry, Sen. Billow. What were you saying?

**Sen. Billow:** Mr. Speaker, Sir, with regard to the Bill you have referred to our Committee, I want to assure the House that we have, indeed, convened a meeting of the

Committee tomorrow to discuss the same. We will be able to get the report of the Committee in this House as you indicated within the dates you gave. We have to conclude before then and forward our report to the House. But I also wish to assure hon. Senators that we will, as required by law, get public participation to ensure that we comply with the constitutional requirements in terms of getting the views of members of the public.

### COMMUNICATON FROM THE CHAIR

#### INVITATION TO THE ANNUAL NATIONAL PRAYER BREAKFAST MEETING

**The Speaker** (Hon. Ethuro): Order, hon. Senators. I have another Communication to make on the National Prayer Breakfast Meeting.

Hon. Senators, as you are fully aware, Parliament, through the Parliamentary Prayer Group, has been hosting the Annual National Prayer Breakfast. This year's National Prayer Breakfast is scheduled to take place on Thursday, 29<sup>th</sup> May, 2014 at The Safari Park Hotel beginning at 8.00 a.m.

His Excellency the President, the hon. Uhuru Kenyatta, is expected to be the guest speaker. This is a function for all Senators, Members of the National Assembly and participants from the private and public service sectors. The event is funded by hon. Members through voluntary contributions. I, therefore, wish to appeal to hon. Senators willing to make their voluntary contributions to do so by signing against their names on the forms that are available at the Serjeant-at-Arms at the entrance to the Chamber.

In addition, hon. Senators who may wish to join the interdenominational Parliamentary Prayer Group are requested to contact Sen. David Musila for further details. I look forward to your generous contributions.

I thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I want to confirm that I will be one of the first few people to approach Sen. Musila. Since this noble exercise is being funded by Members of Parliament from the National Assembly and the Senate, could the organizers consider, instead of meeting for breakfast, this be made an open function at Uhuru Park, Nyayo Stadium or anywhere secure, so that we, as leaders, can pray with the rest of the Kenyans instead of us finding ourselves in one secluded place like a hotel?

**Sen. Orengo:** May be that is why you have---

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo! I thought the point of order was being addressed to the Speaker.

Sen. (Dr.) Khalwale, of course, if that was a burning issue, you would have approached Sen. Musila even faster than you intend to do, so that you can also give him, since he is part of the organizing committee, such good ideas on how they could arrange such an event.

**Sen. Musila:** Mr. Speaker, Sir, I just want to confirm to hon. colleagues that we will be open to suggestions such as the one that has just been made by Sen. (Dr.) Khalwale. With your permission, may I also add that Sen. Beatrice Elachi is also in the committee and, therefore, in addition to approaching me, he should also approach Sen. Elachi.

**The Speaker** (Hon. Ethuro): So, you can approach either Sen. Musila or Sen. Elachi.

Let us proceed to the next Order.

### NOTICE OF MOTION

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

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

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 29<sup>th</sup> April, 2014, the County Assembly of Embu approved a Motion “*to remove from office, by impeachment,*” the County Governor of Embu County;

AND FURTHER, WHEREAS by letter dated 29<sup>th</sup> April, 2014 (Ref: CAE/SCA/1/35) and received in the Office of the Speaker of the Senate on 30<sup>th</sup> April, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No. 68(1)(b) of the Senate, by resolution, may appoint a Special Committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3) (b) of the County Governments Act, 2012 and Standing Order No.68 (1) (b), the Senate resolves to establish a Special Committee comprising the following Senators-

1. Sen. Kipchumba Murkomen;
2. Sen. Kimani Wamatangi;
3. Sen. Zipporah Kittony;
4. Sen. (Prof.) Wilfred Lesan;
5. Sen. Naisula Lesuuda;
6. Sen. Peter Mositet;
7. Sen. James Orengo;

8. Sen. (Dr.) Boni Khalwale;
9. Sen. Boy Juma Boy;
10. Sen. (Eng.) Hargura Godana; and,
11. Sen. Judith Sijeny

to investigate the proposed removal from office of the Governor of Embu County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Thank you, Mr. Speaker, Sir.

### POINT OF ORDER

#### SENATORS' DISCUSSION OF IMPEACHMENT OF GOVERNOR WAMBORA IN PUBLIC FORUMS

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

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

**Sen. Musila:** Mr. Speaker, Sir, I rise under Standing Order No.88 which talks about anticipating debate. This matter of Governor Wambora has been debated very heavily since it came to light by very prominent Senators. I recall that at one point the Senate Minority Leader raised the issue of some of our colleagues purporting to be speaking on behalf of the Senate out there. This matter has become very serious because today, in the newspapers, some very prominent Senators are quoted to have already made a decision on a matter that is before this Senate. I think this is serious. We need your guidance as to whether we are going to be allowing debate on a matter that is before this Senate to be debated outside the Senate. For example, a prominent Senator, the Chief Whip, is reported today to have said that: "it is unfortunate the issues that impeached Governor Wambora last time are the same." To make it worse, she goes on and says: "The Senate has no choice but to impeach Mr. Wambora."

The Deputy Majority Leader is quoted today as saying: "People cannot keep on hiding in courts. So, we are going to chase Wambora away."

*(Laughter)*

These are very serious matters yet the Senate Majority Leader stands here and gives a notice of a Motion to appoint a special committee to investigate a matter that apparently they have already made a decision on. We need your guidance over this matter.

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

**The Speaker** (Hon. Ethuro): Order, Members! Sen. Musila will be heard.

**Sen. Musila:** Mr. Speaker, Sir, we need your guidance on this matter. When we raised the issue of Senators speaking on behalf of the Senate out there, we were told that it would come under a *Kamkunji*. But I think this matter is going beyond the limits. The Senate Majority Leader has even addressed himself on this matter. I want today to be guided on the issue---

**The Speaker** (Hon. Ethuro): Order, Sen. Musila. You are now becoming repetitive.

**Sen. Musila:** I want to be guided on the issue I have raised of the two colleagues, Senators I respect a lot, who have today debated the matter that is before us.

**The Speaker** (Hon. Ethuro): Sen. Musila, while you are at it, which sources are you quoting?

**Sen. Musila:** Mr. Speaker, Sir, the *Daily Nation* of today, Tuesday, 6<sup>th</sup> May, 2014.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I am just wondering whether it is in order for my brother, Sen. Musila, to do two things; one, to come to this House carrying newspaper cuttings yet we know in the traditions of this House and according to the Standing Orders, you cannot rely on newspaper information as a basis for substantiation because newspapers write things which may not be true.

Two, whether it is in order for the distinguished Senator for Kitui County, Sen. Musila, whom I respect a lot, to also mislead this House that by the time alleged remarks were made, which are in any case based on newspapers, that the Senate was seized with the matter of the Governor of Embu County. Is he in order on those two grounds?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Musila, the Chairman of the famous Wiper Party, to mislead the House by selectively reading Standing Order No.88?

The Standing Order says:-

“It shall be out of order to anticipate the debate of a Bill which has been published as such in the Gazettee by discussion upon a substantive Motion or an amendment, or by raising the subject matter of the Bill upon a Motion for the adjournment of the Senate.”

We have just given notice of the Motion now. Between the time that the notice was given and now, I have not heard any Senator who has discussed anything about the same matter. That is totally misleading.

(Applause)

**The Speaker** (Hon. Ethuro): Sen. Murkomen, I did not hear your last words. It looks like you swallowed them as you were seating down.

**Sen. Murkomen:** Mr. Speaker, Sir, I want you to rule that the Senator is out of order because he read that particular Standing Order selectively and in an incomplete manner. I am looking for the best words to---

**The Speaker** (Hon. Ethuro): We have heard you.

**Sen. Musila:** Mr. Speaker, Sir, I insist. I am quite in order. In addition to the newspaper cutting, whatever was said by the Senators, I heard what they said was on television. We saw them discuss it.

On the issue of whether the matter was before the Senate, you did gazette this Special Sitting of the Senate today and indicated the matter to be handled. So, when the matter was discussed, it was in public knowledge that the Senate would discuss this matter. This matter has been debated outside by the distinguished Senators as I have already said. In my view, and I want you to hold me correct, it is out of order.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. We knew before we came to this House because the agenda was circulated, that we were coming to meet for three things. One was the Message from the Chair; two, the Division of Revenue Bill and three the matter regarding Governor Wambora. There is absolutely no excuse for any Senator in this House to speak out there and claim that they are just newspaper cuttings. So, it is in the knowledge of all Senators, according to the information I have even on my phone, let alone the paper Sen. Musila carried. So, it is not fair for the entire Senate to be ridiculed because this is as good as ridicule. Out there, people think we are not serious people. Are the Members in order to defend a position which is not right for the Senate?

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I request that in determining the issue of the Standing Order as raised by Sen. Musila, you consider Standing Order No. 88(3) which is very important. It says:-

“In determining whether a debate is out of order on the grounds of anticipation, regard shall be had to the probability of the matter anticipated being brought before the Senate within a reasonable time.”

I think this was a reasonable time.

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. With due respect to my colleague, the Senator for Kitui County, I am entitled to my own opinion. I am a politician and I can say what, to me, is right. In any case, this House had already made a decision earlier on. All of us collectively voted for the Motion. The facts are the same. However, having said that, I thought after today, when all this is before the Committee, we wait for the Committee to bring the report. At that point, if I make a comment or anybody else makes comments when the issue is before the Committee, that means we will violate the matter. But even now, we have not adopted it as a House. We are entitled to our opinions.

## COMMUNICATION FROM THE CHAIR

THE SENATE SHALL BE GUIDED BY RESOLUTIONS  
MADE ON THE FLOOR OF THE HOUSE

**The Speaker** (Hon. Ethuro): Order, Senators. I think we have all heard Sen. Musila raise issues of anticipating debate under Standing Order No.88. That Standing



Order has three provisions. All of them have been referred to. The first one was made reference to by Sen. Musila, the second one by Sen. Murkomen and the third one by Sen. (Dr.) Machage. So, the entire Standing Order has been read to the House, I do not need to repeat it.

Let me say the following. This is a bit tricky. You need to read the words very carefully. If you read part (2) of the Standing Order, it says:-

“It shall be out of order to anticipate the debate of a Motion of which notice has been given by discussion upon substantive Motion or an amendment, or by raising the same subject matter upon a Motion of the adjournment of the Senate.”

Notice was not given until now. Yes, there was a gazette notice of a Special Sitting to discuss the matter but the Speaker does not give notices of motions. I gave notice of a Special Sitting because the Senate is on recess. So, strictly speaking, anybody else would raise the matter before now.

According to part (3) of that standing order, and that is why I am saying it is a bit tricky, I had already noticed that, the question would be, why would the Members be in a hurry to debate when they have an opportunity given by the Constitution and the people of the Republic of Kenya to come and say all the things they would wish to say on any particular matter? The probability of the matter anticipated being brought before the Senate within a reasonable time, of course, the time had already been spelt out, it was very reasonable. If it could be reported this morning on the material day, there is nothing more reasonable than that.

Having said that, unfortunately, your source of information is also inadmissible. Not only are you the Chairman of a very important party known as Wiper, but you are a very seasoned politician having even been a former Deputy Speaker. I know for a fact, you are very robust with Standing Orders. So, I find that your point of order is not admissible.

*(Applause)*

But having dismissed it, I want to make it absolutely clear that all Senators, including the ones being mentioned, must restrain themselves. Censorship should not be a matter by the state, it is a matter that you look at your own circumstances and your stand in society and you know the kind of things that you will say. Some of the utterances may be prejudicial to the deliberations before us. But as they have clarified, those were their own personal opinions. As far as this House is concerned, whatever you do out there, whether you have the fame of bull fighting---

*(Laughter)*

Whether you are a lion-king from some mountain or the representative of the largest county in terms of population, you can say whatever you want to say out there. This

House and this country can only be guided by the resolutions of the Senate on the Floor of the Senate.

Thank you.

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. Thank you for that guidance. But if you listened to Sen. Musila introducing his point of order, he referred to prominent Senators who were making statements out there. He referred in particular to Sen. Elachi and Sen. Murkomen. Is he in order to suggest that in this House there are categories of Senators, prominent and non-prominent?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to thank you for the ruling you have given. But listening to you keenly, I am not too sure whether we have carried the country with us with that ruling. Sen. Musila talked of a discussion outside this House. Standing Order No.88, to my understanding, refers to an attempt during debate in this House. This is when during debate, you veer off and start anticipating debate of another matter. I was thinking that if that is also your persuasion, then it is important that the House knows that the only way you can be accused of having anticipated debate is when, on the Floor of this House, debating some matter in this House, you anticipate another matter. I do not know whether I have made that point. It would be nice for you to clarify.

**The Speaker** (Hon. Ethuro): It is not only nice, I owe it to you. You have actually done better than I thought. If I wanted it that way, it would have been worse to your good friend, Sen. Musila, and I thought you had already confirmed to the House that you are going to be the first person to approach him. I wanted you to continue along those lines.

In terms of anticipating debate, it is not only when you are on the Floor because there is a substantive Motion and the issue of discussion and the one debating itself was of interest to me, but this was not supposed to be a considered ruling. That is the one that can be done when you put all the parameters together. This was just to dispose of a point of order that had come for now. But you can also anticipate debate if the matter is actively before the House or a Committee of the House and you are out there discussing the same. This was a special session for a special sitting.

*(Several Senators stood up in their places)*

Order, Members! I could understand that Sen. (Dr.) Khalwale's point of order was arising from my Communication. The one of Sen. Obure, while legitimate should have come before I made the ruling. I gave all the Senators an opportunity to raise their points of orders. So, we cannot entertain this notion of challenging the rulings of the Chair. So, we are stopping at that and we proceed.

Order, everybody! That thing is out of order, we proceed.

**BILL***First Reading*

## THE DIVISION OF REVENUE BILL

*(Order for the First Reading read – Read the First Time  
and ordered to be referred to the relevant Senate Committee)*

**The Speaker** (Hon. Ethuro): Order, Senate Majority Leader, just a minute before you go ahead. Where is the Order Paper?

Order, Senators! Before we proceed with Order No.5, I would like to make a Communication for purposes of clarity.

**COMMUNICATION FROM THE CHAIR**

PROCEDURE FOR ESTABLISHING SPECIAL  
COMMITTEE OF THE SENATE TO CONSIDER  
THE REMOVAL FROM OFFICE OF THE  
GOVERNOR OF EMBU COUNTY

**The Speaker** (Hon. Ethuro): Hon. Senators, in terms of Article 181 of the Constitution, Section 33(3a) of the County Governments Act and the Senate Standing Order No.68 (1) (A), the Speaker of the Senate is required within seven days after receiving notice of a resolution from the Speaker of a County Assembly to convene a meeting of the Senate to hear charges against the Governor. It is in this respect that I convened this Special Sitting of the Senate by Gazette Notice No.3020 of 2<sup>nd</sup> May, 2014 which was carried in a special issue of the Kenya Gazette of the same day.

Section 33(3b) of the County Governments Act and Standing Order No.68(1b) both provide that at this sitting, the Senate by resolution may appoint a special committee comprising eleven of its Members to investigate the matter. Indeed, hon. Senators will observe in today's Order Paper that pursuant to these provisions of the law, the Senate Majority Leader has already given Notice of Motion for the establishment of a Special Committee. You will also observe that the Motion has, with the approval of the Speaker, been listed on the Order Paper.

Hon. Senators, if the Motion for the establishment of a Special Committee is approved, the Special Committee will be required under Section 33(4) of the County Governments Act and Standing Order No.68(2) to investigate the matter and report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass today, the Senate shall proceed to investigate and consider the matter in Plenary. I hope I am clear there.

The resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed. It is noteworthy and I wish to emphasize to all hon. Senators that debate on the Motion shall be limited to the substance of the Motion, namely, whether to establish a special committee consisting of the Senators listed to investigate the proposed removal from office of the Governor of Embu County. It is not a Motion on the propriety, prudence or even the constitutionality or legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or the merits. It is, therefore, not permissible to veer into any matter other than the Motion before the House.

Hon. Senators, as I have previously stated, the hearing of charges for the proposed removal of a Governor is one of the most important and almost solemn functions of the Senate under the Constitution. I therefore urge that the Senate exercises the highest level of responsibility on this matter in the Plenary and also, should the Motion by the Senate Majority Leader pass, the same applies in the special committee.

Senate Majority Leader!

### MOTION

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

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

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 29<sup>th</sup> April, 2014, the County Assembly of Embu approved a Motion “*to remove from office, by impeachment,*” the County Governor of Embu County;

AND FURTHER, WHEREAS by letter dated 29<sup>th</sup> April, 2014 (Ref: CAE/SCA/1/35) and received in the Office of the Speaker of the Senate on 30<sup>th</sup> April, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No. 68(1)(b) of the Senate, by resolution, may appoint a Special Committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.68(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators-

1. Sen. Kipchumba Murkomen;
2. Sen. Kimani Wamatangi;
3. Sen. Zipporah Kittony;
4. Sen. (Prof.) Wilfred Lesan;
5. Sen. Naisula Lesuuda;
6. Sen. Peter Mositet;
7. Sen. James Orengo;
8. Sen. (Dr.) Boni Khalwale;
9. Sen. Boy Juma Boy;
10. Sen. (Eng.) Hargura Godana; and,
11. Sen. Judith Sijeny

to investigate the proposed removal from office of the Governor of Embu County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, today, it is a very sad moment again in the history of this Senate and the history of our country, especially since the enactment of the new Constitution in 2010. I say so because while this Senate is gathered here in order to discuss a Motion which is of great national public interest, this involves one of those things that are unpleasant but which must be performed, because to discuss a Motion of establishing a Committee to consider the removal of a governor of a county from office is an extremely unfortunate yet important function that we must do this afternoon.

### POINT OF ORDER

#### THE LEGALITY OF THE MOTION BEFORE THE HOUSE

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

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

**Sen. Khaniri:** Mr. Speaker, Sir, I stand to seek your ruling on the Motion that the Senate Majority Leader is just moving. This is under Standing Order No.50(1) which says that no Motion may be moved which is the same in substance as any question which has been resolved either in the affirmative or in negative during the preceding six months in the same session.

We are all aware that the Motion that the Senate Majority Leader is moving was moved in this House not more than six months ago as the Standing Orders provide and it was decided in the affirmative. Therefore, I believe that the Senate Majority Leader is out of order to move the same Motion that was decided on by this House in a period not exceeding six months ago.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Under very ordinary circumstances, the distinguished Senator for Vihiga

would be very right but it should not be lost to all of us, including my brother, Sen. Khaniri, that we are where we are because a court ruled that the Motion that went before the County Assembly of Embu and the Motion that came before this Assembly was invalid, null and void. Therefore, there was no Motion to go back to the Standing Order mentioned. So, indeed, where we stand much as the Standing Order quoted is correct under normal circumstances where you have debated and passed a Motion, we are in a situation where we debated and passed a Motion that was then declared to be null and void. Therefore, there was no Motion as we stand here. So, I believe that the distinguished Senator for Tharaka-Nithi is correctly moving a Motion. It does not offend the Standing Order quoted and the matter is seized by this House constitutionally, legally and within our Standing Orders.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. We are here by virtue of the Gazette Notice that you posted last week. That was the admission of the head of the Senate that the Senate was respecting the ruling of the High Court. If it is true that you were accepting the ruling of the High Court, it means that you were acknowledging the fact that whatever we had done here initially had been voided by that particular ruling. It, therefore, follows that having admitted so, it means that all that we did is non-existent. Therefore, what we are doing is purely on the assumption that nothing happened. It is a fresh process and it would be dishonest for us to accept to come and meet accepting the ruling of the court and then come and say “well having accepted that it was voided, it is there in our records”. Therefore---

**Sen. (Prof.) Anyang’-Nyong’o:** On a point of order, Mr. Speaker, Sir. I would very much doubt whether what Sen. (Dr.) Khalwale is saying is correct. The court ruling cannot void everything we said in this Senate. I do not think that is true. In any case, this issue could be resolved very easily if you invoke Standing Order No.1 and we proceed.

**Sen. Bule:** On a point of order, Mr. Speaker, Sir. I was of the opinion that since this issue had been debated and has been brought before the House again, I do not see it is proper to appoint a committee but the same committee can just discuss the issue and it will be final.

*(Laughter)*

**Sen. Orendo:** On a point of order, Mr. Speaker, Sir. Whereas I respect the views pronounced by the distinguished Senator for Vihiga, but if you read the Motion, it cannot be true that what is before the House by way of this Motion is the same as the one that we dealt with. It is not. If you read this Motion, it talks about a decision made by the County Assembly on 29<sup>th</sup> April, 2014. So, that there are no doubting Thomases, you are not just supposed to look at the Order Paper, there are accompanying documents to assist you if you have any doubts. If you look at the particulars of allegations against the Governor of Embu County, they may be similar but they are not the same. You know English is a very precise language. Again, in the accompanying document, there is a debate at the County Assembly of Embu and the HANSARD is there. That debate was held on 29<sup>th</sup> April, 2014.

More importantly, there were writs which were served on the Speaker in accordance with Article 181 of the Constitution and Section 33 of the County Governments Act. Once you receive them, then you are expected, in a particular fashion-- - Even the ten days provided in the Motion is not something you have picked up in the air, it is in the law. So, whereas I sympathize with the comments made by the Senator for Vihiga, but had he cared to read the Motion carefully, he would have discerned the fact that this is completely different and therefore completely in order. I would rather we do not even talk about what happened in court because once you begin talking about what happened in court, then even the authority of this House will be undermined. We deal with the business that comes to us in accordance with the law.

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

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Sen. Murkomen has the Floor.

**Sen. Murkomen:** Mr. Speaker, Sir, this is a House of records and it is important that certain issues go on record. I want to pick from where my mentor, Sen. Orendo, left that, indeed, the question of the court does not arise. The issue of whatever court orders were given are not known to this House. What is known in this House is the different communication that came from Embu County which is different from the other one. It is important that this House passes this Motion. This House should operate with a lot of impartiality. This issue is clouded by the previous issues that may have come to this House because we are dealing with a different Motion. In fact, if you read the law, you will see that there are situations where a Motion will come to this House, sail through and the County Assembly will have an opportunity to do another one after three months.

You cannot come back here and say that this case is similar to the other one because the law provides that after three months, a Motion similar to the one that had been brought before can still be brought and we look at it. So, if we go the direction that the Senator for Vihiga is talking about and if we were to agree with him, we would be shooting down those provisions of law.

So, it is important for the authority of this House to know that we are not here as a result of a court ordering us to come and do something here. We are here because we received communication from the County Assembly of Embu.

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

**Sen. Murkomen:** Tosha!

**The Speaker** (Hon. Ethuro): Once you speak, that does not mean that the entire House has spoken. While we appreciate your opinion, you should also appreciate any other opinion.

**Sen. G.G. Kariuki:** On a point of order, Mr. Speaker, Sir. The original point of order raised by my friend over there, George Khaniri, portrayed that he was very clear in his mind that he wanted to find out whether the Speaker can decide on this matter. However, the matter had been turned into a debate.

All of us are trying to give an answer to hon. Khaniri when the Speaker is the one to decide on this matter. We have made this House to be a different House, whose proceedings cannot be followed. Therefore, I suggest that you give us a ruling so that we debate on the Motion.

**Sen. Billow:** Mr. Speaker, Sir, I will really appreciate if in your ruling, you also realise that Sen. Khaniri has a point. What is the Motion before this House? The Motion is very clear. The Motion is to set up a Committee of 11 Senators to investigate the proposed removal of the Governor. In essence, if you leave out the semantics about the date that the letters that were sent among other things, the Motion will remain the same. You may want to look at it in that context.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I rise on this point of order because I know that I will have an opportunity to speak again. This is not the same Motion.

I want to support what Sen. Kipchumba Murkomen and Sen. James Orengo have said by adding the following. It is possible under the Constitution and also under the County Governments Act for several Motions involving the same county and the same Governor in different contexts to come every three months. So, this is not the same issues. Some of the issues could be similar to those that have been brought here before. This is a different Motion.

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

### COMMUNICATION FROM THE CHAIR

#### THE MOTION BEFORE THE HOUSE IS LEGAL AND WITHIN THE CONSTITUTION

**The Speaker** (Hon. Ethuro): Order, Sen. Bule. You can only speak once the Chair has allowed you and not when you feel like it.

Let me make my ruling. One is that I will invoke Standing Order No.1 to start with. I will first dispose of the preliminaries. For Sen. G.G. Kariuki, this is a House of debate and even the Chair can only drink from a fountain, not only one fountain but many fountains. So, Members of the Senate are not passive recipients of information. They have opinions and an understanding of the Constitution and the laws of the Republic. So, it is always better for the House to entertain comments so that we come up with a better conclusion.

Under Standing Order No.50:

“No Motion may be moved which is the same in substance as any question that has been resolved (either in the affirmative or in the negative) during the preceding six months in the same Session.”

These are our Standing Orders which are derived from the Constitution. They cannot overturn the Constitution itself. The Constitution contemplates that possibility. We agonised over these matters, Senators. The Constitution anticipates an opportunity where if a Motion is negated, the House can reintroduce it in three months. So, should



we come here and say that since our Standing Orders talk about six months and since those six months have not been realized, and then we should not act on it?

With regard to what Sen. Billow has said, that is not just a technicality but a diary issue. This is a Motion passed on 29<sup>th</sup> April, 2014. That is what we got from the County Assembly of Embu. That is what we can act upon. For all the good, I am persuaded by the arguments by the Senate Majority Leader, Sen. Murkomen and Sen. Orengo. The issues may appear the same but they still need to be substantiated and looked into. There are timelines of about ten days given by the Constitution to do the same. These are not things that are just provided by the Standing Orders but also provided by the Constitution which we all agree with the basic contract between the governed and the Governors. All of us are, but subjects of the same Constitution.

Therefore, we are dealing with a different Motion that originated from the County Assembly of Embu on 29<sup>th</sup> April which is coming before us for consideration in a manner that is already spelt out in Article 181 and the County Governments Act, Section 33. So, we will proceed along those lines. I am sure that the Senator for Vihiga is not only convinced but a very satisfied man.

(Applause)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I do not intend to take too long. I have already said that among the various duties that this House has to perform, in my personal view, this is a very sad one. This is because it talks about, number one, a very important and critical office in the devolution system and that is the Office of the Governor.

Number two, we are talking about removal from office which is quite a drastic and unfortunate event. Having said so, I would like to say that those who drafted this Constitution had a good reason to put these processes and functions in this format. Therefore, we should not be shy to discharge our duties when we must discharge them. We have always said, time and again, that some of the misconceptions that are emerging about the Senate and the things that we do are selective. Some people want to be selective. They want to befriend and acknowledge the Senate when it suits them, for instance, when it comes to protecting the interests of counties.

**The Speaker** (Hon. Ethuro): Sen. Kindiki, unfortunately, we will share with you the responsibility on this one because you were interrupted. You need to move the Motion. You need to complete moving the Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I stand guided. The membership of the proposed Committee is very diverse. In terms of gender, it is also very diverse and in terms of the party. Both parties are---

**The Speaker** (Hon. Ethuro): Order, Sen. Kindiki. You have not concluded moving the Motion. Do not just move to the justifications.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Sorry, Mr. Speaker, Sir. I think I did not get what I was supposed to do.

I will continue from where I left before the point of order was raised.

*(Resumption of Debate on the Motion)*

To investigate the proposed removal from office of the Governor of Embu County and to report to the Senate within 10 days on its appointment on whether it finds the particulars of the allegations to have been substantiated.

What we do here is critical for the country, devolution and for this House. You have, correctly pointed out that the least that is expected from this House as we debate this Motion is to maintain our sobriety and our cool because the Committee which is proposed here will be charged with the responsibility of discussing a matter that is quite grave and which is critical to the devolution system as I have said.

The other thing I want to say, as I move this Motion, is that I want to look at these issues in the context that something went wrong in the counties, as this Motion was being moved, in terms of procedure. That is why the County Assembly had to repeat this process. From this end, we are taking up the process to see that it is done in accordance with the law.

I also want to say that in the spirit of an open mind and sobriety and as this Committee is proposed, it is assumed that we do not know the veracity of the claims that have been made against the Governor. That is why this Committee is important. It will ensure that the accused person has an opportunity to come before the Committee to defend himself, to adduce and give evidence among other things.

The work of the Committee is cut out and is described in the relevant parts of the law and in particular, Section 33 of the County Governments Act where it is provided that the Committee must report to this House within ten days. That means that it could do this earlier than ten days. It is expected and probably adequate time will be provided to the accused persons to defend themselves and to produce any evidence that they have to support their defence.

The procedure is also there. The grounds for removal are specified and have to be matched by the Committee against the grounds that are set out in the Constitution.

Allow me, before I conclude, to comment very briefly on an issue which I am sure has been exhausted. I think there is need for the people of Kenya to understand why the Senate is addressing this issue. I say so because we do not want it to go on record that the Senate of the Republic of Kenya has succumbed to any imagination, insinuation or pretence that anybody outside the authority of Parliament can cause this House to sit here and discuss anything. I am saying this because the public may want to know why we are here.

We are here and this Committee is being formed because although we had an initial processes; a court of law found that the process was flawed at the starting point and that was at the County Assembly. Owing to that reason, therefore, considering that a process like this is not complete until the Senate acts after a proper process has taken place at the County Assembly, it is important to painstakingly look at this issue as a new process in honour of the court that found that something had gone wrong at the County Assembly level.

Let me say this for clarity. It is not possible for a court of law to injunct Parliament. Parliament cannot also tell a court of law that it cannot decide on a case in a certain way. This is called the independence of the three arms of the Government. Among the three arms of Government, there is only one arm of Government that draws its legitimacy directly from the people. This House and the National Assembly, collectively, is the people of Kenya gathered in the Chamber. No court, no judge, no magistrate sitting in a room can tell the people of Kenya to stop talking, deliberating or legislating until they have decided on a matter. Suppose a decision that has been filed by somebody took three years? That means that you would have injuncted people from transacting their business for three years and this is not possible.

For the record, people have asked whether there is a hierarchy among the three arms of Government. I believe there is a hierarchy. There is a hierarchy as follows. Number one, we know that part of the Executive are elected people but not the entire Executive arm. The civil service, the police and other people who support the Executive are not elected.

In our case, in fact, under the new Constitution, only the President and the Deputy President within the Executive are elected leaders. The rest, including Cabinet Secretaries have no mandate directly from the people of this country. So, the Executive is not the superior arm of Government in terms of democracy.

The Judiciary is equally an important arm of the Government but it is not superior to this House because no judge is elected by anybody. They do exercise important constitutional functions. Those functions have not been entrusted with them directly by the people of Kenya.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, for that reason, I am convinced that I want to be informed by the eminent Senator, James Orendo.

**Sen. Orendo:** Mr. Speaker, Sir, on the issue of hierarchy, I think the Senate Majority Leader is making a very important point. I want to inform him that even in the Constitution, the legislature comes before the Executive in Chapter eight and followed by the Executive in Chapter nine and subsequently the Judiciary. That hierarchy is upheld by the Constitution.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I thank Sen. James Orendo, one of the solid minds that we have in this country for giving me that information.

Having dispensed with the stature and position of the Executive and the Judiciary in a constitutional democracy that leads me to conclude that the superior and the unimpeded arm of Government that can claim that it is entirely drawing from the mandate of the people is the Senate and the National Assembly of Kenya. For that reason, let us not make mistakes and imagine, for example, that a member of the Executive or a member of the Judiciary can sit down in a room and make a decision that arrests this process made by Parliament of Kenya. I say this with a lot of respect for judges and the Judiciary, what courts can do for clarity is to wait until a decision has been

made and tell us how it was arrived at. Was it in accordance with the law? They can make that declaration. In fact, they can even quash something that has been legislated on.

They cannot force Parliament to pass a law or to make a legislative action which according to them is the proper one. So, the court can say this Bill or this Act is unconstitutional, but the court cannot force Parliament to pass another Act which according to them is unconstitutional. Parliament can ignore. They can say that they have noted that, but they---

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I want to be informed by the Senate Minority Leader; another distinguished Senator.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, if you allow me to inform the distinguished Senator, in fact, a court in Mombasa made a decision recently purporting to say that there is a contradiction between the Elections Act and the Constitution and that it should be taken to Parliament for legislation. The Supreme Court has said that Judge was very wrong because the Constitution is supreme and it stands.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I also want to say that the Senate Minority Leader is equally one of the very distinguished and solid legal minds. Just for the record again. I really appreciate that information and it is well taken.

Mr. Speaker, Sir, it is in that context that, that clarity should go out there and nobody should think or even imagine that this House can be intimidated either by the Executive or by the Judiciary. So we are here as a result of certain flaws that emanated from the other side and not on this side.

Having said so, I want to say that should it be appropriate for this House to pass the proposal in this Motion, we hope that justice will be done and this process will make devolution stronger. Devolution is not just about asking for more money, but it is also about asking questions about how that money is being used. The moment we pretend that all we need to do as Senators is to load counties with money and keep quiet about it, we will have abdicated our responsibilities.

Mr. Speaker, Sir, with those many remarks, I beg to move this Motion. In accordance with the traditions of this House, I want to request the Senate Minority Leader who is also the Senator for Bungoma County and my junior in this House, although while we are outside he graduated before me, therefore, his my senior out there, to second the Motion.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is so refreshing listening to a transformed Sen. (Prof.) Kindiki. I beg to second.

This Motion is before this House to call upon distinguished Senators to discharge their constitutional duty. On previous occasions, this distinguished House and individual Senators have demonstrated very ably that they can rise to the occasion and discharge their duties with distinction, without fear, favour and prejudice. Today the country looks at this Senate, once again, not because the Governor is question is a habitual offender, but because they county assembly with which he works has found it necessary, prudent,

legal and constitutional to go through the motion they have done and discharged their duty by forwarding to this House.

Mr. Speaker, Sir, this Senate has many functions, but no function in my view is more trying, raises greater expectations than presiding over the impeachment of a Governor. Like I have said before and, indeed in one of the articles I wrote in today's newspapers, there is no collective guilt or collective wrong doing by governors. Each case coming to this Chamber shall be dealt with as one case on its merit. In arriving at the team on the Select Committee that we are putting before this House, I want to assure distinguished Senators that there have been deep and wide consultations between both sides of the House, knowing that the distinguished Governor of Embu, my good friend, Mr. Wambora is not before this Senate as a member of any party.

He is before this Senate as Governor elected to manage a county to which those he works with think he has not and they have forwarded him to us to handle his case. I want to urge this House that as we finish these proceedings this afternoon, the distinguished Senators on the Committee move with speed to constitute themselves into a proper committee with a Chairperson and a Vice Chairperson and accord Governor Wambora every opportunity to be heard so that justice is not only seen to be done, but manifestly seen to be done.

Mr. Speaker, Sir, as we do so, I want to enjoin the Senate Majority Leader in his very solid and sober arguments about the relationship between the Legislature and the Judiciary. Time and again, opinions have been voiced. I want to add my voice that nowhere in the world or in a democracy can a judicial officer sit and pen out a ruling or a judgment to injunct the Legislature from carrying out its work. What they can do is to deal with our decisions after the fact to find out whether it was constitutional, whether it offends the Constitution and so on and so forth.

So, we should not move on with this matter with any sense of feeling that there is a bigger hand out there trying to micro-manage the conduct of the National Assembly and the Senate. Indeed, we assemble here today knowing our legal duties, our constitutional duties and how to handle matters that come before us in such fair and just a manner as our prayer says that those whose matters are placed before us will go away knowing that they got justice.

I want to encourage the Committee to take time and not to be clouded with the fact that they heard the case of Mr. Wambora a few months ago. They should listen to him, his witnesses and witnesses against him in a fair and open minded manner and bring us a decisions that is not only precedent setting, but a decision that will tell Kenyans that, yes, any Governor out there who falls prey to his county assembly still has a higher calling at the Senate to be heard fairly.

Mr. Speaker, Sir, I want to encourage that the public debate going on in the country about the status and the position and safety of Governors is misplaced. Any blanket condemnation of Governors is idle. Indeed, any talk that this Senate will impeach Governor so and so, is equally idle. We can only impeach a Governor on evidence brought before us and on the conviction by those we are entrusting to deal with the matter, that indeed, a case is made out beyond any doubt. I want to urge that as it has

been said, and rightly so, that this matter is coming before us at a time when there is a lot to talk about.

I want to urge the Senate that if we do not get it right, right now, we may not get it right tomorrow. We must tell the Senate that will come after us and tell the Governors that may fall prey to those they work with that when they come here, they come knowing that they are going to a bastion of justice. They are going to a bastion where they will get fair hearing. They are going to a bastion where they know that having been heard fairly, the decision we make will determine their future.

Mr. Speaker, Sir, it goes without saying that, indeed, devolution being new in the country, it has its trying moments. There are those Governors who have been tempted to fall prey to the massive sources we are placing before them. We are not sending any message to them that will do the same to them, but when the writing is on the wall, those who can read can read and those who can understand can understand. I hope that this is not going to be Senate whose primary function is dealing with impeachments; we want to deal with other constructive issues as well, but we shall not shy away from meeting the expectations of Kenyans. That where there is a wrong doing, it matters not that you come from the same county with the offending Governor, it matters not that you come from the same party with the offending Governor, it matters not that you went to university with the same Governor and it matters not that you socialize with the offending Governor. The Constitution, the law and the interests of the people of Kenya run supreme to all those partisan interests.

Mr. Speaker, Sir, it is with that, that I fully second and support the Motion and urge the House that we should not engage in diversionary issues and demanding to know why we were left out of the list because any one Senator here as the capacity, the ability, the will and the capability to sit on that Committee, but we have chosen on consultations those we have put on the list because we believe that they will do the job that you can do, they can do it for you, they will do it justly, fairly and bring a decision that we shall all own, carry and defend. We hope we will give justice to the people of this country.

With those few remarks, I beg to second and urge that we give the Committee the time to go and start their work because of the time constrain that is imposed on us by the law. We need to finish this matter within the next ten days. I beg to second.

*(Question proposed)*

**Sen. Billow:** Mr. Speaker, Sir, I rise to support---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. We have said over and over again that decorum in the House is very critical. Did you notice that while you were proposing the Question on your feet; that while the Senator for Baringo stood there still like a post as is required by the Standing Orders, other Senators were just walking up and down as if you were not on your feet? There was the distinguished Senator for Nairobi who is diminishing distinction in that order and the distinguished Senator for Embu and the distinguished Senator for Nyeri as well. They were just walking up and down.

**Sen. Kivuti:** On a point of order, Mr. Speaker, Sir. The Senator for Embu has not moved from his seat.

*(Sen. Mbuvi stood on his feet)*

**The Speaker** (Hon. Ethuro): Order, Sen. Kivuti and Sen. Mbuvi! Just the way you have even acted now is sufficient to prove Sen. Wetangula right. But obviously I was on my feet. I just want to confirm from Sen. Kivuti; did you make any movements or did you remain in position like the Senator for Baringo?

**Sen. Kivuti:** Mr. Speaker, Sir, I struggled, but I did not get out of my seat.

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

**Sen. Mbuvi:** Mr. Speaker, Sir, the problem is with the Senators who are wearing glasses or shades. Other Senators did not see us moving, we were freezing.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. The point of order that is being raised by the Senate Minority Leader is not a trivial issue. It is a very important issue. There is a Standing Order which says that while a Senator is on the Floor, between the Speaker and the Senator speaking, there should be no other Senator standing. This is not for nothing, but it is to uphold the dignity and authority of the House. In fact, I must commend the Deputy Speaker because constantly when he is on the Chair, he does not entertain such conduct. The worst thing is that if you have transgressed the rules of the House, the most honourable thing to do, and that is why you are honourable and distinguished, is to stand up and say: "I apologise." But to stand up and make all these excuses and justifications, that further compounds the manner in which the authority of the House is being invaded.

More importantly, it is relating to the Speaker. If it was about the hon. Senator for Siaya County, probably, it would not matter. But the authority of the Speaker is accommodated in many ways, for example, in the Mace. What happens when the Mace is not where it is? There are a lot of things around the Speaker that we must learn to know why they are there. I can see the Senator for Nairobi County is beginning to understand and appreciate. I hope that next time he would do the honourable thing and just stand up and say: "Yes, I apologise." The matter will end there.

**The Speaker** (Hon. Ethuro): Order, hon. Members! Sen. Orengo has just stated the obvious. There will not be a next time. The time is now.

Sen. Sonko, if you made any movements, the best is just own up and apologise. That is why other Senators always refer to each other as distinguished or hon. Senators.

Sen. Sonko.

**Sen. Mbuvi:** Mr. Speaker, Sir, though Sen. Orengo is also in glasses, I apologise.

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

**Sen. Kivuti:** Mr. Speaker, Sir, I will be very candid. Sen. Sonko was two steps ahead and I turned for him to pass. I did not know if turning in my seat was wrong. If it is your ruling that turning in my seat was wrong, then I apologise.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Okay. Let us leave the matter. Definitely turning on your seat has never been wrong. What is wrong is walking. So, you at least confirm that you are a witness that Sen. Sonko actually did---

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

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

**Sen. Hassan:** Mr. Speaker, Sir, acknowledging the great interest by the Senators, particularly with respect to this Motion, so that we can allow a diversity of contributions, and acknowledging the time which is now 4.30 p.m., I want you to invoke the discretion of the Chair to limit the contributions to about three to five minutes.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I appreciate that the Senate is on recess and this is a Special Sitting. Ordinarily, a Special Sitting will disrupt the schedules of Senators. However, if there is a matter that requires the detail and focus of the Senate, it is this one. I would humbly urge my colleagues to be patient because this is not ordinary business; it is very grave business.

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

**The Speaker** (Hon. Ethuro): Sen. Khaniri, do you want to contribute?

**Sen. Khaniri:** Yes, Mr. Speaker, Sir, on the same matter. You the Chair, together with hon. Orenge and hon. Murkomen adequately convinced me that this is a different Motion. But you will agree with me that even if it is a different Motion the names have been put before us to approve to sit in this particular committee are exactly the same names that we approved two or three months ago. I want to agree with Sen. Omar Hassan that we have not changed our minds about these names. We said all the good things that we wanted to say about these names. We got out their strong attributes and capabilities. Therefore, there is nothing new. Can we allow this Committee to go and work? Two minutes is enough for every Member to contribute to the Motion. We already passed the names.

**Sen. Njoroge:** On a point of order, Mr. Speaker, Sir. Sen. Khaniri is misleading this House. We were on recess. The time we had the committee we were not on recess. But that time the Committee had a chairperson. This one does not have a chairperson. The reason you summoned---

**The Speaker** (Hon. Ethuro): We had disposed of that matter.

**Sen. Njoroge:** Mr. Speaker, Sir, this is a new committee. Therefore, the procedure needs to be followed.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, having listened to all who have contributed and the various points of order pertaining to this Motion, I beg that you call upon the Mover to reply.

**Hon. Senators:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senators! First, I wish to tell Sen. Khaniri that similarity of names means nothing. It only means one thing, that there are Members



of this House who have been asked to serve. We pass committees so many times with similar names, it has never bothered you. I do not know why it is a bother now.

Secondly, your point on the reduction of time is important in the sense that it will allow as many contributors as possible, which I think that is the mood of the House, unlike your good neighbour, Sen. (Prof.) Anyang'-Nyong'o who basically wishes to terminate debate. So, I will go by the one which is desirous of ensuring to the extent possible, and again, contrary to the Senate Majority Leader, while we appreciate that this is an important Motion, but this Motion is about the formation of a committee. It is not the substance. I also made it abundantly clear in my communication that I will not entertain people veering off into other matters. All we need to do as the House is just to confirm that these Members can serve on behalf of the Senate, period.

In light of that, I order that I will give every contributor a maximum of five minutes starting with Sen. Billow who was already on the Floor. If possible, let us also minimize the points of order. I will not be entertaining most of them now.

**Sen. Billow:** Mr. Speaker, Sir, I rise to support the Motion. I agree with the Senate Majority Leader that this is very important business of this House because it is a constitutional responsibility of the Senate. One of the key mandates of the Senate in the Constitution is to protect counties and to serve the interests of counties. In Article 181, the Senate has the mandate to deal with impeachment matters of State officers. It is, therefore, important that we, as Senators, must appreciate that we have a key role in terms of determining what happens in our counties both in terms of management of the affairs of the counties and if issues like this one on impeachment come before this House.

In exercising this mandate, therefore, the Senate is not a lynch mob as has been portrayed in the media, time and again. We have made it a habit that if a resolution like this one comes before this House, we must exercise our judgment and minds to it so that we arrive at a decision that will carry the very important message that this House, indeed, is a House that examines and looks at the interests of counties.

Mr. Speaker, Sir, there is a concern that is being raised in the media in the last few weeks that maybe the county assemblies have become a lynch mob too. It is important that we must advise this nation that the framers of the Constitution in creating county assemblies to examine the affairs of county governments were clear in their minds that the role of county assemblies is among other things, to ensure that those counties are managed properly and effectively. If the county assemblies fail to carry out their responsibility we then again complain that counties are being mismanaged and money is being looted. On the other hand, when they take action we also say that they have become a lynch mob. It is important for Kenyans to appreciate that all these constitutional institutions have a mandate. The important thing with the MCAs or the county assemblies is that their decision is subject to a quality control in terms of being approved or rejected by the Senate. That is why this matter is here.

Mr. Speaker, Sir, regarding the Motion before us, I want to urge the Committee to ensure that they give a fair hearing to the governor. It is very important to appreciate that this is an inquest into the affairs of the governor. We must apply our minds to the veracity

and adequacy of the evidence that will be submitted before this Committee. It is not going to be lost on members of the public that this, indeed, is the same Committee.

*(Loud consultations)*

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. Am in order to suggest that even if we are consulting, we do so quietly because we cannot hear what Sen. Billow is saying? There seems to be a lot of noise near the door.

**The Speaker** (Hon. Ethuro): Indeed, let us have order Senators. If you are withdrawing from the Chamber, do so quietly.

Already Sen. Orengo had reminded the House that you do not come between the Speaker and the Senator on the Floor. I have already seen Sen. (Eng.) Karue, Sen. Gideon Moi pointing at the other one and Sen. Musila having done so. But at least Sen. (Eng.) Karue was consulting the Clerks-at-the Table. But the rest of you, whatever you are doing, you have consulted away from Sen. Billow Kerrow.

Proceed, hon. Senator.

**Sen. Billow:** Mr. Speaker, Sir, as I was saying, the Committee must apply itself to the evidence that will be submitted before them. In particular, the veracity and adequacy of the evidence in determining whether, in fact, the Governor should be impeached or not. This is important in view of some of the concerns that have been raised earlier that this is the same Committee that was there and they are not expected to give a new decision. It is important to appreciate that it not *fate accompli*. The committee has to receive evidence and make a decision based on the evidence that will be submitted this time and give the Governor a chance to be heard. It is important because have build a solid foundation of constitutionalism in this country. We must clearly demonstrate fidelity to law.

I support.

**Sen. Abdirahman:** Mr. Speaker, Sir, I also stand to support this very important Motion that is appearing for the second time, but differently, as pointed out this afternoon. I want to recognise colleagues for the period we have been on recess, especially when the court ruled otherwise. I note the sobriety we maintained where we did not impute anything negative against the Judiciary or any other State organ. That is why the Senate is described as the voice of reason and the level headed legislative organ in this country.

Devolution is something we all need to guard jealously. The Senate should be in a position to separate a number of things. We are not in essence saying governors must be condemned collectively. But where there is any wrong doing, the Senate or even this particular Committee we are appointing this afternoon should not shy away from unearthing the truth so that we can have useful lessons in which, we, as a country, will be able to learn from.

The other thing I want to comment on is about this particular Committee of 11 persons. Even if they are the same old ones, really, if anything they will have done additional value because they will use the same experience they gained in terms of

interrogating individual groups and the governor himself. So, they have an edge over any other new person. As much as we are saying that it was important to, probably, mix, this group has the requisite skills, capacity and abilities to be able to get us to the position where we want.

When we begun the sitting this afternoon, a number of colleagues were said to have spoken outside this Chamber with regard to an issue that was about to appear in this House. Some of us felt that should not have happened because we did not want the process to be jeopardized. Whether it is before the notification or after the notification, we must restraint as Members of this House from talking about it outside because it might dent our image negatively. That is why a number of us were opposing it this afternoon. So, it is important as we go out and as we wait for the Committee's recommendations before we reconvene, it is important we all observe restraint as Members so that we do not jeopardise the process.

Mr. Speaker, Sir, I wish the committee well in the new deliberations.

Thank you.

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, I stand to support this Motion and say that while it is a new team in the eyes of the Motion, the individuals concerned are actually the same ones. But I think this gives them a new in depth and thorough interrogation of the matter. It also gives the Governor and all those concerned stakeholders a chance so that they can come up with a more comprehensive and even more value added verdict that, then, we can debate on when they bring their report to the Floor of the House. Of course, we had already stated that they are all men and women of high integrity. Therefore, we still expect the same kind of professional handling of the interrogation.

Mr. Speaker, Sir, my main worry or concern is the few moments when some of the Members in the House personalized and referred to their counties on issues. We must always remember that this, as we had said, is some sort of a judicial process. Therefore, the selected, nominated or appointed Committee Members that we are going to pass must always look upon the weight of the matter that has been bestowed upon them. We should not, in any way, carry with us issues or concerns that we have about our counties, governors or on other governors, or on the general opinion about governors.

This is a very specific matter. It concerns the political life of an individual who has a family and children who are looking up to him and, therefore, we must show that fairness and justice has prevailed; no other matter other than the justice that we want to give to Governor Wambora. Therefore, I would also urge that all Senators should actually refrain from talking about this matter in public until it comes to the Floor of the House. When it eventually comes to the Floor of the House, I think we should execute it in such a manner that we will always have at the back of our minds that this is a constitutional responsibility. We should remove personal issues and our feelings about the positions and the political competitions that might be there.

Mr. Speaker, Sir, I beg to support this Motion.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. I beg to oppose this Motion.

Mr. Speaker, Sir, this is a House of fairness. The Constitution clearly gives us two ways in which we can hold the court for this issue of Governor Wambora.

(Applause)

Mr. Speaker, Sir, whereas the Mover of the Motion had a good idea on picking the 11 Member Committee as prescribed by the Constitution, he did pick names of Members who were in the Committee that ruled over the same issue three months ago. It is what lawyers may call “legal jurisprudence.” It is not fair. This is total prejudice to the accused because these Members already made a ruling. They are unlikely to make a different ruling from what they had already done three months ago although this is a different Motion in front of this House.

In the interest of fairness and being a House of wise people, Governor Wambora deserves a fair hearing. Since this Committee has been laid before us, the best thing that the Members of this Committee could have done is to withdraw their names so that other Members could be put in this Committee so as to make it appear fair to the accused. We are making history. While making history, we should not be seen as if we have a revenge issue. What other ruling do you really expect from this Committee, if at all there was to be any other?

Mr. Speaker, Sir, I am not trying to say that this Committee is incompetent. Indeed, this Committee gave us the best report we have ever seen in this House. It is a very competent committee. However, why soil their names? Why should this House soil the names of these Members and accuse them of not acting fairly in whatever ruling they will come up with in the judgment against Governor Wambora? I beg this House to reject this Committee. However, if there is an avenue for amendments, then let us have legal amendments to this Committee. Otherwise, we have the plenary as the second option. I would rather this House speaks on the plenary issue to appear fair to the accused.

Mr. Speaker, Sir, I beg to oppose.

**Sen. Mbuvi:** Thank you, Mr. Speaker, Sir, for granting me time to contribute to this important Motion. Before I proceed, I would like to take this House back to our previous contributions. I concur with Sen. (Dr.) Machage’s remarks.

Mr. Speaker, Sir, while seated there, I received a message from one of the senior officers in the Judiciary. The content of the message is that we should not blame the Judiciary because of mistakes committed by another bench sitting in Kiambu, Embu, Kirinyaga or wherever else. I remember, in a similar Division of Revenue Bill last year, the Supreme Court gave a very favourable advisory opinion in our favour. The mistakes committed by some judges should not be blamed on the entire Judiciary. If today I, as Sen. Sonko, sleep on the road or punch the walls, we cannot blame Sen. (Dr.) Khalwale, Sen. Elachi or any other Senator.

Mr. Speaker, Sir, we were supposed to go back to the same bench to disqualify that bench which delivered a ruling in favour of Governor Wambora because it had an interest in the same matter which was before them because they had earlier delivered a ruling in favour of the same Governor. So, there was no way they could set aside their ruling or decision. From the message that I received from this officer of the Judiciary,

and from the understanding that I have in the law process of this country, we are either supposed to---

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

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

**Sen. Murkomen:** Mr. Speaker, Sir, I did not mean to interrupt---

**Sen. Mbuvi:** You should let me finish!

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

**Sen. Murkomen:** Mr. Speaker, Sir, I did not mean to interrupt the distinguished Senator for Nairobi, but there are rules in this House. Any document or source of document that is referred to must be tabled for substantiation so that we can refer to it. This is a House of record. Otherwise, if someone reading the HANSARD says that a judicial officer or a judge---

But having said that, Mr. Speaker, Sir, it is not that I want my colleague to reveal the name or the source, I would rather that he proceeds with it as his own information than referring to a source that cannot be tabled.

**Sen. Mbuvi:** Mr. Speaker, Sir, in my contribution and for the first time in the history of this House, I want to contribute in defence or in favour of the Judiciary. From the ruling which was delivered against this House, we can either go back to the same bench with new facts that we have and apply for them to stay their own judgment or their own ruling---

**The Speaker** (Hon. Ethuro): Order, Sen. Mbuvi! The Motion is about our own Committee.

**Sen. Mbuvi:** Mr. Speaker, Sir, I am coming to that point.

**The Speaker** (Hon. Ethuro): What I am saying is that come quickly to that point.

**Sen. Mbuvi:** Mr. Speaker, Sir, based on the Short Messaging Service (SMS) I have just received, I am just conveying the same matter touching the issue on the Floor of the House. I do not want to give an explanation then I come to the point of the Committee as to whether I support it or not.

Mr. Speaker, Sir, you have the discretion of allowing me to convey this message on the Floor of this House. So, with all due respect to this House, and for the message I have just received from the judiciary, the bench---

**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, if the Senator for Nairobi wishes to convey any message from whatever source, it is also important that as we acknowledge that message, we should know the source. Could he substantiate who has given him the message and give us a copy of the same message?

**The Speaker** (Hon. Ethuro): Order Senators, to use the substantiation aspect, it is when the information being given is already adverse. So, Sen. Mbuvi is just excited about some SMS. I think Sen. Murkomen had already guided him properly and that is why I did not want to go to that issue. Let him just abandon that route and proceed to conclude on the issue of the Committee.

Sen. Mbuvi, if you persist on your message, in fact, I thought Sen. (Dr.) Khalwale was going to tell you the proper ways within the Standing Orders in which messages are conveyed.

Proceed.

**Sen. Mbuvi:** Mr. Speaker, Sir, since we are treating what has been tabled before us from the Embu County Assembly as a new matter, I support the Committee and we should hear it afresh. I am in solidarity with my colleagues. The only problem is that I have not exhausted the points which I had, but I am sure towards the end, I will support the Motion. This House supports devolution. With your discretion and with due respect to the hon. Senators, I stood on a point of order when Sen. Wetangula was contributing, but I did not catch your eye. With your permission, I have a point to deliver, but I think Sen. (Dr.) Khalwale is misquoting me.

**Sen. Madzayo:** Bw. Spika, asante kwa kunipa nafasi hii ili nipinge Hoja hii. Kitu cha kwanza, hii Hoja imetolewa na majina ya wale Maseneta ambao kwa upande wangu nina hakika wanaweza kufanya kazi hii. Katika wale Maseneta 11 waliowekwa na Kiongozi wa Walio Wengi, hakuna hata Seneta mmoja ambaye hawezi kuifanya kazi. Wote wana uwezo wa kuifanya hiyo kazi lakini katika akili yangu, je wale Maseneta waliochaguliwa kuangalia kesi hii tena kulingana na sheria na haki za yule ambaye ameshtakiwa, wanaweza kumlinda? Hilo ndilo swali ambalo sisi kama Bunge ya Seneti yafaa tujiulize. Jambo la kwanza, hata ndani ya mahakama yule hakimumu ambaye alikupata na hatia na kwa bahati mbaya ama nzuri ukakata rufani na ukaambiwa rudi chini usikizwe tena, ukirejeshwa kwa hakimumu huyo tena, haki yako iko wapi mbele yake? Wewe uko na nafasi ya kumuuliza hakimumu yule ajitenge kando ili kesi isikizwe na mwingine. Hiyo ndiyo haki.

Hili Bunge la Seneti ni Bunge muhimu sana katika macho ya Wakenya. Inajulikana kwamba tunatekeleza haki. Wako Maseneta 47 na wale wengine wa maalum lakini tunasema kwamba kuna Maseneta zaidi ya 60. Hivi sasa tuko na hawa 11 ambao walikuwa wakimsikiliza Bw. Wambora hapo awali. Tunaweza kusema kwamba hii si ile kesi ya zamani lakini macho ya Wakenya inaona aje? Sisi kama Bunge la Seneti tuna haki ya kutekeleza haki.

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

**Sen. Madzayo:** Ni sawa kwa ndugu yangu kunieleza.

**Sen. Mbuvi:** Mr. Speaker, Sir, I concur with Sen. Madzayo's remarks. I would like to inform him because he has just said something very sensitive, so if any High Court judge or High Court Bench delivers a ruling which is not favourable to the parties in that application, the one who is not satisfied has a right to go back to that same bench to stay that ruling. If the judge does not give a ruling in favour of the application, we always have a right to go back to the superior court in case, the Court of Appeal. If it does not give a favourable ruling in favour of either party, those parties have a right of going to the Supreme Court to seek for the disqualification of the bench or to appeal against the ruling or the judgment delivered by the lower court.

**Sen. Madzayo:** Asante ndugu yangu Sonko lakini ningependa kukueleza kwamba mshtakiwa ana njia mbili katika sheria. Mshtakiwa anaweza kukubali ama kukata rufaa. Kwa hivyo, jukumu hilo ni lake.

Ningependa kusema kwamba sisi kama Seneti, ni Bunge ambalo linaheshimiwa katika Kenya nzima. Ikiwa kuna Mkenya ambaye haki yake haitatimizwa kwa sababu tumeamua ni lazima mambo yawe hivyo, kwa maoni yangu, naona haki haitatimizwa ikiwa tutaweka majina haya vile yalivyokuwa. Kuna umuhimu wa Maseneta hawa 11 kujiondoa ili Seneti iwachague wengine ambao akili zao hazijaamua. Hii ni kwa sababu kisheria, akili zao zimeshaamua na zinajua mwelekeo zinaotaka kufuata. Maseneta wengine wanafaa kuchaguliwa kuchunguza swala hili.

**The Speaker** (Hon. Ethuro): Muda wako umeshakwisha.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir for giving me this chance. I would like to start from the outset by saying that I support the Motion. Of course, I am one of the Members of that Committee. I know that Sen. Madzayo and the Senator for Migori, Sen. (Dr.) Machage, have raised issues that on the face of it appear important, serious and relate to the issue of dearly. It is important that this House goes on record in realising that the Committee that will be formed will not do work on its own and to finality.

The decisions will be made by this House. This is a trying process. The Committee will have to carry out investigations and the House will make a decision. If today we were to check on our records, we would find the details of the every Senator who voted last time and we know how they voted. The matter has come again and the same Senate will vote again. Does Sen. Madzayo or Sen. (Dr.) Machage want to tell us that because the Senate made this decision last time; all the 67 Senators should not sit here again to make a decision?

**The Senate Minority Leader** (Sen. Wetangula): On a point of information.

**Sen. Murkomen:** I have very little time.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I would like to inform the distinguished Senator for Elgeyo-Marakwet that, in fact, what is before us is totally different?

The last time, we were dealing with the impeachment of a Governor and his Deputy. Now, we are dealing with only one individual.

**Sen. Murkomen:** Thank you, Senate Minority Leader. I was coming to that point. We raised many points of order to demonstrate that this is a different decision. We have even demonstrated that this House has Standing Committees that have issues sent to them over and over again as long as things happen. We cannot say that there is bias when the Committee has to look at an issue again. Therefore, it is important, from the outset, to address the issue so that it does not appear that there will be another Senate---

*(Loud consultations)*

Mr. Speaker, Sir, the consultations are very loud. I will be happy if Senators can lower their tones.

**The Speaker** (Hon. Ethuro): Hon. Senators, let us consult in low tones, if necessary.

**Sen. Murkomen:** Mr. Speaker, Sir, let me come to the substance of the formation of this Committee. As a Member of this Committee, I want to assure the country that we will look at the facts and the evidence. The reason we will look at the facts and the evidence is because we are a House of records and mature Senators. History will judge us harshly if we make shoddy reports or prepare documents which look, on the fact of it---

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. Would I be in order to request that the Mover replies? I am saying this because the person on the Floor cannot presume to be elected to say what he will be taking into account. He is moving into a very dangerous area right now. I want to save him from that. He has said that---

**Sen. Muthama:** Mr. Speaker, Sir, I want to speak as a Whip. I realized that Members of this House are walking out slowly. Knowing that this issue depends on our votes, I went out and marshaled them back and you saw me walking in with a group. If we keep on debating on this matter now, we will have no numbers at the time of voting.

I kindly request that you call the Mover to respond so that we pass this Motion. What is the need of debating when, at the end of the day, we cannot cast a vote on the said Motion due to lack of numbers?

**Sen. Murkomen:** Mr. Speaker, Sir, if I wanted to respond to that point of order, I would say that we cannot tell the country that we recalled ourselves from recess to come and run away from debate. I want to be on record to say that whereas we have the desire to keep people here, we cannot speak to the public and tell them that we are lazy to run around.

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

**Sen. Murkomen:** Mr. Speaker, Sir, let me make my point. Everyone is entitled to their opinion. We cannot say that we are lazy. We cannot stand in this distinguished House and tell the country that the reason we want to rush the debate is because we have already made a ruling for five minutes. We now want to rush debate and the reason is that some people want to run away from the Chamber.

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

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! You are the one inviting trouble.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. The Hon. Senator should cool down. He does not have to make noise because he is in the Committee. He should wait. We have Standing Orders which allow any Member to rise and to ask the Mover to reply. That is what the Standing Orders say. He cannot tell us that we are lazy because we have been here for the last three hours. Is he in order? He should apologise to the House.

**The Speaker** (Hon. Ethuro): Hon. Senators, these matters are clearly spelt out in the Standing Orders. In fact, the Chair has been very sympathetic in trying to accommodate your views. There is a limit to that accommodation. I, therefore, wish to proceed as requested by hon. Sen. Amos Wako which was also supported by Sen. Muthama so that we put the question. It is up to you to decide. I was being generous with you, but, obviously, you have squandered that opportunity.



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

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

**The Speaker** (Hon. Ethuro): Sen. Orengo, in all probability, there could be nothing out of order after a vote has been taken.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I can clearly see the mood of the House. I do not need to belabour myself at the expense of losing the mood of the House. In line with the mood of the House, I beg to move.

**The Speaker** (Hon. Ethuro): Hon. Senators, this is a matter affecting counties and the most important thing is really to give the Committee sufficient time to prosecute the matter. It is not really the size, the gender, the composition, regional or religious beliefs of the membership or whether they were there before or after or when. The most important thing is to agree and give them the opportunity to work on our behalf and then when they have done that work, that is when you can interrogate properly. I am sure that point will give sufficient time for you to interrogate that particular matter because there will be something before you.

Since this is a matter affecting counties, we will now go to a division. Ring the Division Bell for eight minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Ethuro): Order! Order! The eight minutes are over! Draw the Bar and close the Doors! Order, Senators! Order! Assume your seats! It is time for voting.

*(Loud consultations)*

Order, Senators! I am sure you would not want to be singled out.

Proceed Clerk.

Order, Senators, the voting has commenced!

## DIVISION

### ROLL CALL VOTING

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

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembu-Gitura,

Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

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

**NOES:** Nil

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

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

**AYES:** 35

**NOES:** Nil

**ABSTENTIONS:** Nil

You may draw the bar and open the door.

**The Speaker** (Hon. Ethuro): Order Senators! Following the approval by the Senator of the Motion establishing a Special Committee and considering the tight timelines to investigate this matter and report back to the Senate. I direct that the Members of the Committee meet immediately at the rise of the Senate in the ground Floor, Committee Room at this County Hall Building to elect the chairperson and the vice chairperson and commence the work immediately.

I further direct that the Committee completes its investigations and reports back to the Senate on Tuesday 13<sup>th</sup> May, 2014 at 2.30 p.m.

## ADJOURNMENT

**The Speaker** (Hon. Ethuro): Hon. Senators, having exhausted the business on our Order Paper, it is, therefore, time to adjourn the House. This House stands adjourned until Tuesday, 13<sup>th</sup> May, 2014 at 2.30 p.m.

The Senate rose at 5.35 p.m.