

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 8<sup>th</sup> July, 2014**

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

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

### PRAYERS

### MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE MEDIATED VERSION OF THE  
COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL,  
SENATE BILL NO.4 OF 2013

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a communication to make on a message from the National Assembly on the approval of the mediated version by the Assembly of the County Governments (Amendment) (No.2) Bill, Senate Bill No.4 of 2013.

Hon. Senators, I am pleased to report to the Senate that pursuant to Standing Order No.40 Paragraphs 3 and 4, I have received the following message from the Speaker of the National Assembly regarding the approval of the mediated version by the said Assembly of the County Governments (Amendment) Bill No.2, Bill, and Senate Bill No.4 of 2013. I wish to quote.

“That, the National Assembly, having considered the version of the County Governments (Amendment) No.2 Bill, Senate Bill No.4 of 2013 as developed by the Mediation Committee appointed pursuant to Article 113(1) has now approved the said version of the Bill.”

Hon. Senators, for the benefit of the House, I would like to reiterate the provisions of Article 113(1) of the Constitution, which are as follows:

“If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.

(2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.

(3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.

(4) If the mediation committee fails to agree on a version of a Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.”

Hon. Senators, according to the Votes and Proceedings of the National Assembly forwarded together with the message, the decision of the Assembly to approve the version of the Bill developed by the mediation committee was taken on Thursday, 3<sup>rd</sup> July, 2014, pursuant to Article 113(2) of the Constitution. It is now upon the Senate to take a decision on the Report.

With this regard, I direct that the Report of the Mediation Committee be scheduled for Senate Business tomorrow, Wednesday, 9<sup>th</sup> July, 2014 at 2.30 p.m.

### STATEMENTS

*(Sen. Karaba and Sen. (Prof.) Anyang'-Nyong'o  
Stood up in their places)*

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba! I have not seen your request. We are not using the old system. This also goes to Sen. (Prof.) Anyang-Nyong'o.

*(Sen. (Prof.) Anyang'-Nyong'o stood up in his place)*

**The Speaker** (Hon. Ethuro): Order! Sen. Anyang'-Nyong'o, you could do better than gesturing to the Chair. Approach the Table and Clerks will find a way of assisting you. However, as far as I am concerned, we are in the new Chamber with new things and new procedures.

### PRICING AND MARKETING OF KENYAN TEA

**Sen. Okong'o:** Mr. Speaker, Sir, I request for a statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries. The statement relates to the pricing and marketing of Kenyan tea.

Mr. Speaker, Sir, in the statement, I want the Chairperson to state whether he is aware that the Kenya Tea Development Agency (KTDA) as reported in the Tea Industry Status Report of May, 2014, is accused of the following acts:

- (1) Colluding with cartels to manipulate tea prices.
- (2) Conducting direct sales with big markets outside auction venues.
- (3) Buying tea directly from factories at lower prices and then importing cheap tea.
- (4) Colluding with various players to create the impression that there is excess tea in the market in order to maintain low prices.

Could the Chairperson inquire into the activities of the KTDA with a view to ascertaining the malpractices and taking appropriate action to address them?

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries?

**Sen. Murungi:** Mr. Speaker, Sir, we appreciate the importance and the urgency of the issues raised by the hon. Senator. We request for a week to respond. Could we respond on Wednesday, next week?

**The Speaker** (Hon. Ethuro): It is so directed; Wednesday, next week.

*(Mr. Sang stood up in his place)*

What is it Sen. Sang?

**Sen. Sang:** Mr. Speaker, Sir, I was trying to load my card. I am sorry.

**The Speaker** (Hon. Ethuro): Order, Sen. Sang! You are completely out of order. If you really wanted to familiarize yourself with the system, when your good neighbour was on the Floor, you should have done something at that time. You cannot wait until now when you appear to be making an intervention.

DECLARATION OF MONDAY, 7<sup>TH</sup> JULY, 2014 AS A PUBLIC HOLIDAY  
BY A SECTION OF COUNTY GOVERNORS

**Sen. Mositet:** Mr. Speaker, Sir, I request for a statement with regard to the declaration of Monday, 7<sup>th</sup> July, 2014 as a public holiday by some Governors.

I would like to seek a statement from the Chairperson, Standing Committee on National Security and Foreign Relations on the declaration of Monday 7<sup>th</sup> July, 2014, as a public holiday by some Governors.

I understand that some Governors declared Monday 7<sup>th</sup> July, 2014 as a public holiday and instructed the workers in their counties not to report to work. In this statement, the Chairperson should explain under what legal basis a Governor can declare a public holiday. Two, if a Governor has such authority, what action can be taken against Governors who gave the said illegal declaration?

**Sen. Haji:** Mr. Speaker, Sir, I presume that those who declared public holidays were following Mr. Raila who had declared a public holiday for the whole Republic. Nothing has happened to him. Therefore, I do not know what will happen to the others. I stand guided.

**The Speaker** (Hon. Ethuro): Order, Mr. Chairperson. The House is seeking for guidance from you. While I know that you normally seek guidance from the Chair, on this particular one, I am afraid; you will be guiding everyone, including the Chair. Just tell us when you will bring a response to the House.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I do not have the powers, but I will inquire into this and give an answer in two weeks' time.

**The Speaker** (Hon. Ethuro): Order, Senator! Why should you respond in two weeks' time? I thought this is a matter that you could respond within a week?

**Sen. Haji:** Fine, Mr. Speaker, Sir, I will try.

**The Speaker** (Hon. Ethuro): Bring it on Tuesday, next week.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. If, indeed, it is true that a Governor or Governors issued that kind of statement, the House should remember that those are heads of governments. There is a constitutional aspect of the independence of county governments.

**The Speaker** (Hon. Ethuro): Order, Sen. Khalwale! There will be an opportunity for you to raise that matter. For now, I have disallowed the Committee Chair from responding and neither will I allow another member. Most likely, you are not a Member of the Committee itself and you should not be purporting to respond.

Wait for the one week. That is why I wanted it to come sooner than the time suggested. I am sure that you will make interventions along the lines you are seeking.

#### REINSTATEMENT OF JOHN MAINA NJOROGI BY TSC

**Sen. Karaba:** Thank you, Mr. Speaker, Sir. I would like to issue a Statement. This one concerns the reinstatement of John Njoroge Maina, TSC No.256488.

Pursuant to Standing Order No.45(2)(b) of the Senate Standing Orders, Sen. Kembi-Gitura, Senator for Murang'a County, requested for a statement from the Chairperson of the Standing Committee on Education, Information and Technology regarding the reinstatement of John Njoroge Maina, TSC No.256488 by the Teachers Service Commission (TSC).

In the statement sought, the Senator wished to be informed of the following issues:

(a) In view of the fact that the court found Mr. Njoroge not guilty of the allegations brought against him and on whose strength and the only reason upon which he was interdicted, why was he not reinstated and what was the basis of the statement that "the Commission has carefully studied your case, but found no new evidence to warrant a review of your case"

(b) When will Mr. Njoroge be reinstated to the position he held before the interdiction?

(c) What is the position regarding his benefits from the date of the interdiction to that of his reinstatement?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Why should the Chairperson re-read exactly what was requested, which is already on HANSARD and which every Member knows? Why can he not give the answer to save the Senate time? Is he in order?

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! You are the one who is completely out of order. It is important that the request is made and the response given accordingly because not everybody may be as fortunate, contemporary and up to the minute in terms of what transpired.

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, I wish to respond to the specific issues raised by the Senator as follows:-

(a) The teacher was accused of having carnal knowledge of the Standard Five pupil. He was invited for the hearing of his case together with witnesses that included the pupil in question. All the witnesses testified against him. He did not challenge their testimonies during cross examination. The disciplinary committee established the following:-

(1) He facilitated the abortion of the pupils' pregnancy.

(2) When he appeared before village elders, he admitted the offence and paid a fine of Kshs2,000.

(3) The teacher did not deny. This is when he came up during the hearing.

In view of this, the Commission was convinced that the teacher had violated his professional relationship with the learner. It is for this reason that he was dismissed from the teaching service.

(b) Mr. Njoroge was dismissed from the teaching service by the Commission through a disciplinary process. Therefore, he cannot be reinstated.

It is worth noting that the teacher's case before court was that of rape whereas the Commission charged the teacher of having carnal knowledge of the pupil, a Standard Five girl.

(c) There are no benefits for the teacher for the period he was interdicted to date since he was dismissed from service. However, he qualifies for a refund on the Widows and Children's Pension Scheme since he was a contributor towards the scheme.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, it is my position as the Senator for Murang'a County that any teacher who commits an act of carnal knowledge against a pupil should be sacked forever. He should not be reinstated to that position if due process is followed and he is found to have been guilty of that offence. I am asking this question more for a policy than anything else. The teacher was charged as it were by the TSC with the offences stated in the statement. This is having carnal knowledge of a Standard Five pupil. He went before the committee and the hearing was done and they said they found that. But, even as that was going on, the accused had been charged in a court of law. The proceedings and the judgment are here and I will table them.

*(Sen. Kembi-Gitura laid the documents on the Table)*

Mr. Speaker, Sir, this is where all those things that are mentioned were found not to have been true, that he had not committed the act of rape or that he had not had carnal knowledge of the young girl and that he had not procured an abortion. The court of law also found that no proper investigations had been done in this case.

The question I want to ask the Chairperson of the Committee is this: What is the policy of the Government? Does the TSC Act override the rights of a teacher if you are charged under the TSC Act and it is not even a quasi judicial hearing, it is a disciplinary hearing? That same teacher was acquitted in a court of law duly constituted under our Constitution. What is the policy of the TSC? Does the teacher remain guilty even after a court has said he is not guilty? Does that teacher suffer consequences that are said not to have been there? What is the position? What are his rights as a teacher? Even as a pupil has rights, so does a teacher. What are his rights under the law?

**The Speaker** (Hon. Ethuro): Let me allow a few more clarifications.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, this is entirely without prejudice to the interest of the Senator for Murang'a, who is representing his constituent. If I heard the Chairperson right, this teacher is alleged to have had carnal knowledge of a Standard Five pupil. It can, therefore, not be proper that he was taken to court and charged with rape. This is for the simple reason that a Standard Five pupil, if the child went to school at the age ordinary children go to school, then it could only have been defilement. This is because rape is where one has carnal knowledge of another adult without consent. A child of that age is not capable, both in law and in fact, to consenting to any sexual act. Why did the State prefer a charge of rape, which was not sustainable and not a charge of defilement? That could very well have been the reason the charge did not succeed in court.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, in the Oxford English Dictionary, carnal knowledge is defined as having physical, sexual intercourse. So, even if the charge was moved from defilement or rape to carnal knowledge, it amounts to only one thing, that this teacher had physical, sexual intercourse with a child in class five. Could the Chairperson explain why this teacher is not in jail? He was merely interdicted.

**Sen. Wangari:** Mr. Speaker, Sir, my intervention is as simple as what has been raised by Sen. (Dr.) Khalwale. I am looking at this from the eyes of that class five girl. Under the Sexual Offences Act, even attempted rape is a very serious offence. I am hoping that the Chairperson can clarify to the satisfaction of the Senator for Murang'a County that this girl also has rights. The fact that there was even an abortion as a consequence of this act is something that should worry all of us. Whether it was charged as carnal knowledge or rape, there was an offence and that should not be lost.

**The Speaker** (Hon. Ethuro): Chairperson, you may respond.

**Sen. Karaba:** Mr. Speaker, Sir, thank you for that intervention. What this entails is that there is a child in class five and a teacher teaching the same class. What emanated is that the child was defiled by the teacher. Even before the teacher was brought to the TSC for interrogation and further discipline preferred on him, he had already been interdicted by the District Education Officer (DEO) Murang'a County. So, for the TSC it was just to come and verify the facts. I have already stated here that the procedure was duly followed going by the TSC Code, the Laws of Kenya Cap.212 which states that the moment there is information of a teacher getting to know about a girl, particularly touching or may, be now it is even worse, even looking, that is tantamount to the offence. What happened, therefore, is that the teacher took the matter to court after he had already been interdicted, not that he had taken the matter before interdiction.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. With all due respect, I do not know whether or not it is not because Sen. Karaba is not a lawyer. But what does he mean that the teacher took himself to court when I said he was charged in a criminal court? You do not charge yourself in court, you are charged by the operatives of the law. Can he make that clarification when he says the teacher took himself to court, this is not a civil case.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, the Chairperson has completely avoided to respond to my intervention. Why was this teacher

not prosecuted for defilement and instead a charge of rape was preferred? I told you for free that in law, a child of that age is not capable of consenting to a sexual act. Rape is a sexual act without consent. Therefore, you cannot deny consent that you cannot give in the first place. The correct charge against this teacher would have been---

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! You have asked the question and now you are proceeding to answer. Why did you ask?

**The Senate Minority Leader** (Sen. Wetangula): I am explaining to him, to help him understand.

**The Speaker** (Hon. Ethuro): Order! He has not sought for your assistance yet. Let him respond to yours.

**Sen. Karaba:** Mr. Speaker, Sir, the situation here is a bit different from what Sen. Wetangula is trying to State here. The teacher was interdicted by the TSC. After that he went to court for an appeal. He was released by the court. Not that he had been there before interdiction. The teacher had already been interdicted. He was interdicted in 2003 when the offence took place. He went to court in 2008. The teacher had to appeal against the decision of the TSC. He was charged with carnal knowledge of a girl in class five. That is what normally happens. There is a disciplinary committee at the TSC. Short of that, there is another professional body, the KNUT which met and agreed that the teacher was at fault.

**The Speaker** (Hon. Ethuro): Very briefly, Sen. Muthama.

**Sen. Muthama:** Mr. Speaker, Sir, the Chairperson is truly confusing the House. He says that the teacher was interdicted. Secondly, he says that he went to court and he was reinstated. What caused the interdiction and the reinstatement? Why did he have to go to court for him to be reinstated? There is some confusion.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. I rise because we are not able to tell whether the TSC has gone beyond doing the interdiction and taken the teacher to court or the teacher has sought some opinion from the court. This is not very clear. Can the Chairperson clarify what the position is? We thought the TSC should have been the one to pursue this.

**Sen. (Dr.) Machage:** Mr. Speaker Sir, on several occasions, the TSC has never honoured decisions by the courts. Is it, therefore, true that the TSC's decisions are above court rulings?

**The Speaker** (Hon. Ethuro): Finally, Sen. Kembi-Gitura.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, with all due respect, I want to submit that Sen. Karaba, the Chairperson of this Committee does not understand this issue because he must distinguish between a disciplinary action by the TSC and the regime of criminal law. I want to go on record as saying that I cannot possibly support a teacher who has carnal knowledge of a pupil. My conscience cannot allow it. But I am also a lawyer. There must be due process. If the teacher was found not guilty and Sen. Karaba needs to understand that he was charged and prosecuted, he did not take himself to court. He did not go to court on an appeal. He went there because he was charged with having carnal knowledge of that Standard Five pupil. It was not for me to say whether defilement or rape should have been the proper charge. My question is: Does a decision of the TSC have precedence or over ride a decision of a court of law duly constituted under the

Constitution? If the court of law found this teacher not guilty, whether for defilement, carnal knowledge or whatever other reason, does the TSC decision take precedence over a court of law's decision? The court said he was not guilty of the offences charged; rape, procuring an abortion and everything else. That is the question that the TSC must answer because this child has rights and so does the teacher.

**The Speaker** (Hon. Ethuro): Sen. Karaba, take note of those clarifications.

**Sen. Sang:** Mr. Speaker, Sir, there is an issue that was raised by Sen. Wetangula. I want to follow up from that in terms of the procedures by the TSC and the disciplinary issue that was raised against the teacher under the TSC. This may not necessarily be the same issue that was taken to court because if the teacher was charged in court and was released on a technicality; that does not preclude the TSC from preferring the correct disciplinary processes. Could the Chairperson clarify the issues that were before the court and those that were before the disciplinary committee within the TSC?

**The Speaker** (Hon. Ethuro): Sen. Sang, actually you are helping the Chairperson.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, if the Chairperson allows me, I can inform him.

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

**The Senate Minority Leader** (Sen. Wetangula): That is what I wish to do.

**The Speaker** (Hon. Ethuro): Then you have to allow the Chairperson to have the Floor.

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

**The Senate Minority Leader** (Sen. Wetangula): He had already stood up. He has allowed me.

**The Speaker** (Hon. Ethuro): Order, Senators! This is not a Chamber owned by two Senators, for them to do as they deem fit. This is a House of order. The one to be informed must be on the Floor saying something. That cannot be attributed by his desire to stand because even if you stand and you are not granted the permission, you are not yet on the Floor.

Sen. Karaba, I want to remind you that this is your baby; it is not Sen. Wetangula's. So, you must make some effort to try to respond and then you can seek for support in the course of business.

**Sen. Karaba:** Mr. Speaker, Sir, I suppose the process of an interdiction should be clear to the Senator for Murang'a County, Sen. Kembi-Gitura. The moment a case like this one has been identified by the school administration; the matter is taken to the DEO for further interrogation, which was done. Then from there, the matter is forwarded to the Disciplinary Committee TSC which is formed. If the problem is between the TSC, the KNUT---

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

**The Speaker** (Hon. Ethuro): Sen. Karaba, do you wish to be informed by Sen. Wetangula?



**Sen. Karaba:** Yes, Mr. Speaker, Sir, I will allow him.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I wish to inform the distinguished Chair of the Committee on Education that through my experience as a lawyer and advocate, and as a representative of a constituency, I know that under the TSC rules when teachers are employed, they sign to a commitment; to a code of conduct. It says the moment you are alleged to have interfered with a girl child, whether it is an attempt or a successful defilement or rape, it matters not to whether a court of law acquits you, you are dismissed by the TSC.

**Sen. Karaba:** Mr. Speaker, Sir, I would like to inform Sen. Wetangula that the due process was done. The KNUT came in to save the teacher, but they gave in to the reasons that he had already committed the offence. That is why he was interdicted. From there, according to the laws of Kenya Cap.212 against which the teacher took the matter to court Civil Case No.140, on rape charges, but here the TSC had already charged the teacher on assault and carnal knowledge of a girl in Standard Five. So, I concur with Sen. Wetangula.

**The Speaker** (Hon. Ethuro): Hon. Senators, this matter is concluded although I see Sen. Kembi-Gitura is eager to speak. Maybe you may have one last bit.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, with the greatest respect, this is the most unsatisfactory answer I have ever heard in this House because it says nothing. What I was seeking is the policy statement by the TSC and not a cursory answer the way that it has been done here. However, if that is what they know, he still has not answered several questions, particularly on policy and also whether there is in place the code of conduct that Sen. Wetangula was talking about. He has not tabled any policy or code of conduct that overrides national laws or what has happened in a case like this. It is most disappointing in that answer that the Chairperson does not even appear to understand the issue. When he says that my client took himself to court and charged himself with rape, then quite obviously, he does not understand the question that I had raised.

**The Speaker** (Hon. Ethuro): Order, Sen. Kembi-Gitura! Neither is Mr. John Njoroge your client, but I understand he comes from Murang'a County. First, I think the Committee Chair attempted to respond. The issues are actually there, but it is just that he may not have made them as obvious as requested by both Sen. Kembi-Gitura and Sen. Sang. Sen. Sang was actually helping because there is the disciplinary process by the TSC which accused him of having carnal knowledge of a standard five pupil. It actually produced evidence which was agreed to by the teacher himself. That is independent from the court process. I do not want to go beyond there, but I have put the two positions and they were all pursued.

**Sen. Obure:** Mr. Speaker, Sir, I forgot my card at home, but I will make sure that I come with it next time. I have been listening to this debate. I think we are treading on rather dangerous ground because what direction are we giving with regard to the TSC Act, the Code of Ethics and their regulations. Are they above a due court process? I think this is what worries me a little bit. Once the matter has gone through a court process and somebody has been pronounced not guilty, that should be the ultimate position. I think we are getting carried away by this Standard Five girl and the rest of the other issues. I think we should relook at this matter before we set very dangerous precedence.

Otherwise, I think the issues being raised by the Senator for Murang'a County are very fundamental.

**Sen. Sang:** Mr. Speaker, Sir, while agreeing with the concerns being raised by Sen. Obure and Sen. Kembi-Gitura, it is important to note that the Constitution and the legal regime in this country provide a process of setting aside a decision that has been made by a tribunal. If somebody does not agree with the TSC Disciplinary Tribunal, there is an opportunity through the law to present their issues and appeal against it. I think the level expected under the Code of Conduct is fairly different from the criminal procedure. So, it is important to note that there already exists a constitutional process of raising some of these issues if somebody does not agree with them.

**The Speaker** (Hon. Ethuro): Hon. Senators, if you cared to listen, according to part (b) of the second paragraph of that answer states:-

(a) "It is worth noting that the teacher's case before court was that of rape, whereas the TSC charged the teacher on having canal knowledge of his pupil".

So, they were two different things.

**Sen. Okongo:** Mr. Speaker, Sir, I think if the interdicted teacher felt aggrieved there was recourse to the industrial court.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is important for us to note that when you are taken to a criminal court, the standard of proof is beyond any reasonable doubt. But when you are subjected to a civil process to which you have committed yourself and signed a code of conduct which you are subject to, it is on a balance of probabilities. If you are found culpable, you already signed that the result is dismissal, as the distinguished Senator for Kirinyaga said. I want to invite Members to just look at the TSC Code of Conduct, it is not in conflict with the Constitution or inconsistent with any law. The standards of proof are different. We do not want a country where pedophiles escape on technicalities and continue tormenting little children in school.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I do not know the standards Sen. Wetangula would like for a person to be labeled a pedophile without due process. That is why we have the due process. So, you cannot label people pedophiles before you have tested and you have proof. That is why there are courts of law. The fundamental question is still outstanding. That is why I would like Sen. Karaba to think whether he would like to give a second bite to the cherry, go back and come back with a policy, because he has told us nothing.

Sen. Obure has made it clearer than even I had; that whereas a Standard Five pupil has rights, so does a teacher. It is important that this should be balanced so that teachers are not hounded out of their positions, because we have people like Sen. Wetangula who want to label them pedophiles before they appear before any court of law with a civil or criminal case. We are seeking fairness and looking for policy. This is important and that is why we represent people here.

**Sen. Karaba:** Mr. Speaker, Sir, I would like to inform my friend Sen. Kembi-Gitura that this is not the first process. We have had quite a number of processes taking place at the TSC. I am not an amateur in education policies. I know a lot about education. This is the due process which takes place and it is already contained in the code of

regulations for teachers. In every school you go to, there is a copy of the Code of Teachers Regulations in the staff room. The teachers know what is right and wrong. For that process to get to the TSC, it would have passed through the principal, the DEO, the TSC and the KNUT. The KNUT must have also confirmed that this teacher was guilty of the offence. I do not know why the Senator is saying that I have not done enough research because this, to me, is a very serious matter and we should not belittle it. If we allow that to happen, teachers will become pests in the classrooms.

**The Speaker** (Hon. Ethuro): That concludes that particular matter. Sen. Karaba, you have another Statement. Proceed!

CANCELLATION OF MARANDA HIGH SCHOOL  
2013 KCSE RESULTS

**Sen. Karaba:** Mr. Deputy Speaker, Sir, pursuant to Standing Order No.45(2)(b) of the Senate Standing Orders, nominated Sen. Elachi requested for a Statement from the Chairperson of the Committee on Education, Information and Technology regarding the cancellation of 2013 KCSE examination results for Maranda High School. I wish to respond to the specific issues raised by the Senator as follows:-

(a) The Kenya National Examinations Council (KNEC) did not rank the school because 23 boys who were doing computer studies colluded. In exercising the powers conferred by the KNEC Act, 2012, the Council has made rules and regulations governing the matters that relate to the examinations. The current rules and regulations on ranking of schools provide for the following criteria:-

(i) Only examination centres with more than 20 candidates are ranked.  
(ii) Private examination centres that host privately registered candidates are not ranked.

(iii) Examination centres that have candidates who were involved in examination irregularities are not ranked by the KNEC, except in cases where less than five candidates in an examination centre were involved in an examination irregularity.

(iv) Further, exemption is given to cases where head teachers report examination irregularities to the KNEC and when less than ten candidates in such examination centres are involved in the reported examination irregularities.

The reason, therefore, Maranda High School was not ranked during the release of the 2013 KCSE examination results is because 20 candidates in the school were involved in collusion in the computer science examination.

(b) Why is the school being penalized because of computer studies, which is an optional subject?

The candidates sitting for the KCSE examination are required to sit for a minimum of seven and a maximum of nine subjects based on the established rules and regulations which detail the clustering of subjects offered by the KNEC are clustered as follows:-

(i) Group I subjects – English, Kiswahili, Mathematics Alternative “A” and Mathematics Alternative “B”.

(ii) Group II – Biology, Physics, Chemistry, Biology for the Blind and General Science.

(iii) Group III – History and Government, Geography, Christian Religious Education, Islam and Hindu.

(iv) Group IV – Home Science, Art and Design, Agriculture, Hand work, Wood work, Metal work, Building Construction, Power Mechanics, Electricity, Drawing and Design, Aviation Technology and Computer Studies.

(v) Group V – French, German, Arabic, Kenyan Sign Language and Business Studies.

The awarding rules and regulations for the KSCE stipulate that a mean grade shall be calculated for all candidates who satisfy the subject entry requirements. The mean grade will be based on seven subjects chosen from the following two options:-

The three subjects from Group I, the best performed two subjects from Group II, the best performed subjects from Group III, any other best performed subject selected from the remaining subjects in Group II, III, IV and V.

The three subjects from Group I, General Science from Group II, the best performed subject from Group III and any other performed two subjects selected from the remaining subjects in Group III, IV and V.

The awarding regulations and policy for handling of examination irregularities for KCSE examination further states that if a candidate is involved in an examination irregularity in a paper, he or she will be awarded a “Y” in the relevant subject, denoting involvement in an examination irregularity which will lead to award of an overall mean grade of “Y” in the examination irrespective of whether the subject in which the candidate cheated was an elective subject or not.

Part (c) of the question sought to know why the Kenya National Examinations Council (KNEC) has moved to allow the 23 boys to repeat, yet they know very well that there is a policy that, indeed, if there are any irregularities, they are supposed to stay for three years before they repeat the same subject. The KNEC Act, 2012 stipulates that all candidates who are involved in examination irregularities should be barred from taking any KNEC examinations---

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. With due respect to Sen. Karaba who is a good friend, it is very important for responses to be very precise, so that we are able to ask questions. I tend to think that his response is unnecessarily long. Could he try to actually condense that information, so that the Members can quickly grasp and ask for clarifications in good time?

**Mr. Karaba:** Mr. Speaker, Sir, due to the nature of the question and the gravity that it carries, particularly to the Kenyans, the response has to be detailed. This is because cancellation of examination results is a very serious issue. But I am about to finish.

**The Speaker** (Hon. Ethuro): I agree, Mr. Chairman.  
Proceed!

**Sen. Karaba:** Mr. Speaker, Sir, the question was why the KNEC did not allow the 23 boys to repeat. The KNEC Act, 2012 stipulates that all candidates who have involved themselves in irregularities should be banned from taking any KNEC examinations for a period of up to three years. Before implementing this policy in full,

the KNEC consulted with stakeholders and it was agreed that it should take time to effectively sensitize all stakeholders, including candidates. Barring of candidates who were involved in examination irregularities from registering with the KNEC for a period of up to three years, therefore, takes effect from this year's (2014) Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) examinations.

On why the KNEC has not apologized to the school and the 409 parents who today are still in pain and wondering what really happened to the school: The decision to cancel results of candidates involved in examination malpractices is taken after undergoing a very rigorous process of verification. So, it is a long process. The KNEC, therefore, cannot apologize for undertaking its mandate in the expected manner, because the cancellation of results for the 23 candidates from Maranda High School was undertaken as per the established KNEC rules and regulations. It was established beyond reasonable doubt that the 23 candidates had colluded during the Computer Studies Paper 1.

Part (e) of the question sought to know how Kenyans will understand that it is not the students who colluded, but there was a confusion of names, since this was a practical paper and the KNEC claimed that there was confusion within the diskettes and, therefore, the names were different. The answer is that the 23 candidates from Maranda High School, whose 2013 KNEC examination results were cancelled, had colluded in Computer Studies Paper 1. This is a theory paper and not a practical paper as alluded above.

The last part of the question sought to know why the examiners did not raise the issue with the school instead of waiting for the results to be announced and then penalize the school. The 2013 KCSE examination results for 23 candidates from Maranda High School were cancelled because the candidates colluded in Computer Studies Paper 1, which is theory. The theory papers are marked by examiners who are hired by the KNEC, who are not aware of the names of schools for which they are marking. Of course, the names are given at random. When the examiners suspect that the candidates have been involved in cheating during the examinations, they make a report on all such papers to the KNEC office. I was also an examiner and know this process.

Mr. Speaker, Sir, also, the names of schools are concealed as the result of the random numbers used by candidates. As such, examiners are not aware of the names of schools whose examinations they are marking. This is done to maintain objectivity and confidentiality during the marking exercise. All cases where examiners suspect cheating must be validated by a number of KNEC committees, to ensure objectivity and accuracy of decisions made in regard to cancellation of candidates' results or otherwise.

Finally, any release of information related to candidates' work before the release of examination results would be *prejudice* to the release of results process.

Thank you, Mr. Speaker, Sir.

**Sen. Elachi:** Mr. Speaker, Sir, first, I would wish to appreciate the Chairperson. The response from the Principal Secretary says that it was a theory paper and not a practical paper. Maranda High School is a very highly rated school. Even though the Chairperson says that the random numbers are used to conceal the names of the schools,

the examiners who mark those examinations are teachers who are drawn from many schools. Therefore, they will know the index numbers of their schools. As much as the students cheated in the examinations, it was important for KNEC to call the school and explain to them that there was a problem with the Computer Studies subject, which is not a compulsory subject. Since only a few students chose to do this subject, it was unfair for the whole school to be punished.

The Principal Secretary has also explained so well that based on the grades that are given, we have Group I, Group II and so on. If in Maranda High School there was no cheating in Group I and Group II, then for the purpose of the integrity of the school---

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

**Sen. Karaba:** Mr. Speaker, Sir, I would like to inform Sen. Elachi that cheating in examinations is a very serious irregularity. Collusion is equally serious. Since the certification of candidates is based on seven subjects, and this included Computer Studies, it was going to affect the overall ranking of the school. That is the reason the school was not ranked. It was not the first school not to be ranked in the Republic. I would wish that such cases are avoided in schools. The career masters and heads of those schools should be able to guide the students properly, so that they are told exactly what subjects to take. This will ensure that those schools are not affected in future.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, for cheating to occur in a school, there has to be collusion by the invigilators, teachers, sometimes parents and students. Action has been taken against students who are thought to have cheated. What action has been taken against the invigilators and the teachers who were involved on that day in any activity, in the examination room, where cheating is purported to have taken place?

**Sen. Karaba:** Mr. Speaker, Sir, in most cases, if a headteacher is involved in cheating, he or she interdicted and removed from that centre. Also, most invigilators nowadays are teachers. They have to submit their names as registered with the Teachers Service Commission (TSC)---

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! Be relevant to the question. In the particular cases of Maranda High School, the students have been punished by being asked to repeat.

**Sen. Karaba:** Mr. Speaker, Sir, regarding Maranda High School, the process is still not complete, because investigations are still ongoing. It is a very tricky area. As soon as they get to know who assisted who, then the concerned teachers and invigilators will be dealt with severely by the KNEC, through the TSC.

**The Speaker** (Hon. Ethuro): Okay. That is the end of that particular Statement.  
Sen. (Prof.) Anyang'-Nyong'o.

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

LACK OF LIVE MEDIA COVERAGE FOR  
CORD SABA SABA RALLY

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I rise under Standing Order 33 to give notice of the following Motion.

THAT, this House doth adjourn to discuss a matter of national importance.

*(Several Senators stood up in their places)*

**The Speaker** (Hon. Ethuro): Order! Order, Members! I do not understand why you are supporting the Professor. Let him, at least, explain what it is.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I think that you are right. Maybe I should explain.

Mr. Speaker, Sir, on Monday, 7<sup>th</sup> July, 2014 an incident occurred which requires that we do look at the issues behind it. I would like to explain. Recognizing that Article 2(1) of the Kenyan Constitution states very clearly that “this Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government;” recognizing further that the subsequent subsection 2 of the same Article states in no uncertain terms that “no person may claim or exercise State authority, except as authorized under this Constitution;” realizing that the Bill of Rights as contained in Chapter 4 of the Constitution provides for rights---

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. The person who is controlling the microphone should make the sound audible, because we cannot hear the Professor very well. I cannot even hear myself well here.

**The Speaker** (Hon. Ethuro): I hope that it is noted.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to move; THAT, realizing that the Bill of Rights, as contained in Chapter 4 of the Constitution provides for rights and fundamental freedoms by stating *inter alia* in Article 19(1) that “the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies”; conscious of the fact that Article 19(3)(a) makes it absolutely clear that “the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the state;” aware that Article 21(1) states that “it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights”;

Realizing further that Article 24 of the Bill of Rights clarifying limitation of rights and fundamental freedoms, at no time contemplated any limitation on the fundamental freedoms contained in Article 19 nor did it legitimize any limitation of rights on the basis of a speculative transgression and Article 24(3) states very clearly that “the State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied”; noting that freedom of the media, as stated in Article 34(2) forbids the State not to exercise control or interfere with any person engaged in broadcasting, production or circulation of any publication or the dissemination of information by any medium;

Having observed that on 7<sup>th</sup> July, 2014, while holding a *Saba Saba* rally at Uhuru Park, the CORD leaders were given a complete blackout by the media, following direct and/or insinuated threats and intimidation by the State, through a communication by the

Cabinet Secretary to media houses to that effect; this House doth hereby resolve to declare this action by the State as unconstitutional and calls upon the Jubilee administration to desist from clawing back the democratic gains of the Kenyan people as enshrined in the Constitution.

*(Several Senators stood up on their places)*

**The Speaker** (Hon. Ethuro): Hon. Senators, according to Standing Order No.33, I am satisfied that the matter is a definite matter of urgent national importance. Standing Order No.33(3) says that there should be not less than five Senators, you are definitely more than five from my count. Therefore, I order that this matter shall be deliberated today from 5.00 p.m.

There is still one more Statement from Sen. Sijeny. Which Committee is that?

**Sen. Sijeny:** It is the Committee on Roads and Transportation.

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

*(Resumption of Statements)*

#### CURRENT STATUS OF ISIOLO AIRPORT PROJECT

**Sen. Sijeny:** Mr. Speaker, Sir, on 12<sup>th</sup> June, 2014, the Senator for Meru County, Sen. Murungi, requested for a Statement from the Chairperson of the Standing Committee on Roads and Transportation regarding the status of Isiolo Airport Project. In the Statement sought the Senator wish to be informed on the following:-

- (i) the current status of Isiolo Airport Project;
- (ii) the cost of the project, the contract and the cause of delay in completion;
- (iii) the completion and handover date;
- (iv) the amount allocated to the project in the financial year 2013/2014; and,
- (v) whether Kenya Airways will make regular commercial flights from Nairobi to Isiolo once the airport is complete.

Mr. Speaker, Sir, the Chairperson of the Standing Committee responds to the Statement as follows:-

The Isiolo Airport Improvement Project is being carried out in phases and the current construction of the facilities is as follows:-

Phase One - Runway: A runway of 1.4 kilometres long has been constructed and was completed in February, 2012. The contractor for the works was M/s Kundan Singh Construction at a cost of Kshs7,967,729. The project was completed on time.

Phase Two - Terminal Building: The contract for construction of the terminal building was awarded to M/s Northern Construction Company Limited for the contact sum of Kshs963,052,188.22. The contractor commenced the construction on 8<sup>th</sup> March, 2013 for a construction period of 28 months. The terminal building is expected to be completed by July, 2015. So far, a progress of 35 per cent has been achieved and the project is on schedule.



The two phases of construction have cost a total of Kshs1,664,019,917.22, and are on schedule.

Phase Three - Access Road: Expansion of aircraft parking apron and drainage works is estimated to cost Kshs675 million and the designs have been completed.

Advertisement for the tenders is expected to be made on 20<sup>th</sup> June, 2014 which was done and commencement of works is expected to start in September, 2015. The airport will be ready for operation by October, 2015 and the project implementation is on schedule. An allocation of Kshs400 million has been included in the 2013/2014 budget and further Kshs400 million in the 2014/2015 Financial Year, which is adequate for implementation.

Regarding usage, Kenya Airways is still carrying out studies on the feasibility of operations and have not yet confirmed if they will operate to the airport when completed. The airport has been developed to accommodate up to code 3C Aircraft which includes some of the aircraft in the Kenya Airways fleet.

Mr. Speaker, Sir, I beg to submit the Statement.

**Sen. Murungi:** Mr. Speaker, Sir, I am very disappointed by this Statement. The Isiolo Airport is a crucial project for both Isiolo County and the Meru County and, indeed, other parts of Northern Kenya. From this Statement, it is very clear that there is very little political will to get this project completed. If you look at what has happened from the Statement, the runway was completed in February, 2012 and nothing happened for one year. Then the terminal building starts in March 2013. So, from the completion of the runway in February, 2012 to March, 2013 absolutely nothing happened.

The third phase which is access roads, parking area and drainage works, they say the tenders are expected to be advertised in June, 2014. That is another year which goes before tenders for the third phase are advertised. This is a small airport. So, why should it take the Government between 2010 and 2016 to complete? That is why I am saying there is very little political will. Could the Committee Chair explain why we needed three different contractors for this particular project? Are they satisfied that the budgetary allocations of Kshs400 million would be sufficient to complete this project within the stipulated time?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Senator for Meru has asserted that there is lack of political will for this project. It is clear that for us in the Opposition, we are ready and willing to ensure that funds are allocated for this particular project. Could he confirm and clarify who is responsible for this political bad will against this project so that the people of Meru and Isiolo do not think we are the ones causing it?

**Sen. Murungi:** Mr. Speaker, Sir, I do not want Sen. (Dr.) Khalwale to bring CORD politics into my question. It is quite clear the Cabinet Secretary who has given the answer which the Chairperson of the Committee on Roads and Transportation has read is well known and is familiar with these projects. That is the person I am saying does not have sufficient political will. If there was, enough money would have been spent and we would not be taking six years with three different contractors.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, listening to the distinguished Senator for Meru County, it lends credit to a famous saying from my community that even a circumciser's son feels pain. Listening to that, I want to ask the

Chairperson of the Committee, if Meru is crying over Isiolo that much, what is the Government doing about Kakamega Airport that has been closed for five years pending repairs that were meant to cost just about Kshs100 million? For five years we have not used the airport. How hard can we cry then?

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

**Sen. Sijeny:** Mr. Speaker, Sir, I wish to state, first, on the latter question whether the budget allocation is sufficient. Yes, the Ministry feels it is sufficient unless otherwise proved contrary. This will be adequate to implement and complete the project. As stated, everything has been completed on time. The runway was completed on time. The three contractors adhered to procurement laws and there is nothing to prove that anything sinister was done. So, I am satisfied with the answer.

**The Speaker** (Hon. Ethuro): Order, Senator! The Senator for Meru has told you that every year, it is like nothing is happening. So, how can you be satisfied that the three contractors are doing something? Then there is the story of Kakamega Airport.

**Sen. Sijeny:** Mr. Speaker, Sir, since the Senator for Meru would require more details which he had not requested for, then I would, perhaps, request for at least one more week when I can come and give the details.

Regarding Sen. Wetangula's question, this question had been asked and the Committee had been given more time. We have now sought for that information; it is in the HANSARD because it had been previously asked. So, we should be giving the answer in two weeks' time as per the HANSARD.

**The Speaker** (Hon. Ethuro): I thought you might just wish to say that it is a different question.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, could the Chairperson, even now or at a later date, table a list of all the airports and airstrips in this country, the state in which they are and the areas in which they are found?

**Sen. Sang:** Mr. Speaker, Sir, adding to the information sought by Sen. (Dr.) Machage, included in the details should be when the airports were constructed.

**The Speaker** (Hon. Ethuro): Sen. Sijeny, you are under no obligation to respond to those two interventions. Those are completely two different matters. If the Senators feel strongly interested in those matters, they know what to do. They will file a request for a Statement which I can approve immediately for your disposal. So, I do not think you should respond to that. The Statement was specific about Isiolo Airport which I think on its own, is a grave matter that requires a lot of information.

**Sen. Murungi:** Mr. Speaker, Sir, my concern was really about the delays. The runway was completed in February, 2012, but nothing happens on that site for one year because they start doing the terminal building one year later in March, 2013. Why wait for one before moving to the next phase?

They say they have advertised tenders for Phase Three on Access Roads. The tenders were supposed to have been advertised on 20<sup>th</sup> June, 2014. Have they been advertised?

**The Speaker** (Hon. Ethuro): Sen. Abdirahman, you had an issue?

**Sen. Abdirahman:** Mr. Speaker, Sir, listening to the response from the Vice Chairperson of the Committee, I feel there are quite a number of areas that have not been

sufficiently addressed, particularly whether there is sufficient financing arrangements in place and secondly, why there has been serious delay. The Vice Chairperson has not been able to address these two questions which are critical to the completion of this project. I think she needed to do that.

**The Speaker** (Hon. Ethuro): Sen. Abdirahman, really you are just repeating what Sen. Murungi asked.

Sen. (Dr.) Machage!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, allow me to plead with you that you rescind your decision on my intervention which had given a leeway for the Vice Chairperson to go and bring that information later. Isiolo Airport situation might be tied up with the dilapidated situations in all other airports. It is a comparative issue. Please, allow that question to be replied.

**The Speaker** (Hon. Ethuro): I sympathize with your pleadings, but the choice is between a case study and the entire sample. What you are asking is an entire state of play in terms of airports countrywide. I think we all agree that is a tall order. This is just a drop in the ocean. I am sure Sen. (Dr.) Machage, you have capacity to just draw in a few lines which will be approved and the matter will be investigated properly so that we get a comprehensive report. Let us not take it away from the specifics of the Isiolo Airport which I think are very important on their own. I would imagine some of these flights that usually take off from Wilson will easily be taking off from Isiolo.

**Sen. Sijeny:** Mr. Speaker, Sir, I had requested that since all these details had not been asked before including the delay and why three different contractors were engaged, I think this requires a comprehensive report---

**The Speaker** (Hon. Ethuro): Order! Hon. Senator, also include inadequate financing if you captured the sentiments by Sen. Abdirahman.

**Sen. Sijeny:** Mr. Speaker, Sir, regarding inadequate financing when I look at the report or the answer we have been given---

**The Speaker** (Hon. Ethuro): I do not want you to respond. I am just saying add to the issues that you want further investigations.

**Sen. Sijeny:** Yes, Mr. Speaker, Sir. That also includes inadequate funding, the delay and why the different contractors. This requires a detailed report and I ask for more time.

**The Speaker** (Hon. Ethuro): How much longer?

**Sen. Sijeny:** Mr. Speaker, Sir, perhaps, two weeks because they will have to dig into reports, submit and prove.

**Sen. Murungi:** Mr. Speaker, Sir, it is not correct to say that we had not raised issues of delays in our request for the Statement. My Statement was very clear in part two. I had asked the cost of the project, the contract and the cost of delay in completion. So, it is not correct for the Vice Chairperson to say that the issue of delay is a new one and she needs to go back. Maybe she should say that the answer on the Statement she got from the Ministry was not complete and therefore, she is requesting for more time to seek for a more comprehensive Statement. However, we should not bear the blame of introducing new matters. They are not new because they were in the original Statement.

**The Speaker** (Hon. Ethuro): Sen. Murungi, you are absolutely right. In fact, if you went further, the Statement is talking about completion and handover date, which should also be related to the cost of the delay. Another issue is the amount allocated to the project in this financial year. You can easily make reference in terms of whether the allocation was sufficient to complete the project. It does not even have to be made that explicit. So, locate the failure where it is supposed to be.

Maybe before you respond to other interventions, let me give a chance to Sen. Wangari. If it is by mistake, we will understand.

**Sen. Wangari:** No, Mr. Speaker, Sir, you had already dealt with the issue of procedure on statements.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Yes, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it may have escaped the distinguished Senator for Meru County that, actually, Isiolo International Airport is part of the Vision 2030 flagship projects. That brings into focus the issue raised by Sen. Abdirahman, that those were priority projects. If it is one of the priority projects, like Lamu Port, why is the Government procrastinating on funding and is bringing it in bits and pieces, the way the distinguished Senator has told us? I think the Chairperson should bring that information to the Floor of this House.

**The Speaker** (Hon. Ethuro): Except that, Sen. Kiraitu, while your bit is not to be blamed, but I think you should have made that with the same issue of whether you are satisfied with the two weeks, which I think is reasonable time, so that we really conclude this business.

Yes, Sen. Kiraitu?

**Sen. Murungi:** Mr. Speaker, Sir, I believe the information is available and the Cabinet Secretary (CS) does not require two weeks. We are prepared to give them another one week.

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

**Sen. Sijeny:** Mr. Speaker, Sir, we will try our best within that one week and we will give the information sought.

**The Speaker** (Hon. Ethuro): The information will be given in one weeks' time. What is it, Sen. Kiraitu?

**Sen. Murungi:** Mr. Speaker, Sir, the Chairperson had promised two statements and they are in the Order Paper for today; one on Isiolo Airport, which she has attempted to answer. There is another one on the Mikinduri-Maua Road---

**The Speaker** (Hon. Ethuro): Let me make this proposal, hon. Senators. Because of the other matter – the Motion coming up at 5.00 p.m. – and the interest of the other business pending, why do we not terminate that Order for now and defer the rest of the Business listed under Statements to tomorrow afternoon so that, that allows us to proceed with the other Business before us?

Is that okay, Sen. Kiraitu?

**Sen. Murungi:** I am most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I know we had already concurred with the Chairperson and the Senator on Item “d” under Statements and also under Item “e”. Of

course, also under “a”, we had also agreed that it goes to next Tuesday. So, that should account for everything under Statements.

STATUS OF MIKINDURI-MAUA ROAD

*(Statement deferred)*

MEASURES TO ERADICATE POACHING OF WILDLIFE IN KENYA

*(Statement deferred)*

OUTBREAK OF MAIZE DISEASE IN NAROK, BOMET,  
KERICHO, NYAMIRA, KISII AND MIGORI COUNTIES

*(Statement deferred)*

Next Order!

**BILL**

*First Reading*

THE FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 36 OF 2013)

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

*Second Readings*

THE POLITICAL PARTIES (AMENDMENT) BILL  
(SENATE BILL NO.3 OF 2014)

*(Sen. (Dr.) Khalwale on 1.7.2014)*

*(Resumption of Debate interrupted on Tuesday 1.7.2014)*

**The Speaker** (Hon. Ethuro): Who had the Floor?

*(The Speaker consulted the Clerk)*

I am told that it is open to any contributor.  
Yes, Sen. Kiraitu Murungi?

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I want to thank you for giving me this opportunity to contribute to this very important Amendment Bill.

From the very outset, I would like to declare my interest in this Bill. As you know, I am the party leader of the 'Bus' party; the Alliance Party of Kenya (APK). So, I want to contribute from that perspective.

Mr. Speaker, Sir, this Bill comes at a very appropriate time when we have just been celebrating our *Saba Saba* Anniversary.

*(Applause and laughter)*

You will recall – although some of the people we saw at Uhuru Park were there for the first time – that *Saba Saba* is a very serious occasion. That day, on the 7<sup>th</sup> of July, 1990, about 20 people died and all the political leaders in the Opposition were either detained or exiled. Very many people suffered, with some dying as a result of that struggle.

Mr. Speaker, Sir, the question is why did that have to happen? The struggle then was about one Section in the old Constitution called Section 2(a), which had converted Kenya into a *de jure* one party State. That particular provision of the Constitution denied the people the right to political participation and political choice. It is for that reason that as we were struggling for the new Constitution, it was made very clear that one of the very first articles in the new Constitution has to be about making Kenya permanently a multi-party democracy.

*(Applause)*

Mr. Speaker, Sir, Article 4(2) of the Constitution states as follows:-

“The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.”

Mr. Speaker, Sir, I have to emphasize that “The Republic of Kenya shall be a multi-party democratic State.” So, there is no room whatsoever that this country will ever be ruled by one party only the way KANU had been the single political party controlling the politics of this country.

Mr. Speaker, Sir, we have gone further in Article 38(1) of the Constitution to provide political rights. It says:-

“Every citizen is free to make political choices, which includes the right—

(a) to form, or participate in forming, a political party;

(b) to participate in the activities of, or recruit members for, a political party; or

(c) to campaign for a political party or cause.”

What Article 38 of the Constitution does is to entrench the political rights of Kenyans into the Bill of Rights. All the organs of State have a duty to promote the enjoyment of the rights contained in the Bill of Rights. Therefore, all the organs of the State have a duty to promote the enjoyment of political rights in this country. So, any restriction – legal or administrative – which constraints the enjoyment of political rights by Kenyans is unconstitutional and is null and void.

*(Applause)*

Mr. Speaker, Sir, it is also the right of Kenyans not to be discriminated against in the distribution of political goods. It is the right of Kenyans to enjoy equally the right of political goods being distributed by the State. It is for this reason that I am supporting the Bill brought to this House by the distinguished Senator for Kakamega, Sen. (Dr.) Khalwale. I want to thank him for his vigilance in making sure that Kenyans enjoy the rights that are enshrined in this Constitution.

*(Applause)*

Mr. Speaker, Sir, there are certain provisions of the Political Parties Act which are unconstitutional and, therefore, null and void to the extent of the inconsistency with the Constitution. Being the right and the duty of the Government to promote political parties, therefore, it cannot deny some political parties funding while giving funding to other political parties because it will be failing in its duties and obligations to promote multiparty democracy in Kenya.

Mr. Speaker, Sir, I can tell you as the Leader of the 'Bus' party that we carry the 'bus' on our shoulders. It is the duty of the members of the 'bus' party to fuel the 'bus' from their own pockets. It is the duty of the political party leadership of the 'bus' party to make sure that we pay our staff to keep our offices open. All large parties like TNA and URP are enjoying enormous largesse from the State. In fact, we are contemplating taking them to court for discrimination. We are contemplating going to court to declare Section 7 of the Political Parties Act unconstitutional, illegal, and null and void to the extent that it requires political parties to open offices in 24 out of the 47 counties in this country.

*(Applause)*

It is illegal and unconstitutional to require a political party to have 1,000 members in 24 out of the 47 counties because it is reducing your capacity to enjoy political rights by saying that you cannot enjoy the right to make political choices unless there are 1,000 other members from a county supporting you.

Mr. Speaker, Sir, every individual Kenyan has a right to enjoy the right political choices. Every individual Kenyan has a right to political participation, whether you are acting alone, with 10 or 20 people. Therefore, this requirement that I must convince 1,000 members from a different county to come and support me so that we can have a party is unconstitutional. To say the least, it is undermining the very fundamental right that many Kenyans died for.

Mr. Speaker, Sir, regarding political party funding, I know the reason we fought for political party funding. Sen. (Prof.) Anyang'Nyong'o was with me I think in the Seventh Parliament when we formed the Parliamentary Select Committee on Anti Corruption. The reason we went for political party funding was because we discovered that mega corruption in this country comes in just before the elections. Without feasible

funding of politics in this country, people are forced to use underhand methods of funding political parties and elections. We proposed that we should fund the parties from the Treasury, so that there was no need for people to go and steal just to go and fund political activities in this country.

Mr. Speaker, Sir, that very noble idea is being undermined. We might be talking today about some huge political parties like CORD, Jubilee and what have you, but we have said it before; which party was bigger than the ones of Jaramogi Oginga Odinga and Kenneth Matiba? But where are they today? FORD Asili is gone! It used to cause waves; Nairobi was impassable when the FORD Asili crowd was passing. But today, where is FORD Asili? It is gone.

*(Laughter and applause)*

Mr. Speaker, Sir, let us not be blind-folded by the fact that parties have big names and are they have a big following today; they might not be there in the next general elections. I was the Secretary General of a national party called The Party of National Unity (PNU) with our friend, the late hon. George Saitoti. We had support from all over the country, but we cannot find a single Member now either in the National Assembly or in the Senate.

Mr. Speaker, Sir, the ‘Simba’ party – FORD Kenya – was a great party enjoying a lot of support all over the country. But now it is a minority party.

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

**Sen. Murungi:** That is why he is the Senate Minority Leader!

*(Laughter)*

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

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

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the distinguished Senator for Meru and the leader of the insignificant ‘bus’ party to belittle FORD Kenya party when FORD Kenya is a party that boasts of being one of the CORD principals and a leader in this House with a large following countrywide when the ‘bus’ is---

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

**The Senate Minority Leader** (Sen. Wetangula): Is he in order to belittle FORD Kenya when he leads a party that is a footnote to the Jubilee brigade?

*(Laughter)*



**Sen. Murungi:** Mr. Deputy Speaker, Sir, you know politicians like cheating themselves; they ignore the realities. If the 'bus' party is a footnote, then FORD Kenya will be a footnote to a footnote.

*(Laughter)*

Mr. Deputy Speaker, Sir, let us not trivialize the importance of this Bill because if we are talking about historical injustices, there is one which was committed by the Tenth Parliament in enacting a Bill which said that unless as a party, you have five Members of Parliament (MPs) and five per cent of the total national vote, then you are not entitled to political party funding. We have major problems even in the computation of these votes. On our side, the APK, we all voted for the President, but right now, we are not entitled to any funding because those votes are not being counted. Our votes, which went to the President, are not being counted.

**The Senate Minority Leader** (Sen. Wetangula): I think it is a proper for us to be recognized by our own name. This has caused a lot of pain to political parties including the "Mbus" party which is drafted by the distinguished Senator for Meru but subsequently brought to Parliament by hon. Martha Karua.

I am not saying that he prosecuted it but he drafted it.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kiraitu Murungi, are you seeking the Floor or are you making an intervention? I can see your card. What do you want me to do for you since you have made a request and sought an intervention?

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I wanted to raise a point of order. However, I have forgiven him.

**The Senate Minority Leader** (Sen. Wetangula): You can never sweep the truth under the carpet. That reminds me of the words of wisdom of one Aaron Ringera when he was teaching us law. I believe that Mr. Ringera was a one time partner of the distinguished Senator for Meru. He used to say that if you want to test the goodness of a law, imagine the same law in the hands of your worst enemy. If you feel safe with it, then it is a good law. I am sure that my learned senior agrees with me. This draconian Political Parties law we passed ends up giving advantage to a few parties and disadvantaging other parties and yet we know that every vote counts.

You may recall that during the last Parliament, we had an election in Wajir where two candidates tied. After several recounts, they had to send them back for a by-election. That means that every single vote counts. We had a Member of Parliament called Maj. Sugow who served a whole five years having won an election with a majority of three votes. Every vote counts. That is why we should not leave the management of political parties to the chemistry and goodwill of coalitions.

We in CORD have an arrangement where we put all our votes in the Presidential candidate from ODM and the funds are shared out on an agreed formula between ODM, Wiper and FORD (K). That becomes a contractual relationship after the fact.

I agree with the sponsor of the Bill that any party that successfully wins an election by getting a Senator, Governor, Member of the National Assembly or even a Member of the County Assembly is not easy. On a *prorata* basis, there must be a

mechanism of calculating how you can get the parties supported. I agree with the distinguished Senator for Meru. It is extremely sonorous to expect the very large parties like the ODM— it is only ODM because parties like TNA are enclaves within ethnic regions and are not spread out countrywide.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I do not want to interrupt my able friend, Senate Minority Leader. However, we should not mislead this House and Kenyans that the party called TNA is made from a tribal enclave. The TNA is a national party. We all know it because it is the ruling party. The TNA has members all over the country including the Secretary General who is from Luo Nyanza. How national should a party be if TNA is not a national party?

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, a party having a Chairman with a name starting with “O” does not make it national.

**The Deputy Speaker (Sen. Kembi-Gitura):** Is the law not clear that you cannot register a tribal party anywhere? Is this not in the Constitution?

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I never said that the TNA is a tribal party. I said that the TNA is a party I enjoin in support from a tribal enclave. I did not say that it is tribal party. Those are two different issues. I can elaborate more and more but let me go to the point.

**The Deputy Speaker (Sen. Kembi-Gitura):** You have not answered Sen. Murungi’s concern on the point of order.

**The Senate Minority Leader (Sen. Kembi-Gitura):** His justification is that Mr. Oloo is the Chairman of TNA---

**The Deputy Speaker (Sen. Kembi-Gitura):** I am not engaging in an argument or debate with you. I want you to deal with the point of order that was raised by Sen. Murungi.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I dare say that if you go to the Rift Valley, the TNA members will be the same community. If you come to the central part of Kenya, you will find that they are also from the same community with exceptions of my brother who is agitated and standing---

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. Wetangula, I do not think that your response is helpful to yourself or to anybody else. You cannot say that some people have abused the Constitution because the Constitution is very clear on what constitutes a political party. I think we have to be careful not to raise issues of temperatures where there are none. In fact, I am sure that there are many ways you can contribute to this debate without making such statements.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, that matter would have passed without any issue if the Meru Senator did not jump to it. All I said is that apart from the ODM which has strong support everywhere in the country, other parties still follow members of certain communities. That is neither here nor there. Let me go on with my submission.

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

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, Sen. Sang is a lawyer and he knows the maxim *expressio unius est exclusion alterius*, which means to specify one is to exclude others. I did not mention URP

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Being the sponsor of this (*inaudible*)

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, *expressio unius est exclusio alterius* means that to specify one is to exclude others. I only mentioned one party, but let me move on.

**Sen. Njoroge:** On a point of order, Mr. Deputy Speaker, Sir. (*Inaudible*)

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

**Sen. Njoroge:** (*Inaudible*)

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, we had gone over that. If you want locals to grow, you must take into account - I will reiterate what Sen. Murungi said – that any party that can fight an election and get an electoral seat is entitled to money from the taxes of Kenyans. I find it extremely onerous to expect that a party can maintain 24 offices in 24 counties, actively paying and being paid surprise visits on taxpayers' expense by the Registrar of Political Parties. They are busy roaming around the country to check whether ODM has an office in Lunga Lunga, whether the *Mbus* party has an office in Bungoma even when they cannot raise a village elder. It is not reasonable!

We should support this Bill if we want democracy to grow. We live in a country where every election time--- this days innovative Swahili speakers call it *vuguvugu*. In the next elections, you will find that TNA has been wiped out completely and there will be another party. The URP may disappear completely and there will be another party. The only consistent party is Ford Kenya that can boast of being the second oldest party in Kenya up to---

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators although your name for intervention appears here, I think it is also good to say, "On a point of order when you want to speak".

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. (*Inaudible*)

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

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you read George Orwell's 1984 book of which he has a character there called Big Brother, he was watching from an instrument then called a telescreen and you can hear the distinguished Senator for Tharaka-Nithi pretending to be Big Brother, sitting in his office and watching the proceedings and then running here with a big stick to purport to control the debate. That is not acceptable!

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, Sen. Muthama wants to inform you. Do you want his information?

**The Senate Minority Leader** (Sen. Wetangula): He can inform me.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, I wish to inform Sen. Wetangula that when Sen. (Prof.) Kindiki rose on his point of order, he said that the CORD coalition has

changed its name to *Okoa Jahazi*. The information I want to give to Sen. Wetangula is that he made a mistake; it is not *Okoa Jahazi* but *Okoa Kenya* which he is part of.

**Sen. (Dr.) Khalwale:** *Tunaokoa wewe!*

**The Senate Minority Leader** (Sen. Wetangula): --- CORD as a coalition or any parties in the cold.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. (*inaudible*)

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, he said that he was watching the proceedings in horror from his office.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, may I request we put this to a close because I do not want us to draw the line too far about imputing bad motives on other people because you know as well as I do that under Article 91 of the Constitution and other laws all parties cannot be registered if they are ethnic or they are based on religion. So, I think it is good that you take this debate very seriously like Sen. (Dr.) Khalwale says he is. Let us deal with the issues which are in that Bill, and they are quite many.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, in fact, you are very right. When Sen. Murungi raised the issues, I let the chips lie where they fell. It is my two colleagues who have come in with gusto, pretending to be more concerned than others. I support this Bill fully. I want the issue of maintaining 24 county offices for political parties to be rethought. It is actually unconstitutional. I want every vote to have value. Any party that can have an elected person, including Kalembe Ndile's Tip Tip with one or two Members of the County Assemblies, on a *pro rata* basis should be able to benefit from a fund that is from the taxpayers' money. How do you discriminate against the *Mbus*, when it has two Senators here and has even been given an opportunity and privilege to nominate a third one? They also have Members of the National Assembly, a Governor and Members of the County Assemblies and, yet they have to go through the pain of fundraising to pay even for their ordinary party meetings. This is unacceptable. We need to make the law to help parties grow.

Mr. Deputy Speaker, Sir, the point that I was coming to is that we must respect resilient parties. We came up with the NARC in 2002 and it took the imagination of the whole country. We brought President Kibaki into office and one Charity Ngilu took off with the party. She destroyed it and we had to look for another party to go to the next general elections. We came up with PNU and we got President Kibaki re-elected. As soon as we got into the Government, they forgot that it was a party and eventually, it was left to one George Saitoti, my distinguished close friend – God rest his soul in eternal peace. When it died, a man called Gideon Konchella pretended that he was fighting to lead the party. He was elected and a week later, wound up the party and walked away to URP.

We must institutionalize parties, because if parties as institutions do not grow, then our democracy will not grow. We will have what the Waswahili call *vuguvugu*. Every election time, there is a *vuguvugu*. Sen. Kiraitu may next time abandon the *mbus* and form a rocket, so that---

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

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

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I would like to inform the Senate Minority Leader that, indeed, I was one of the founder members of FORD-(K), which he is talking about today. I was one of those who drafted the constitution of FORD-(Kenya). For your information, I have never run on the same party twice. Even if I run on a different party in the next elections, it is not because I am a defector. It is because we are looking for the perfect.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is serial defectors like Sen. Kiraitu that are the enemies of democracy.

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

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

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, may I inform my party leader with a light touch that the ODM-(K) Party jumped out of the main ODM Party. FORD-(K) also jumped out of the FORD Party sometime ago and he knows the year.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Sen. Wetangula is a very respectable leader and I respect him. When he makes suggestions and even gives examples on the Floor of the House how come he never uses himself; that for example he was in KANU and serially defected to PNU and then FORD-(K)? He should be using examples that are closer home. Is he in order to just look for examples elsewhere when he should be using himself?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, for the record, in my entire political life, I have been a member of only two parties. I was in KANU, which every other Kenyan who was in politics then was and, later, FORD-(K). I was in NARC and PNU as a corporate member from FORD-(K). It was my party that was a member of NARC and PNU and not I, the individual.

Mr. Deputy Speaker, Sir, let me conclude by urging the House that we support this Bill. It is actually going to help parties grow and reduce pain in parties. There are many things that need to be looked at, including equity in how the political parties are run by the Independent Electoral and Boundaries Commission (IEBC) and the Registrar of Political Parties. For example, my party has four elected Senators here and we were allowed to nominate one. The *Mbus* has two and they were allowed to nominate one. UDF has two and they were allowed to nominate one. Where is equity? There is no equity whatsoever. There is, in fact, corruption in the management of political parties by the institutions that are in place. You cannot understand how they run these issues. If we want to democratize and put to good use---

**Sen. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Minority Leader has been the most interrupted speaker on the Floor of this House because of making reckless statements. He has just said that those who are managing the political parties are doing so corruptly---. Could he substantiate because that is a serious charge and it is going into public record?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have said this even to the Chairman of the IEBC who calculated and determined nominations to this House; that with four Senators I could not have been equated with the *Mbus* which has two Senators, and be given an opportunity to nominate one each. I have said this and will say it again.

**The Deputy Speaker** (Sen. Kembi-Gitura): But when you clearly talk about corruption against an institution---

**The Senate Minority Leader** (Sen. Wetangula): Corruption does not necessarily mean money.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, could you allow me also to say what I have to say? Like I have told you many times, I do not wish to engage with my fellow Senators on issues. When you raise issue like corruption and use the word “corrupt” whether it is an institution or party leader – and you are party leader – do you not think that you are spreading yourself too thin, because you could very easily be asked to substantiate?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, how else can you explain that two are equal to four? It is a convolution of facts.

**The Deputy Speaker** (Sen. Kembi-Gitura): Against whom are you now alleging corruption?

**The Senate Minority Leader** (Sen. Wetangula): It is not against the *Mbus*, because they did not nominate themselves.

**The Deputy Speaker** (Sen. Kembi-Gitura): When you now talk about the Bus and four or two Senators, and your party with one or two Senators, and allege corruption, against whom are you alleging that corruption? You have got to be extremely careful at that point.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, when I was making my point, the Clerk was talking to you and, perhaps, you did not follow.

**The Deputy Speaker** (Sen. Kembi-Gitura): I followed, Sen. Wetangula. You are not going to fault me on issues of following or not following a debate.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. I have just done a very quick calculation. If FORD-(K) has got four elected Senators; four divide by 47 and multiply by 16, which is the number of women nominated to this House, it comes to 1.3. I am even surprised that they got two Members. If you do the same calculation for the Bus, which has two Senators elected, you get 0.7 which is rounded to one. They nominated only one person from the Bus party and not two. So, I think that it is a mathematical formula. Is the Senator in order to mislead the House on a simple mathematical formula?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, my issue is not so much about the mathematical formula, because I am not very good in mathematics but it is on the issue of going close to crossing the line. Quite obviously, the HANSARD is there and it is a public record, and if you talk about corruption and in the same breath mention political parties, then there is a danger. I think we have to be very careful how we go about this.

*(Sen. Wetangula remained on his feet)*

Having said that, you are still on your feet but it is 5.00 p.m. and the Speaker made a ruling that the House shall adjourn at this time to discuss a matter of national importance.

Sen. Wetangula, my record shows that you still have 35 minutes whenever we resume this debate. For now, the House is going to adjourn to discuss a matter of national importance that was brought up as a Motion of Adjournment by Sen. (Prof.) Anyang'-Nyong'o. So, let us move to the next business.

### **MOTION OF ADJOURNMENT UNDER STANDING ORDER NO.33**

#### **LACK OF LIVE MEDIA COVERAGE FOR CORD SABA SABA RALLY**

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, thank you for granting me this opportunity to move this Motion of national importance. I will crave your indulgence to read the Motion again because I am quite sure that there are certain Members of this House who were not here when I was reading it as a matter of national importance earlier.

Mr. Deputy Speaker, Sir, in accordance with Standing Order No. 53(b) I beg to move that this House do now adjourn. I beg to move the following Motion.

THAT, realizing that the Bill of Rights, as contained in Chapter 4 of the Constitution provides for rights and fundamental freedoms by stating *inter alia* in Article 19(1) that “the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies”; conscious of the fact that Article 19(3)(a) makes it absolutely clear that “the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the state;” aware that Article 21(1) states that “it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights”;

Realizing further that Article 24 of the Bill of Rights clarifying limitation of rights and fundamental freedoms, at no time contemplated any limitation on the fundamental freedoms contained in Article 19 nor did it legitimize any limitation of rights on the basis of a speculative transgression and Article 24(3) states very clearly that “the State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied”; noting that freedom of the media, as stated in Article 34(2) forbids the State not to exercise control or interfere with any person engaged in broadcasting, production or circulation of any publication or the dissemination of information by any medium;

Having observed that on 7<sup>th</sup> July, 2014, while holding a *Saba Saba* rally at Uhuru Park, the CORD leaders were given a complete blackout by the media, following direct and/or insinuated threats and intimidation by the State, through a communication by the Cabinet Secretary to media houses to that effect; this House doth hereby resolve to declare this action by the State as unconstitutional and calls upon the Jubilee administration to desist from clawing back the democratic gains of the Kenyan people as enshrined in the Constitution.

Mr. Deputy Speaker, Sir, I move this Motion on behalf of the Kenyan people and on behalf of all of us here who, as indeed in the previous debate we have been having here, have belonged to several parties and may yet belong to several parties in the future. I have been in the Government and may yet be in the Government in future or in the Opposition. Therefore, it is for us to understand that the fundamental document that gives us security---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! There is somebody's phone still ringing in the House. I do not know where it is.

*(A Phone rang in the Chamber)*

**The Senate Minority Leader** (Sen. Wetangula): It is on that side!

**The Deputy Speaker** (Sen. Kembi-Gitura): For me, it does not matter which side it is on but I have indicated before that it is good when you come to the House that you switch off your phone and if you are not able, please leave it in the office or in the car because it is disruptive and it disturbs the Floor. Since I have said this in the past, please, put your phone either on silent mode or leave it in your car or in your office.

I am sorry to interrupt you, Senator.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir, more importantly this is a House of distinguished Senators. When it comes to the level of the Chair sounding out twice in an afternoon, one would expect any Member who has inadvertently carried a phone to be honest to the House and behave themselves and say "it was me and I am sorry" other than just pretending that nothing happened and yet you have interrupted the business of the House.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Wetangula. I think it is important that we observe that because it gives the House the respect that is due to it.

Please proceed, Senator.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Deputy Speaker, Sir, I was saying that I am moving this Motion on behalf of all of us not for any particular reason over a conjunction nature but for a reason that looks at the present and the future as well. The importance of the Bill of Rights is that it safeguards individuals as citizens of this nation against any transgression by the State that may at any one time be done at political expedience or individual expedience. Therefore, the Bill of Rights is one of the most important aspects of our Constitution. Any modern democratic nation must enshrine in its Constitution the Bill of Rights.



It has been said that the Fourth Estate or the media is a very important aspect of democracy in modern nations. What happened on 7<sup>th</sup> July, 2014 had been billed before then as going to be a mega *dome* of this nation; that things were going to fall apart. Indeed, many people called me or sent me text messages asking what is going to happen on 7<sup>th</sup> July, 2014. My answer to them was; the rains will not come down, the earth will not split into two nor will the moon get married to the sun. We knew that 7<sup>th</sup> July, 2014 was going to be a day during which we will make it very clear why we are calling for a national dialogue, failing which we shall provide a political alternative.

To the end, that is what we did, notwithstanding the attempt I think by some insidious forces to try and disrupt the rally – which Sen. James Orengo and I foiled when it was occurring – eventually the rally went on very peacefully and democratically. But what is more important is that the nation wanted to listen to what was happening because this was a historical moment. As we were in the rally, as the Secretary General of the ODM and immediate former acting party leader, I received several text messages from people asking me why they were not seeing what was happening. I was wont for an answer.

Mr. Deputy Speaker, Sir, you must also understand that the media houses had come there well equipped to broadcast this rally live. Advertising companies were going to benefit tremendously because of maximum viewing of this rally on that day. Indeed, if a census were to be taken by opinion poll companies, one may realize that the population that could have watched that rally was quite high and, therefore, the advertising revenue for media houses could have been very high. Therefore, for those of us who know some things about media, media houses lost an opportunity to make some perks; but that is a “by the way”.

What is more important, Mr. Deputy Speaker, Sir, is the actions precedent to that experience. On Wednesday, 2<sup>nd</sup> of July, 2014, in Serena Hotel, Gen. Karangi and the Cabinet Secretary (CS) in charge of Information, Mr. Matiangi, called all the media houses – and they were duly represented in good numbers and I have spoken to them – and they were given directions that they must not cover this rally live because it is likely to cause tension in the nation.

**The Senate Minority Leader (Sen. Wetangula):** Shame!

**Sen. (Prof.) Anyang’Nyong’o:** This is what I call making law in advance presuming behaviour of citizens which is not becoming. That is why I am saying that realizing further that Article 24 of the Bill of Rights, clarifying limitations and fundamental freedoms---

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. With due respect to Sen. (Prof.) Anyang’Nyong’o, who I have got profound respect for; he has just mentioned that there was a meeting where Gen. Karangi gave directives to the media not cover the event. Under normal circumstances, when you make an allegation like that, you are supposed to fully substantiate and prove that, indeed, that was the case. Otherwise, you withdraw and apologize.

*(Sen. Wetangula spoke off record)*

Mr. Deputy Speaker, Sir, just a few minutes ago, Sen. Wetangula was talking about the decorum of this House. Please, practise what you preach; address the Speaker!

*(Laughter and applause)*

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Prof.) Anyang'-Nyong'o:** I can substantiate, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Just hold on, Sen. (Prof.) Anyang'-Nyong'o; there is a point of order by Sen. Murkomen.

**Sen. Murkomen:** On a further point of order, Mr. Deputy Speaker, Sir, is it in order for the Mover of the Motion to insinuate that they tried to be covered live, and it never happened? Can he disclose whether they paid for the media to cover them live?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, on the issue of Sen. Murkomen, I think that is anticipating debate because you have not even finished saying what you need to say. I will allow you to proceed on that basis. On the one by Sen. Kagwe, I want to know what you are going to do with the issue of substantiating that both Gen. Karangi and CS Matiangi were at a meeting in Serena at which certain directions were given. I want to refer you to the provisions of Standing Order No.94, which I am sure you are very well aware of so that as you proceed, you are cautioned on the veracity of your statement.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I am quite prepared to face the consequences of my statement---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, I am not trying to make you face any consequence or anything; I am just drawing your attention to the provisions. We have not got there yet.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, by "consequence", I mean the need to explain because it is consequential to his request; that is what I mean. I am aware of Standing Order No.94, which stipulates that:-

"A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly." That is very good. First, I have talked to the media houses; they are not here, but I will request this Senate to establish a special Committee to look into this issue at which I will witness and substantiate in details.

*(Applause)*

Secondly, Mr. Deputy Speaker, Sir, I am quite prepared to talk to the media houses to appear before that committee because this is a serious issue, Mr. Kagwe. It is not a speculation; the meeting occurred in history on that day at Serena Hotel; that is a fact. Unless you want me to bring video tapes of that meeting, which were not taken, of course---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, I can see only one---

**Sen. (Prof.) Anyang'-Nyong'o:** But individuals at a historical moment met and the discussions took place. If you want to prove, establish a Committee of this House and we shall testify and give evidence.

**The Deputy Speaker** (Sen. Kembi-Gitura): There is a point of order by Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. I think the provision which we have been given in Standing Order No.94 is very clear; it says:-

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.” It does not require the formation of any Committee of any kind to deal with it.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, let us not belittle this fact.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kagwe, have you requested for intervention?

**Sen. Kagwe:** Yes, I have, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, let us not lose sight of why we have asked this matter to be substantiated. We are talking about individuals in this country who are fairly respected by those who respect others and by a majority of Kenyans, largely. So, even if the person was respected by one individual, they require substantiation on an accusation like this just as much as a Senator or anybody else for that matter.

Mr. Deputy Speaker, Sir, let us not cut corners; it is an accusation and a serious one. What it borders on is that an individual is going against the law and the Constitution to try and control the media in this country at which point I would have expected that the Media Council of Kenya, the Media Owners Association and all those institutions, including the Law Society of Kenya, would all be up in arms to talk about how the media is being controlled.

*(Sen. Wetangula spoke off record)*

Mr. Deputy Speaker, Sir, with all due respect---

**The Deputy Speaker** (Sen. Kembi-Gitura): For the benefit of you, who are Members, I have a list of four interventions and I am going to listen to all of you.

**An hon. Senator:** What?

**The Deputy Speaker** (Sen. Kembi-Gitura): I said that I have a list of four interventions and I am going to allow each of you to make the intervention because this is important. But you must know that Sen. Kagwe is on a point of order; so allow him to finish.

**Sen. Kagwe:** This is a matter that can apply as Sen. (Prof.) Anyang'-Nyong'o said earlier. This filming of the media can apply to us at some point depending on where we sit or stand. However, it is important that the film be given to individuals who are

supported or otherwise not supported by individuals on either side. Let us respect those offices if not the individuals by clarifying and substantiating instantly.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. I would like to draw your attention to Standing Order No. 94(2).

The first point of order requested Sen. (Prof.) Anyang'-Nyong'o to substantiate, which he attempted to do. The subsequent points of order that were raised were not necessary because the only determination on whether the substantiation was adequate or not rests with you, Mr. Deputy Speaker.

Part 2 clearly says that you can give more time in the next sitting for more substantiation. So, would I be in order to ask that no more points of orders are raised using Standing Order No.94(2) so that we give a chance to Professor to substantiate?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Machage, you and I sit on this Chair quite often. I am fully seized of Standing Order No.94. I am waiting for you and everybody else to ventilate their issues on this Standing Order after which I will give direction.

First of all, under Standing Order No.94, you know very well, as Sen. (Prof.) Lesan said that if you were called to substantiate such facts instantly--- I do not know whether Sen. Kagwe wanted substantiation. If this was under Article 94(1) – which you are trying to say – has to be instantaneous. So, let me listen to your ventilation and I will see how we will deal with the situation.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, first of all, when Sen. Kagwe rose on a point of order, I am not quite clear that he had Standing Order No.94 in mind. I think he just wanted substantiation. In fact, he was just protesting. He never quoted any Standing Order as being breached. The HANSARD can bear me out. He simply said; “is the Professor in order?” He did not say that the Professor was required under Standing Order No.94 to do anything.

Be that as it may, I come to Sen. Lesan. I respect you, immensely for what you have said regarding the Chair. You have cautioned Members from selectively reading into visions of Standing Orders. Sen. Lesan, whom I have tremendous respect for, stood and read Standing Order No.94(1) and stopped there as if there is no Standing Order No.94(2). Prof. Anyang'-Nyong'o said, very clearly, that he was ready to substantiate. He said something that no Senator has said on this Floor, that if a special Committee is established, he is prepared to go there and testify on oath. That satisfies the provisions of 94(2).

It is common knowledge in practice and everywhere that---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I will not allow you to debate. You were making a point of order. I think you have already made your point.

**The Senate Minority Leader** (Sen. Wetangula): We do not want to accuse anybody of selective amnesia.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. The Professor has said that he would like to substantiate this issue by a Committee of Inquiry. That is not provided for in the Standing Orders. There are only two options. One is instant substantiation and two; an issue can be substantiated tomorrow.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am aware of Standing Order 94(2).

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, the options available to the Mover is to substantiate the point of order. Is he in order to elevate this issue to a Commission of Inquiry on issues which are not provided for in our Standing Orders?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to beg you. After these interventions, you have to make a ruling as to whether by so doing, the Professor has adequately responded to the point of order regarding the substantiation. I beg you to realise that this is such a serious matter. In his wisdom, Professor knows the consequences of---

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

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, is it in order for the Senators for Nyeri and Elgeyo-Marakwet to insist on subsequent points of order insisting that the Senator for Kisumu is out of order to request the House to allow him to make a presentation before a Committee of this House in view of the fact that a transgression has already been made which is very severe? This one suggests that the head of the military had---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Khalwale, Sen. Anyang'-Nyong'o is here and is an extremely capable Senator. He is well capable of speaking for himself. So, make your point of order.

**Sen. (Dr.) Khalwale:** The Senate belongs to the Republic of Kenya and we are allowed to come up with debates. My point of order is that by that very insinuation, the Professor is revealing to this House that the military has started wading into the arena of politics. Nothing can be more serious than that.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Khalwale, I will not allow you to go beyond that point. I am not allowing you to debate on a point of order. Sen. Khalwale, we have a Motion of Adjournment. We have one hour to the end of this. I assume that Sen. Anyang'-Nyong'o brought this because it is a matter of great national importance to him. So, let us not eat into his time as you tell me things that I know.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Whom do you want to inform?

**Sen. (Dr.) Machage:** I want to inform him.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is too late.

Sen. Anyang'-Nyong'o, let us now look at the law. Our Standing Orders are the law. Standing Order No.94(1) says;

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and be required to substantiate any such facts instantly.”

The Senator for Nyeri, requested you to substantiate. The Standing Orders talk about “instantly”. You have not made any transgression so far because you have not said that you are not capable of any substantiation. In fact, you said that you will substantiate and stand by the statement that you made.

The only problem here, which is not a problem, is that the law requires you to do so instantly. I did not want to repeat the fact that you have mentioned two people; Gen. Karangi and Cabinet Secretary Matiangi. You said that they have done something that

you consider to be illegal because that is the essence of the Notice of Adjournment that you have brought. So, that means that if they have done something illegal, unlawful or against the Constitution, since they cannot defend themselves in this House, that allegation needs to be substantiated. That will take us to Standing Order No.94 (2) that states:-

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.110, unless the Senator withdraws the allegations and gives a suitable apology if the Speaker so requires”.

So, we are not saying anything that is not within our own Standing Orders. The only question is: Are you able to substantiate instantly? If you are, we shall request you to do it, but if you are not, then we shall stand down that issue for now and require you to substantiate tomorrow on the issue of Gen. Karangi and Cabinet Secretary Matiang’i. If you are not able to substantiate even tomorrow so that we do not go to Standing Order No.110, then my request would be that you withdraw so that we are able to proceed with the debate on the Motion of Adjournment. I think you have to make a decision within those parameters.

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Deputy Speaker, Sir, in fact, when I was advancing to the podium and I was stopped, I was just going to read the second part of that Article but I was stopped. I will definitely substantiate tomorrow because the people who are supposed to be substantiating are not in this House. So, they need to make statements which I can bring to this House which will prove beyond any reasonable doubt that such a meeting was held and those two gentlemen were there. It is a matter of history and I am not creating it.

Further, I have said that there has been a communication---

**The Deputy Speaker** (Sen. Kembi-Gitura): So, the order shall be in that event, but since you are now proceeding under Standing Order No.94 (2), that tomorrow in the afternoon session, you will be able to substantiate the allegation that you have made about Gen. Karangi and Cabinet Secretary, Matiang’i?

**Sen. (Prof.) Anyang’-Nyong’o:** Exactly, Mr. Deputy Speaker, Sir. In fact, these two gentlemen are my friends and I am quite sure that they were not ghosts on that day, assuming they---

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senator, I have no issue with you myself. I just want to make it clear for the record and the HANSARD that you shall make substantiation tomorrow after 2.30 p.m.

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Deputy Speaker, Sir, since this is a very important Motion and so many Senators have risen on points of orders---

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

**Sen. Anyang’-Nyong’o:** Let me finish and make my point because these points of order are not part of the debate.

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. I was only standing because I have been dully told to do so by you. Let no Senators try to intimidate others when we are in this House because there is no superior or inferior Senator.

In view of the fact that Sen. (Prof.) Anyang'-Nyong'o has clearly said – I respect that – that he will speak on this matter and substantiate, would I be in order to propose that this Motion of Adjournment, since it was heavily based on the facts of this allegation, be postponed until the time that the allegation has been substantiated?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, Sen. Kagwe has said that he is being intimidated. I wonder under what Standing Order Sen. Kagwe is making that statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, let us look at this issue dispassionately. I think this is where Sen. Kagwe is coming from; that if we proceed with this debate on the Motion of Adjournment and if we should continue to discuss the name of Gen. Karangi and Cabinet Secretary Matiang'i, and should Sen. (Prof.) Anyang'-Nyong'o for any reason be unable to substantiate tomorrow, then damage would have been done to people who will never be able to defend themselves on the Floor of the House. So, all I am saying – I want to be understood very clearly and I do not think that Sen. (Prof.) Anyang'-Nyong'o has said that that is the line he is going to take on his contribution – is that at least we cannot proceed on the specific issue of those two gentlemen until there is a substantiation and then you are able at that moment to put everything that you have on the table about the meeting that you say they had in Serena and in which they told the press not to cover the *Saba Saba* rally live.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, with utmost respect to the Chair and the House, this is an attempt to muzzle and intimidate Sen. (Prof.) Anyang'-Nyong'o from moving his Motion. First, there is no provision in the Standing Orders to lend credit even at the remotest level to the proposition being made by the distinguished Senator for Nyeri. A Motion of Adjournment cannot even be imagined to be adjourned to the next day.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am not adjourning the Motion of Adjournment to another day, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, secondly, the moment you have invoked Standing Order No.94 (2), it means that you have accepted the assertion put on the Floor by the distinguished Senator for Kisumu, subject to substantiation tomorrow, which you have already given and we thank you for that. We cannot then turn round and gag the House from touching on matters that are already on record. What is open to the House tomorrow is if the matter is not substantiated to the satisfaction of the Chair and not the House, then the Chair can order a retraction, apology and expunging from the record of the HANSARD. That is what is available to the House.

We cannot say that you have allowed Sen. (Prof.) Anyang'-Nyong'o to substantiate tomorrow and then somebody jumps up and says that you cannot make reference to a matter that the House accepted subject to your substantiation tomorrow. That ends up in gagging Members and this House will not take that direction. I believe this is a conspiracy to frustrate this Motion; which is not right.

**Sen. Mugo:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senator to mislead the House because the whole reason for asking for substantiation is to protect the names of those who have been mentioned? If we go ahead and discuss the same people, you will have rendered the whole substantiation---

*(An hon. Senator interjected)*

No, it is common sense. It is natural justice.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I should go ahead with my Motion because I think this is why this House is losing respect. When people see Motions being brought to the House and they cannot be debated, the nation does not take you seriously. There is no need having Motions---

**The Deputy Speaker** (Sen. Kembi-Gitura): I hope that we are going to proceed with the Motion of Adjournment, but on the other hand, fellow Senators, as I sit here, even as Sen. Wetangula would accuse me of gagging Members, which I am not doing, in the same manner, I would be accused of gagging Members if I stop them from rising on points of order. Like I have said in the past, I am not able to anticipate what a Senator is going to raise until they have raised it.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Not even psychologists can anticipate what you are likely to speak in the next sentence. It is, maybe, soothsayers who may pretend to do so. So, gagging Sen. (Prof.) Anyang'-Nyong'o not to proceed and tell us what he has in mind is wrong. He may have other information and so let us hear him.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am not going to stop Sen. (Prof.) Anyang'-Nyong'o from moving his Motion of Adjournment. I can assure you that. But on the other hand, I am not going to stop a Senator who wants to raise on a point of order whose content I do not know from doing so. I think I would be doing it wrongly both ways because these rules cut both ways.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, am I in order - and correct me if I am wrong - to interpret your ruling to mean that the Motion can proceed, but would caution on that particular issue of the two gentlemen mentioned. If that is true, I am wondering what would be debated because that is the substantive part of this Motion.

**Hon. Senators:** How do you know?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, protect me from heckling and hecklers on the other side.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Murkomen! All I did was to caution Sen. (Prof.) Anyang'-Nyong'o. I cannot stop him because, like Sen. Wetangula said - and I believe substantially correctly - it is upon Sen. (Prof.) Anyang'-Nyong'o to decide how to proceed. That is the point I made to him. This is because if tomorrow, the Speaker shall be of the opinion that he has substantiated, that shall be the end of the matter. Am I correct?

**Hon. Senators:** Yes!

**The Deputy Speaker** (Sen. Kembi-Gitura): If the Speaker shall be of the opinion that Sen. (Prof.) Anyang'-Nyong'o was not able to substantiate, then the consequences



contemplated in Standing Order No. 110 will take effect. All that I did was to caution Sen. (Prof.) Anyang'-Nyong'o, because if you look at Standing Order 94 (2) which states:-

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed disorderly within the meaning of Standing Order No. 110 (*Disorderly conduct*) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Therefore, the onus is or shall be with the Senator making the allegations. He has already mentioned Gen. Karangi and the Cabinet Secretary, Mr. Matiang'i. He will proceed, but he is aware, like every Senator is, of the consequences of not being able to substantiate. This is because Standing Order No. 110 is clear in its provision.

You may proceed, Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I had agreed about 20 minutes ago to that ruling and taken the responsibility to substantiate tomorrow. I do not think that we should belabour that point.

I further said in the Motion that realizing further that Article 24 of the Bill of Rights clarifying limitation of rights and fundamental freedoms at no time contemplated any limitation on the fundamental freedoms contained in Article 19 nor did it legitimize any limitation of rights on the basis of a speculative transgression. On Sunday, a Press statement on broadcasting of hate speech was issued by the Communications Authority of Kenya (CAK), definitely, under the authority of the Cabinet Secretary.

*(The amber light was put on)*

Mr. Deputy Speaker, Sir, you need to add me time, because the time that I was supposed to move the Motion was taken by points of order. I see that the amber light is already put on. This is really not fair at all under the rules of natural justice. It would be futile to move a Motion without being given time to do it.

This Statement said among other things:-

“It has come to the attention of the Communications Authority of Kenya that some broadcast stations are taking advantage of the prevailing political situation in the country to air content containing hate speech that may divide the country along ethnic lines. The Authority hereby wishes to remind broadcasters that the constitutionally guaranteed freedom of expression does not extend to spread of hate speech, propaganda for war, incitement to violence, advocacy of hatred that among others constitutes ethnic incitement, vilification of other persons or community or incitement to cause harm. Further, the Kenya Information and Communications (Amendment) Act, 2013, outlines the airing of hate speech or material that may incite ethnic violence or propaganda war in the country. The ICT sector law obligates broadcasters to provide responsible and responsive---

In light of the foregoing, the Authority hereby wishes to call on the broadcast media to carry out their mandate of providing information, education and entertainment within the perimeters of the law, failure to which we shall be forced to take the necessary regulatory action, including withdrawal of frequencies from the offending stations.”

Mr. Deputy Speaker, Sir, if you read this statement in full, it essentially means that the Communications Authority of Kenya was issuing this order to legitimize limiting of rights on the basis of a speculative transgression. This is because they were speculating on what was going to happen in the rally, which really is contrary to the Bill of Rights. If, indeed, we are going to intimidate broadcast houses and the media, when politicians are going to be around the country, we forget that there are courts of law and laws that can follow individuals after they have committed a transgression. No order should be given speculating somebody’s behaviour in the next one hour. This is the kind of thing that led the media houses to take a lot of caution in what they are doing, because they did not know exactly what kind of evil would visit them after that event.

As it turned out, anybody who followed the discussions at the rally will realize that there was nobody who transgressed the law. If, indeed, there was somebody who transgressed the law, the law and the courts are there to follow them. Therefore, I would say that these kinds of actions by State organs are contrary to the Constitution. We must faithfully and filially defend our Constitution, particularly the Bill of Rights.

Mr. Deputy Speaker, Sir, this circular from the Communications Authority of Kenya, with the overt knowledge of the Cabinet Secretary, was definitely unconstitutional. The fact that I am Luo is a fact and cannot be changed. If, indeed, I get advantaged of being a Luo to be appointed to an office, that has to be proved. When that is stated in the public, that does not become hate speech. We must distinguish between facts and hate speech. What we are actually bordering on now, is for some State organs to muzzle freedom of speech on the basis of the fact that they do not want to listen to some information from some people, which is factual.

This is the kind of thing that we must guard against. One of the reasons I brought this Motion to this House is that I see a trend which is reminiscent of nascent fascism. This is because fascist societies tend to begin like this. They make the State and certain institutions sacred. They also make individuals fear that in the event that they commit a crime, that crime is not committed, in fact, but in speculation---. Indeed, when I was a lecturer at the University of Nairobi, this is what we suffered during the Nyayo Regime.

I remember one day we were going to demonstrate against the British sale of arms to South Africa as well as the assassination of Walter Rodney, the Professor from Guyana. It was anticipated that the demonstration was going to lead to chaos. When the demonstration took place peacefully, and we did address a rally in front of the law courts and went back to the university peacefully, everybody was surprised. *The Daily Nation* wrote an editorial the next day praising university lecturers and students for having held a very peaceful demonstration in Nairobi, informed Kenyans about the British sale of arms to South Africa and made Kenyans aware of a very progressive historian called Walter Rodney, who wrote a famous book called “*How Europe Underdeveloped Africa*” who had actually be assassinated in Guyana by imperialists and their running dogs.

Mr. Deputy Speaker, Sir, unfortunately, the next day on Sunday, a newspaper which was definitely a mouthpiece of the regime, came up with a speculation---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Your time is up.

Sen. Murkomen, you have five minutes.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, first of all, may I appreciate Sen. (Prof.) Anyang'-Nyong'o for attempting to make a case for a Motion that I have doubts whether it has national importance or if it is for party importance! But be it as it may, I will contribute to this Motion.

*(Laughter)*

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Murkomen trying to question your judgment that this Motion was not of national importance?

**The Deputy Speaker** (Sen. Kembi-Gitura): He is out of order. The Speaker ruled that this is a Motion of Adjournment.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, as I said, I was very categorical, I respect the Speaker. I said "if it was me" and I am not the Speaker. That is why I respect the Chair.

I would like to first congratulate CORD for having their rally yesterday---

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. Murkomen to insinuate that the Motion that I have just moved is of party importance but not national importance? Did Sen. Murkomen take time to listen to what I said or is it the hatred in his heart that makes him say that?

**Sen. Murkomen:** As I was saying, Mr. Deputy Speaker, Sir, I would like to congratulate CORD for carrying out their rally yesterday. Unfortunately, that rally failed in all aspects, including media coverage. It was the leader of CORD who announced that all Kenyans should go for holiday. The journalists must have obeyed; those who cover events from the media houses and the media owners must have obeyed. Those could be the reasons why they were unable to come. In fact, it was incumbent upon the leaders of CORD who were at Uhuru Park to actually send home the journalists who were covering that event because that day was meant to be a holiday according to them.

The freedom of the media to air certain views is the same freedom not to air certain views. Largely, the media in this country is privately owned.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator. I am informed by the technical people that they are having a problem recording the HANSARD if you speak too close to the microphone. I hear that these things are very sensitive.

*(Laughter)*

**Sen. Murkomen:** Thank you, Mr. Deputy Speaker, Sir. I was born in the village where there was no need for microphones. The point is this, that the freedom of the media to air certain views for certain individuals and for privately owned media, is the same freedom not to air certain views. Had the CORD rally in Uhuru Park been given a live

media coverage, and the President who was at the Jomo Kenyatta International Airport (JKIA) was not given, it would have led to a situation where the Jubilee side would have brought another Motion asking: Why did CORD get coverage at Uhuru Park and we did not get coverage? If Sen. Wetangula, who represents one county out of 47 was given media coverage yesterday, I would have complained as the Senator for Elgeyo Marakwet why I am not being given live coverage while in Iten. So, the attachment of the importance of a function in so far as live coverage is concerned is in the judgment of the owner of the media house, who is the beneficiary when it comes to profits. I do not think a responsible media house would have wanted to lose profits just for purposes of listening to Karangi or any other person against the law.

It is also important for me to emphasize that CORD should take the country seriously. The people who closed their businesses because they feared there was going to be violence or who feared that the President was going to be “shaved” at Uhuru Park, are the same people who own those media houses. They are the same people who own businesses in Koinange Street, Kenyatta Avenue and Upper Hill. They were worried about the state of their business and have a right to make certain judgements and decisions in the interest of protecting their business. Unfortunately, the fact that an event like yesterday’s *saba saba* rally never attracted anybody including the media has become a subject of discussion in this House. Be that as it may, I would like to say that I mourn with my brothers in CORD for the spectacular failure of their function and particularly in regard to representation---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator. There is a point of order by Sen.(Prof.) Anyang-Nyong’o.

**Sen. (Prof.) Anyang’-Nyong’o:** Is the junior Senator from Elgeyo Marakwet County in order to insinuate that the CORD leaders caused panic in this nation when he is very well aware that it is his side who trumpeted that kind of propaganda, therefore, causing the nation to go into a panic? If you look at newspaper and media reports all through the last week, it is them who were propagating this fear-mongering to Kenyans that led to the kind of behaviour you saw.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, since my time is almost ending, I would like to say this about yesterday’s CORD rally; we were promised a storm but the clouds did not even form. We were promised that Sen. (Prof.) Anyang’-Nyong’o, Hon. Kalonzo Musyoka and Sen. Wetangula were going to carry their blankets and sleep at Uhuru Park but it never happened. That failure in Uhuru Park has found its way to the Senate of the Republic of Kenya in the form of a complaint against only stakeholder called the media. Does it happen that every time someone fails in his rally, he must blame a certain institution?

(Applause)

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator. Your time is up.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, there is a great musician from Jamaica called Jimmy Cliff who sang a record called “*Foolish Pride*”. Those words are very relevant even today. Yesterday was an important day in

this country. One can say what they want. I salute Sen. (Prof.) Anyang'-Nyong'o for bringing this Motion to bring to the attention of this country the excesses, abuse of power and authority being exhibited by the Jubilee regime. When somebody stands up here and says the rally was a failure because there were no people, it reminds me of Chinua Achebe's book called "*The Trouble with Nigeria*" where he says that "I recently talked to President Shehu Shagari and he said that: "Corruption in Nigeria has not reached endemic proportions." He said that anybody who says such a thing is either a fool, a crook or does not live in Nigeria." He went on to say that "I know Shagari is not a fool or a crook, therefore, he does not live in Nigeria".

Anybody who cares to listen, see, hear or read, knows that yesterday, from midnight of the previous day, all the suburbs of Nairobi were cordoned off by the police to distract people from coming out to attend the rally. It is a terrible shame. It is a derogation of the rights of the people of Kenya under the Constitution of the freedoms of movement, association and freedom to listen to the people they want. To crown it all---

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

**The Senate Minority Leader** (Sen. Wetangula): Save my time, Mr. Deputy Speaker, Sir.

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

**Sen. Mugo:** Is the hon. Senator in order to mislead Kenyans that the police had cordoned off all the areas where the few supporters of CORD would have come from? We know that if that had happened, those youths would have been rioting and this would have been the major news of the day. Could he prove or substantiate which area because no area was cordoned off. They were allowing free passage and providing security as CORD has been demanding. When it is given although they are the major cause of insecurity, they do not want to see security.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Minority Leader in order to mislead the House? When the court said that CORD should take responsibility for security, he rushed to court and said that the police should take responsibility. When the police took the responsibility to protect, he says that they were too many policemen. Is he in order?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, I am not responsible for anybody's failure to listen or to understand what I am saying.

*(Laughter)*

Mr. Deputy Speaker, Sir, at no time did I say that the police declined to give security; It was even in the newspapers yesterday that they were cordoning off Kibera, Kawangware, Mathare and other areas.

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

What is it, Sen. (Prof.) Lesan?

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. I have been patiently waiting, listening and hoping that I would hear more about the Jamaican singer who was supposed to have displayed some foolish arrogance. I do not know in what terms it was

referred to. If it was not specifically referring to anybody, then I think the Senator owes us an explanation before he can continue explaining.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I take no responsibility for anybody's limited knowledge.

*(Laughter)*

Jimmy Cliff still lives in Jamaica and he sang a number called "*Foolish Pride*;" I simply said that there is a singer in Jamaica who sang a number called "*Foolish Pride*"

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wetangula! Proceed, Sen. Sang.

**Sen. Sang:** Mr. Deputy Speaker, Sir, Sen. Beth Mugo did raise a point of order requesting the Senator to substantiate his allegations that some of the areas in Nairobi were cordoned off by the police to curtail attendance. Can he substantiate? He cannot tell us that that was reported here!

*(Loud consultations)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir---

*(Several Senators stood up in their places)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! I know you would like me to ask Sen. Wetangula to substantiate about the issue of cordoning off, is that right? At this point, what I would say about his statement, because I am going to allow each of you a chance to debate, is that he is just giving his opinion. For now, because it is his word against yours, I am sure you are going to have your word against his on whether or not there was cordoning off. If we continue about substantiation on every issue that somebody raises, it is going to be difficult. Let us draw a line between a Senator giving his own opinion---

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, yesterday morning, I personally drove around Nairobi and I saw these cordons even at the entrance to Uhuru Park. They were at the gates from Serena Hotel, where there were more than 100 policemen. At the gate from Intercontinental Hotel, there were more than 100 policemen. Further, at the Railway gate---

*(Loud consultations)*

*(Several Senators stood up in their places)*

I am giving a factual situation; what is out of order?

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

**Sen. Njoroge:** On a point of order, Mr. Deputy Speaker, Sir. If you read Standing Order No. 94(1), the Senator needs to be accurate with his facts. Is it in order for the Senate Minority Leader to cross the boundary and start giving facts which are not accurate?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Njoroge Ben, I have already made a ruling on that point.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I will spare you. I am giving facts. The police themselves said that they were going to pour 15,000 policemen into Nairobi. They emptied the barracks; they brought in the National Youth Service (NYS), the General Service Unit (GSU) ---

**Hon. Senators:** Aaah!

*(Loud consultations)*

When this heckling goes on, it defeats the purpose of the Senate---

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

**Sen. Mugo:** Is the Senator in order to mislead this House? We know and we even saw on *Nation Television* that the police who were at the gates or entrance to the park were just frisking or checking to ensure that nobody was carrying any weapon. Everybody was allowed to enter the park. We witnessed that nobody was kept out. If people missed coming to the rally, CORD should not pretend that they were stopped by anybody.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, such are the characters in Chinua Achebe's book, "*The Trouble with Nigeria*": persons who have got no respect for the truth; who think that defending kith and kin and who think they are here to defend the position. We are here to defend the Constitution and the people of this country. When the shoe will be on the other leg---

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

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

What is your point of order, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. It is important the Senator clarifies to us; how do you tell when police officers are providing security and when they are cordoning off a place to avoid people getting into a venue?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! It is important that this debate should go on, is that right? As I sit here, it is important to distinguish debate and points of order because---

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

Sen. (Dr.) Khalwale, when I need your assistance, I will ask for it. I have not asked for your assistance yet. So, let me do my work and I am sure everybody else is going to do their work.

As I sit here, I must distinguish and help you to distinguish the difference between debate, opinion and facts. Sen. Wetangula is saying that there was cordoning off from as far away as estates. Is that right? I do not know. Maybe he is just giving his view of things. Sen. Sang, I will give you a chance to debate and maybe tell me whether they were in the estates or nearer, or whether there were none.

So, it is a matter of how you want us to look at this debate; but let us be dispassionate and let us debate the issues that are there to be debated.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. This matter is so important that I want to assure the ladies and gentlemen across the Floor that when you will switch to this side, we will put our lives on the line to defend your freedom. We will put our lives on the line to defend you all. Remember, Sen. Mugo, that you were in the Opposition and you came to Parliament as the Opposition; so, do not be excited about being in Government!

*(Laughter)*

These are facts and we must know them. Even the young Sen. Sang; you have a long way to walk! Do not be excited about nothing.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Your time is up.

Sen. Kimani Wamatangi?

**Sen. Wamatangi:** Thank you, Mr. Deputy Speaker, Sir. I wish to first congratulate the people of Kenya for having displayed maturity yesterday. I also wish to congratulate the police and the law enforcers in Kenya for having ensured that throughout yesterday during the *Saba Saba* rally, there was peace and minimal damage was caused.

Let me on the other hand also congratulate the Members of CORD for having organised their rally and all the work they had done earlier in going around the country. I would like to take a very sober approach to this matter. If there is a lesson that we learnt from the events of yesterday, it is that Kenyans now want to be taken seriously.

*(Laughter)*

We have all listened to the assertions by the CORD side. I will begin with the first one that the police prevented members or followers of the CORD movement from attending the rally at Uhuru Park.

The CORD fraternity has held numerous rallies in this country from Mombasa, Migori and at Uhuru Park. I want to remind CORD Senators that the last meeting they held at Uhuru Park was attended by many people. There were police officers on that day. The difference, and it is important for us to tell the country the truth---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is the distinguished Senator for Kiambu County in order to draw parallels between the last rallies we had at Uhuru Park to the one of yesterday? He knows that in



the previous rally at Uhuru Park, there were absolutely no policemen. Yesterday's rally was ring-fenced by heavily armed policemen. Is he in order?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, whether or not there were policemen yesterday or the other day, is this a matter of fact or opinion or even a matter of debate?

Proceed, Sen. Wamatangi.

**Sen. Wamatangi:** Thank you Mr. Deputy Speaker, Sir. Probably, in the last meeting Sen. Wetangula was on the podium and there were many people, he may not have noticed the policemen. However, as we watched from the sides, we saw policemen.

Before the last meeting, all Kenyans heard them promise so much storm and many other untold things. There were more policemen to protect them. However, my point is this. From the meetings that CORD has held and the last one that they held at Uhuru Park, Kenyans came out to assess the message that CORD had. The conclusion of the Kenyan people who went to listen to them is that the message was not worth their while on Monday.

*(Applause)*

As it has been said by my colleagues here, there was call that Monday be treated as a public holiday. Today, in the press, we have read that some CORD loyalists like the Governor for Siaya told his people not to appear at work since it was a holiday. However, majority of the Kenyan people know when it is a holiday and when it is not a holiday. Therefore, they chose to go to work.

Questions abound; there are still answers that need to be provided. Who will compensate our school children who missed school? Who will compensate all the peace loving businesspeople of this country that closed their businesses? Who will also compensate media house owners because an issue has been raised and, indeed, they were denied coverage?

It was clear, to everyone that they had publicized that the meeting at Uhuru Park was supposed to commence at 10.00 a.m. From that time, there was no one speaking. At mid day, Sen. Wetangula was not there and even at 2.00 p.m. they were all not there! Now, why did they want coverage even when they were not there?

*(Applause)*

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is the Senator for Kiambu County right to say that there was nobody speaking at Uhuru Park when I was on the podium at 11.00 a.m.? Is he further right to say that there were no people at Uhuru Park at 11.00 a.m., when there were people there? Did he watch and if he did not watch, was it because the event was not covered live and, therefore, he does not know the truth?

**The Deputy Speaker** (Sen. Kembi-Gitura): Unfortunately, Sen. (Prof.) Anyang'-Nyong'o he cannot respond to your point of order because his time is up. Sen. Kagwe.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I do not think they kept my time---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up.

Sen. Kagwe.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, from the outset, I want to correct my friend, Sen. (Prof.) Anyang'-Nyong'o, for saying that the media ignored the rally yesterday, but when you look at today's *Daily Nation* newspaper, about six pages from the beginning onwards is about the rally. If you look at the headline and all other stories, they are about the rally. If you look at the headline of *The Star* newspaper, and if you watched news last night in all the television stations, if you listened to the F.M radio stations yesterday, it was all about the CORD rally. Therefore, I did not notice any media blackout because if there is a media blackout, nothing would have been aired or printed. The owners of the *Daily Nation* newspaper also own *Nation Television*. So, even when you say that---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is the distinguished Senator for Nyeri County in order to grossly misunderstand and misquote Sen. (Prof.) Anyang'-Nyong'o when he was very clear that the issue was to blackout the rally from live coverage. He did not make any mention about the coverage in the daily newspapers. There was, indeed, a blackout on live coverage, courtesy of your conspiracy.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I would like my good friend Sen. Wetangula to acquaint himself with how newspapers and television stations work commercially. I would like to educate him by informing him that if you want live coverage on television, you pay. That is why if you watched television yesterday, you will find that the President did not get live coverage when he was at the airport because he did not pay. Therefore, to expect that the newspapers and the television stations are automatically going to cover you is getting an illusion of power that does not exist.

*(Applause)*

I want to urge that, as the Opposition has rightly said, this was a very serious event; it was a very serious day---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mbuvi, are you on a point of order?

**Sen. Mbuvi:** Mr. Deputy Speaker, Sir, I want to contribute.

**The Deputy Speaker** (Sen. Kembi-Gitura): But it is not yet time. If you used the electronic system, your name is not before me. I do not have your name among the Senators that want to contribute.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Far be it for me to want to interrupt my dear friend, Sen. Kagwe, but is he really in order to misinform the House that I expected the media houses to cover us free of charge? The point that I was making is that the warning given to the media houses stopped them from doing what they intended to do.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, if you look at the behaviour of the police yesterday, you are really flabbergasted by the allegation made by Sen. Wetangula, because the police were sitting between a rock and a hard place. At what point are you protecting the people and at what point are you obstructing the people? Anybody who watched the police yesterday - given the level of insecurity that we are experiencing in parts of the country - would very well understand the reason why they were doing what they did.

I want to urge my brothers on the other side of the House, at this time in our nation's history, when we are facing the kind of attacks that we had even on the previous day before this rally, that it would well serve our country if the kind of heightened rallies, like was seen yesterday, were to put aside first to address issues of *Al Shabaab* and other people who are attacking us. We saw a whole contingent of the police, General Service Unit (GSU) and other security officers at Uhuru Park. These are the people who would have been in Tana River to protect people there.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senator for Nyeri to talk about *Al Shabaab* attacks, when the Government on whose side he is, is persistently and consistently denying any *Al Shabaab* involvement in the attacks at the Coast even when the *Al Shabaab* themselves are saying so?

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, the only reason there was a very large contingent of police officers in Nairobi yesterday is because the CORD people had said that there will be a million people at Uhuru Park.

(Laughter)

When you talk about the protection of a million people, you understand why the country would take it very seriously. A million people are not a joke. Clearly, we are interpreting mathematics in a completely different way, because the people that I saw at Uhuru Park were very few and it is an abuse to the figure "million."

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

**Sen. (Dr.) Machage:** Thank you, Mr. Deputy Speaker, Sir. Hear me, both sides of the House. It might sound trivial as we discuss this issue, from whichever side that you are.

Mr. Deputy Speaker, Sir, yes, I was not at Uhuru Park. I thank God that I am alive and well because I was in a hospital in Karen due to an illness. But I watched the whole exercise on television. Let it be known that *Al Jazeera* and other international media did televise the event live. Really the assumption that both sides of the House are celebrating nothing---

(Applause)

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Considering that the Minority side has now conceded that there was a live coverage by one of the media houses, where my respectable senior, Sen. (Dr.) Machage, watched, does it make any more sense to continue with this Motion?

*(Applause)*

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

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, as a lawyer I would have expected Sen. Murkomen to have a good memory of what the Motion by Prof. Anyang'-Nyong'o is all about. It is unfortunate that Prof. Anyang'-Nyong'o could not really table his substantiation of what he had in mind, and we accept the situation. But the truth is that in most African households we do keep wet firewood on the ceiling as the mothers cook, waiting for it to dry slowly. We know that sometimes that firewood "laughs" at the firewood in the fire. One day that firewood will be also in that fire.

*(Laughter)*

Mr. Deputy Speaker, Sir, we must protect this Chapter which has 40 Articles on the Bill of Rights. It should not be trivialized. We are here to make and protect law. We are not here to amuse ourselves whether or not the CORD rally yesterday was successful. The importance of this Chapter should not be undermined, because that is what Kenya and independence is all about; your freedom. The games that are being played by the so-called Jubilee and CORD should stop. What Kenyans should be looking at are facts. Does CORD have an issue to address to the sitting Government? Yes. Does the sitting Government listen to those issues? I do not know. If they do, then we need a round table. I call upon CORD to revert the decision of refusing to dialogue---

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. I want to appreciate issues being raised by Sen. (Dr.) Machage and I want to agree with him.

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

**Sen. Sang:** This is my point of order. Unfortunately, all the issues that CORD was raising yesterday---

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

**Sen. Sang:** Mr. Deputy Speaker, those issues can be handled in this House. Why did they not present them here?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, he is still a young person. Just live for a few more years and you will be wiser.

I call upon my own party, CORD, to withdraw the statement that they have stopped dialogue. I will call upon Jubilee, especially His Excellency the President to sit down with CORD, dialogue and listen. This is our country. We should not let it go down the drain because of pride and arrogance. It is not worth it. The generations to come will judge us harshly if the leadership of both Jubilee and CORD cannot even sit down to discuss, arbitrate and agree on very trivial issues.

Hon. Members of this House, it is our duty to look at our side of the Government. This is also part of the Government. Yes, it is; the Opposition is part of the Government. That is what the Constitution says. It is the minority side of Government. It is, therefore, our combined duty as the Government to solve crises of this country.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! Let us give respect to each other.

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, since I do not have much time, I would like to thank the Mover of this Motion. He says that CORD would have had a very good meeting if it was given publicity. He is telling the whole country that they failed because CORD was not given publicity. The other point is that---

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. My point of order is to my octogenarian Senator, G.G. Kariuki. Is it in order for him to misconceive what I said, misunderstand it and present it from his own confused perception?

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, the hon. Senator has his own opinion and interpretation of the situation. My interpretation is exactly what I said. We were told by the Senate Minority Leader that people were stopped from coming to the meeting and that is why they failed. I am asking a question here: Did they expect the Government to campaign for the meeting or mobilize people for them? Another big question is this; if you tell the whole nation that you will attempt---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. G.G. Kariuki who I have tremendous respect for in this House and who has been here even before some of these Senators were born to engage in reckless talk and misinterpretation of what we said, when he has just been sitting here listening to us? Is he in order?

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, what I learnt from the other side was nothing, but reckless talk. It was totally reckless. It was not giving any message to this nation.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you want information?

**Sen. G.G. Kariuki:** Yes, let him just go on.

**The Deputy Speaker** (Sen. Kembi-Gitura): Go on, Sen. Sonko.

**Sen. Mbuvi:** Mr. Deputy Speaker, Sir, I want to inform my senior colleague that one of the reasons our brothers were holding this failed rally yesterday and were calling for dialogue is because they want to discuss insecurity and corruption. What I want to inform my colleague is that there is a saying in Kiswahili language which says “*nyani haoni matako yake*”.

**Sen. G.G. Kariuki:** *Kundule.*

**Sen. Mbuvi:** Whatever that means. The reasons I am giving this information to my colleague is because the challenges we are facing as a Government today were caused

by our brothers. These are the problems we inherited from the Grand Coalition Government---

### **ADJOURNMENT**

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! Hon. Senators, it is now 6.30 p.m. and the business of the House has been concluded. This House is, therefore, adjourned until tomorrow, 9<sup>th</sup> July, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.