

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 16th December, 2015

Special Sitting

*(Convened via Kenya Gazette Notice
No. 9266 of 15th December, 2015)*

*The House met at the Senate Chamber,
Parliament Buildings, at 3.20 p.m.*

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

PRAYERS

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE TO CONSIDER THE WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014), THE PRESIDENT'S MEMORANDA ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO.40 OF 2014) AND THE PUBLIC AUDIT BILL, (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make on the Special Sitting of the Senate to consider the Water Bill (National Assembly Bill No. 7 of 2014), the President's Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and the Public Audit Bill, (National Assembly Bill No.38 of 2014).

Hon. Senators, I wish to welcome you from recess and thank you for finding time to attend this Special Sitting of the Senate. I am sure each of you has scheduled major county events and it is because of the value attached to the business of the Senate, especially the consideration of key pieces of legislation like the ones before us today that you have created this time to be here.

By letter dated 15th December, 2015 and pursuant to Standing Order No.29(1) of the Senate Standing Orders, the Senate Majority Leader, supported by the requisite number of Senators requested the Speaker to appoint this day, Wednesday, 16th December, 2015 as a day for a Special Sitting of the Senate to consider the following:-

- (i) The Water Bill (National Assembly Bill No.7 of 2014)

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(ii) The Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and,

(iii) The Public Audit Bill, (National Assembly Bill No.38 of 2014).

Following consideration of the request by the Senate Majority Leader, I was satisfied that it met the requirements of Standing Order No. 29(2). It is in this respect that I convened this Special Sitting of the Senate by Gazette Notice No.9266 of 15th December, 2015 which was carried in a Special Issue of the Gazette of the same day.

Hon. Senators, as required by Standing Order No. 29(5), the notice specified that the business to be transacted at this sitting would be the consideration of the Water Bill (National Assembly Bill No.7 of 2014), the Presidential Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and the Public Audit Bill, (National Assembly Bill No.38 of 2014).

Hon. Senators, as specified in the Gazette Notice and in accordance with Standing Order No.29(5) of the Senate Standing Orders, the business specified in the notice shall be the only business before the Senate during this Special Sitting following which the Senate shall stand adjourned until Tuesday, 9th February, 2016 at 2.30 p.m. in accordance with the Senate calendar.

Indeed, hon. Senators, you will observe that at Order Nos.2, 3 and 4 in today's Order Paper, pursuant to the provisions of the Standing Orders and as indicated in the Gazette Notice, the business to be transacted is the consideration of the Water Bill (National Assembly Bill No.7 of 2014) and the Presidential Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and, the Public Audit Bill, (National Assembly Bill No.38 of 2014).

I thank you.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I start by thanking you for that communication that has elicited facts that require our comments.

We all know we are on recess which runs up to early February. Standing Order No. 29(1) that you have cited allows either me or my brother the Majority Leader to requisition for a Special Sitting of the House.

(Sen. Chiaba and Sen. Leshore consulted in high tones)

Mr. Speaker, Sir, if you may advice the distinguished Senator for Lamu to keep his cool.

In doing so, fairness has to be at the centre of play. The hallmark of this Constitution is drawn from the holy books and is about fair play at every level.

Mr. Speaker, Sir, good practice, common courtesy and etiquette require that in an adversarial system, consultative approach to issues at the mere level of information would make things better. Being on recess, we know that some Members are out while others are on holiday. For instance, our Chief Whip is out of the country on his Christmas vacation while others are out of town. From the facts the Chair has given us, I must commend the Speaker's office for the lightening efficiency.

The Senate Majority Leader ought to have sent a requisition yesterday. However, it was received and within no time, a Gazette notice was drafted, executed and published on the same day. As the Senate Minority Leader, at least I expected the Speaker or my brother the Senate Majority Leader to call me and inform me of the requisition proposal for a Special Sitting and whether we can agree on a convenient date. We would not have been unreasonable to that extent. No such request happened.

In fact, I received a text message and not in a manner I expected. The text message was sent and signed by a Clerk-at-the-Table named Caroline - whom I have respect for - yesterday at 7.48p.m., informing me that the Speaker has set a Special Sitting this day.

Mr. Speaker, Sir, we are not here to debate a matter that does not require a vote like a security situation on a Motion of adjournment. We are here to deal with matters that have been heavily contested on this Floor. These are matters that we have repeatedly raised objections and we feel were inadequately addressed. We required the Chair to give us a ruling. Importantly, I expected the Speaker's and the Senate Majority Leader's offices - assuming that all the Senators are within the country - to consider that a Senator from far flunk Turkana, Marsabit and Wajir counties among others, require time to come to the Senate. A Senator cannot be informed of the scheduled Special Sitting at 8.00 p.m., and the next day he or she is expected to come and sit especially while on recess.

Our side of the House is neither obstructing nor hindering but we are looking at fundamentals of fair play in adjudicating the proceedings of this House from your office. We say this with the greatest respect to the Chair and everyone else involved in this.

Mr. Speaker, Sir, you know or you have reason to know that the Bills that have come to the Floor today are not constitutional timeline bound Bills that are required under the Schedule of the Constitution to pass within a particular time. The Public Audit Bill and The Public Procurement and Asset Disposal Bill are amendments to the Bills we passed pursuant to the Constitution in the last Parliament. The Water Bill is not a constitutional timeline bound Bill.

Where it is necessary to convene the House to deal with the pending matters from the immediate last session, fair play must be adhered to. What is the crisis, rationale and rush for? One need not be a rocket scientist to know why we are pressing the panic button on the matter of the Auditor-General's Office. The Chair lives in this country and I am sure you can take cognisance of the audit issues that are under continuous public debate. We as a critical component of this House urge the Chair to find it within your competence and good sense that the notice given for this sitting is extremely unreasonable, oppressive, onerous and consequently unworthy of being adhered to by this House presided over by yourself to the extent that we must be given an opportunity to whip our Members and caucus with them.

Mr. Speaker, Sir, our colleagues across the Floor have been caucusing the whole day. We know where they have been and what they have been told as well as what they have come to do. Therefore, we must be given an opportunity to do the same on our side because---

(Laughter)

I can see the levels of discomfort in the manner in which some of my colleagues are sitting from the excess lunch they have had.

(Laughter)

(Sen. Keter consulted with the Speaker)

The Speaker (Hon. Ethuro): Proceed, Senator.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I thought you were being interfered by a non Member.

(Laughter)

I will come to the point of the distinguished Senator talking to you in a short while. I and my colleagues pray that you rule that we are not in a position to transact the business of the House in view of the unreasonable short notice we were given. The reason the Water Bill was stepped down last time was because of the objections that we needed to look at in greater detail. In a promise I made to this House, my research team is working on amendments that I intend to place before the Committee. The Chairperson of the Committee, the Senator for Embu County, reached out to me and proposed that we discuss the amendments I intend to bring. The Chair that presided over the Committee allowed me to prepare my amendments.

My research assistant is busy working on those amendments on my direction. Today, within a notice of under 12 hours, we are sitting here to deal with the same matter, completely oblivious of the fact that the same Chair had allowed me to prepare amendments and bring them without giving me a deadline or timeline.

Mr. Speaker, Sir, let me come to the matter of the distinguished “former” Senator for Kericho. We all stood here and congratulated my good friend, “former” Sen. Keter. We wish him well in his new assignment. The distinguished “former” Senator has been vetted and there is a 411 message to the effect that his vetting has gone through. The message reads:-

“Seven Cabinet Secretaries nominees approved by the National Assembly Committees on Appointments.”

Once again congratulations, “former” Senator for that approval. We wish you well and I am sure you will do a good job for this country. But that notwithstanding, this House now is not properly constituted because the distinguished “former” Senator for Kericho is a stranger. The Constitution and our Standing Orders do not allow you to preside over a House in which strangers are seated. We are in a very strict presidential system. The Executive is divorced from the Legislature and *vice-versa*. Sen. (Prof.) Kindiki cannot go and sit in the Cabinet---

(Loud consultations)

How many Speakers do we have in this House? The Speaker is patiently listening to me. Anyway, I will not be distracted by those who have ill will.

Mr. Speaker, Sir, I urge you to find that the seat of the delegation of Kericho is vacant and, therefore, the Kericho delegation has no vote in this House until a by-election is held and a new Senator to represent the County of Kericho is elected. This is because once you are nominated, forwarded to Parliament, vetted, approved and the national media carries the news, you have been approved. In fact, the distinguished “former” Senator should be queuing at State House to be sworn in and given a better car, with a flag, a chase car and retinue of policemen guarding him everywhere, instead of sitting here.

Sen. Lesuuda: On a point of order, Mr. Speaker, Sir. Since the Senate Minority Leader is on a point of order, could he just get to the point and indicate what is out of order and then we proceed with the business of the House?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I will be seeking the Floor later to respond to some of the things that the Senate Minority Leader has said. However, I am wondering whether Senators speaking on points of order can be allowed to do so for whatever period it is. Am I in order to ask you to determine that anybody who will stand on a point of order is given two or three minutes so that others can also get a chance? If one person speaks the whole afternoon, all of us will have no chance to say something.

The Speaker (Hon. Ethuro): Order! Sen. Wetangula, you may conclude.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I will conclude. But I want to tell this House that we have only one Speaker. Even the *de facto* Majority Leader has no right to direct the Chair on what to do. I was addressing the Chair and my brother is patiently listening to me with the patience of a good lawyer. I am sure he will respond in the same vein, but the *de facto* leader is so impatient that he wants to do a job that is not---

(Laughter)

The Speaker (Hon. Ethuro): Order! Conclude, Sen. Wetangula. You know that there is only one Speaker and nobody else has made that claim.

The Senate Minority Leader (Sen. Wetangula): Well done, Mr. Speaker, Sir. I am sure that those who have been pretending to do your job have heard you loud and clear.

Let me conclude by urging you that fairness is not about numbers or who wins and who does not. Fairness is about giving every side a fair chance to contest an idea. In the words of a great scholar, “the race may belong to the strong, but everybody must be given a fair start.” You can notice – in the greatest respect to you – that I have used very constrained language in my objection.

I want to urge with this humility that I have displayed to you and the House, to find that this Sitting be adjourned. It is within your competence. If you are able to issue a gazette notice within two hours, you can issue one tomorrow for the next week, so that you give us an opportunity to bring our Members to argue the case.

Let me just point out one issue as I end. I want to salute the distinguished Senator for Mandera. He may today be whipped to transform from the distinguished and reasonable Senator that we know to a voting instrument. We know from the good old days that when there is a troublesome Member of Parliament, you arrest him and release him several times and then tell him: "Go and do what I want." The distinguished Senator for Mandera is the Chairman of our Committee and has walked me through that Bill. I am absolutely convinced that it is not good for this country. We need time to contest these issues here; not through an ambush like we have had.

I urge you to allow a few of my colleagues to supplement and complement the points that I have raised so that the good Lord, in His infinite generosity, can descend upon you to see the need to be fair, just and play to fair play; to allow this House an adjournment. My brother and I can then sit with you and agree on a convenient date so that we can deal with this matter. Nothing is urgent since these are not constitutional time-bound Bills, unless there is a mischief to be played, and at some point I will come back to the Floor to say it.

Thank you.

The Speaker (Hon. Ethuro): Order, Members! I allowed the Senate Minority Leader a bit of leeway but, definitely, that cannot be for every person raising a point of order. Therefore, subsequent points of order should not exceed three minutes.

Sen. Orendo.

Sen. Orendo: Mr. Speaker, Sir, thank you very much but I ask you to add me just two minutes, because I had done some little preparation for this.

The Speaker (Hon. Ethuro): You have five minutes.

Sen. Orendo: Mr. Speaker, Sir, I rise to plead with the other side of the House that this is a matter in which having some kind of consensus would be good for the House, rather than taking a bipartisan position on a matter which is procedural.

You will indulge me to go to a little bit of history. However, before I go into that, the second President of the United States of America (USA), Mr. Adams, said that there was never a democracy that did not commit suicide. In fact, he said this before the American Constitution. He said that the reason democracies fail is where majorities are used as a basis of tyranny, so that instead of approaching issues in a sensible and reasonable manner, there is also the application of the sense of immediacy; that we must do this now and not later.

Mr. Speaker, Sir, the other founding father of the American Constitution, Mr. Madison, said that democracies in general have been as short in their lives as they have been violent in their deaths. I am saying this because we had a democratic Constitution when Kenya got Independence in 1963. However, over time, because of the immediacy of the moments, we found ourselves enacting legislation that, indeed, turned Kenya into a despotic regime instead of becoming a democracy. Democracy that does not deal with matters in a manner that is dignified and with decorum and consultation ends up becoming a mobocracy. Kenya is slowly becoming a mobocracy; that because of numbers we are prepared to give up the gains of yesterday.

If you read the Constitution, a notice should normally be due notice; sufficient and adequate notice. The Constitution says that you do not count the day in which an

event occurred. Therefore, there has been no notice in terms of giving this assembly a 24-hour notice in order to deal with this matter. Members of the opposite side should know that former President Moi became a statesman during the last years of his regime. He would come to the House and some of us would address the House while he sat. He listened throughout however complicated issues were. Even on procedural issues, he would sit and listen to what people were saying.

However, we are developing a habit where, like now, we just come here and wait to vote. An august assembly like this cannot be called just to vote. We have to look at every issue that comes before us and even listen to those that we do not disagree with. Sufficient time should be given to everybody to express themselves in this particular regard.

Mr. Speaker, Sir, what affects Kenya is because of the things we do like we are doing now. Kenya became a one-party State because we were called one day and told that there was a constitutional amendment that we had to pass that afternoon, and it happened. The removal of the Auditor-General, like we are now dealing with the Auditor-General and judges of the High Court and the Court of Appeal was done in one day. A Motion was brought by an Attorney-General who, instead of giving good advice to the Government said: "We are prepared to carry the instructions of the Executive." That was done within one day and it cost very many days thereafter to get the new Constitution.

Mr. Speaker, Sir, I am afraid at this rate. I am looking at, particularly, the Office of the Auditor-General because we have amendments to the Constitution through back door legislation; where an Office of the Auditor-General (Corporations) was established to undermine the Office of D.G. Njoroge who is doing a wonderful job. So, let Kenya not become a mobocracy. We want Kenya to continue to be a constitutional---

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

Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, firstly, I would like to congratulate Members of the Coalition for Reforms and Democracy (CORD) for a stunning turnout today for this Sitting and also the other side of the political divide. There are arguments that have been made by the Senate Minority Leader, but all of them are not anchored in law.

First of all, we must tell the truth because we do not want to lie to the nation. The only business remaining on Order Nos.2 and 3 is voting. It is important to also agree with the nation that, that voting had been attempted almost twice. So, we are here to vote. Let us not lie to the country that we are voting machines. We are here to vote and each one of us will vote for his or her own county, and we have done that before.

The Senate Minority Leader should not say that he knows where we were and what we were told. Instead, he should have spent that time to mobilise his side of the political divide. To use too much energy to try to know what we were doing, instead of trying to do something for his side of the political divide, is misleading the House. Therefore, the first important point is that we are here to vote. Whether we were to do it today, next week or two months ago, we came here to vote on the business in Order Nos.2 and 3, which we have attempted before. In any case, we tried to reach the requisite number of 24.

Mr. Speaker, Sir, we are attempting to see whether we can reach that requisite number and it does not matter whether it will be tomorrow or the day after. You declared that if we do not achieve that, the memorandum should go back to what you called “constitutional purgatory.” Secondly, in terms of Standing Order No.29, you just needed to be satisfied that there was an important matter and that the Senate Majority Leader, presenting his request, should be supported by at least 15 Senators and that was met.

These two Bills are important because Kenya is holding the World Trade Organisation (WTO) Conference. Kenya is trying to work hard to attract investors. Kenya has promised the world that we are willing to reform to ensure that we have a better investment climate for this country. We are running against time. If we want to attract investors to deal with poverty and other challenges we face as a nation, it is necessary that a legal framework is in place. The mistake of delaying this Bill was ours because we have held it for more than---

(Sen. Murkomen microphone went off)

The Speaker (Hon. Ethuro): Sen. Murkomen, the request should have come at the beginning and not at the end.

Sen. Hassan Abdirahman.

Sen. Abdirahman: Mr. Speaker, Sir, I want to add my voice on the feelings of the Senate Minority Leader about the convening of this House this afternoon. Instead of colleagues on the other side constantly referring to an individual, it would be wise for them to honestly address the issue under discussion.

We know that the business before this House this afternoon is very important for all of us. It is of great interest to all counties and the nation. But as much as we agree that the House may be properly constituted and you have gazetted it, as a result of the request by the Senate Majority Leader, it would have been wise and courtesy demands that the colleague on the other side is even told to take note of what is being planned.

I was personally called by the Senate Minority Leader in the evening while at home and I had to fly in this morning. The manner in which this House has operated for the last three years was that of consultation in terms of approving Bills and of what is of interest to Kenyans in general. I have a feeling that the manner in which the other side wants this House to operate may lead to the manner in which the National Assembly passed the infamous Security Laws (Amendment) Bill 2014 Bill early this year. It is going to be unfortunate. You are not a man who is driven that easily probably by the individual thoughts that may not be of great interest to all of us. With your wisdom, I have a feeling that you may be able to agree with us this afternoon and say that we give more time for discussion.

Let me conclude by saying that convening this House must not be shrouded in secrecy like this case. You cannot give people less than 24 hours notice when they are traveling from far places like Wajir, Mandera and Marsabit as clearly said by my colleague. So, I implore you this afternoon to use your usual wisdom –which I have a feeling that you will do – to give us more time for consultation because it is will not augur well in terms of our future in this House.

Sen. Hassan: Mr. Speaker, Sir, some of us are better off they even received text messages last evening. I received none. In fact, I learnt of this special meeting through a text message from our own Chief Whip, asking for a totally different course of action. If you also look at the way the numbers have been constituted today, it demonstrates bad faith. One side is totally prepared. Contrary to what Sen. Murkomen has said; one side is literally totally disenfranchised. For your information, Sen. Murkomen, Sen. Mbuvi and Sen. Bule actually seat on that side. I think it is just that, that side is so full today that they had to find extra sitting on this other side. I think that demonstrates the preparedness in terms of ambush.

Article 10 of the Constitution on national values and principles talks about good governance, integrity, transparency and accountability as principles and values of national leadership. Once you try to ambush one side on the basis that there is a certain need for the Jubilee Coalition to demonstrate victory after a choreography of meetings for whatever reason or sake and then using this Senate is what Sen. Orengo said is about lowering the state of this House. This is what is called a presidential system – a total disconnect. It totally radicalises and changes the architecture of our new Constitution, that this House must play oversight rather than a rubberstamp to the Executive.

While here today, we know that all these matters that we want to prosecute have obvious constitutional issues that we have raised, demonstrates even that lack of national values to protect this Constitution and to usher Kenyans in a December holiday that the Office of the Auditor-General (AG) which I think was the whistle blower at both national and county government levels in terms of the corruption and wastage to weaken and transfer some of its functions to other agencies so that you can have manipulative control over those agencies.

Mr. Speaker, Sir, unfortunately, even some of these things that we are doing might meet the same fate. They might not even meet the scrutiny of the courts. Kenyans these days rush to the courts to stop everything. I can tell you, meet today, try to prosecute this matter and it will be stopped at its heels. So, let us work on this matter thoroughly in a bipartisan manner and arrive at a consensus. After all, some of the areas of contention for the Coalition for Reforms and Democracy (CORD) are one or two fundamentals that protect and preserve this Constitution and we will be home and dry. This Senate has always operated in that manner.

I think our Jubilee colleagues must acknowledge that they were sufficiently mobilised and prepared for this event. For the kind of speed and efficiency that your office demonstrated in this matter, it is definitely a saddening ambush on your own Members. You might want to find it in you that we go home after this ---

The Speaker (Hon. Ethuro): Your time is up. Sen. Mutula Kilonzo Jnr., you are the last one from that side. I will allow two more from this side and conclude.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, allow me to say that what we have been called for is not urgent. Let me tell you what is urgent. You were reported in the news yesterday that three Bills from this Senate have been rejected by the National Assembly and you have threatened to go to court. A Bill concerning the Constituencies Development Fund (CDF) has been signed without the Senate. That is urgent. What we have been called here for is not urgent.

We are allowing ourselves to be used by the Executive. Let me tell you, my colleagues, looking at you straight in the eye that you are supervising the death of this Senate. I can tell you that what you have been given today is called a poisoned chalice. Let me advise you, today, we even have a 411 that Sen. Murkomen is now the *defacto* Senate Deputy Majority Leader. The fact of the matter is that we would like you to determine what constitutes reasonable time for purposes of calling Senators and what constitutes reasonable notice for purposes of this Senate.

Three, you are aware that while you were away, Sen. (Dr.) Machage disowned a vote here on one of these memoranda. You have not issued a communication. This session is premature. We urge you to resume your desk upstairs and give us that communication so that we can now know what the position is when the Chair of a Committee of the Whole disowns a vote that has been taken before the Senate.

Lastly, this Senate is on its death bed. By the time we finish what we are going to do today – Sen. Murkomen has disclosed without knowing that we have just been sent here to vote – the fact of the matter is that there are people out there who are using this Senate to cause a constitutional crisis and remove the Auditor-General, Edward Ouko from office. We know it. So, Sen. Murkomen, as you vote, just know that you are voting for that purpose and not Jubilee.

Sen. Wamatangi: Mr. Speaker, Sir, I have two points. The first is procedural according to our Standing Orders because they are clear that no Senator shall impute improper motive on any other Senator. Is it in order for the Senate Minority Leader to impute improper motives on the Senate Majority Leader, in the first place, in the reasons why he moved the Office of the Speaker to summon this House? The transactional nature of this House is to propose business via debate.

If you look at the Order Paper and before you sat down, you communicated that this House is on a Special Sitting today. In this Order Paper, which every Senator here has, Order No. 2 is clearly indicated down there that it is resumption of debate interrupted on that date. Order No. 3 is also resumption of debate interrupted on Thursday, 29th October, 2015. The third one is also resumption of debate. This is a House of debate. How would the Senate Minority Leader stand at the Dispatch Box to claim that he has been disadvantaged by being asked to come to this House to debate, the role for which he and all the Senators were elected?

Lastly, a request has been made to you by the Senate Minority Leader that you make a ruling that this House be adjourned.

Mr. Speaker, Sir, we are here today for a Special Sitting. A Special Sitting of this House clearly expresses why we, as a House, have met. When the business as contained in the communication and gazetted has been transacted, maybe in your good consideration, you could then give a date when you will give a ruling but the business of the day as constituted must be transacted. This is not a litigious House where, maybe because Sen. Wetangula is a lawyer goes to court and says: “Today, your honour, I am not prepared, adjourn the House.” This House does not transact its business like a court. We come to the House to debate. That is why our rules are different.

The Speaker (Hon. Ethuro): Finally, proceed, Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, first and foremost, I thank my brother, the Senate Minority Leader for rising on a point of order, articulating it well and trying to justify why he thought, for instance, that we should not be here.

Mr. Speaker, Sir, however, so that I do not fall into the trap of Sen. Murkomen, now that the Senate Minority Leader was given a bit of time, I request for a few more minutes - five or six minutes will do. I need to respond to each of the issues he raised.

First, it is true that most of the time when we have Special Sittings we consult, but it is not law, it is a custom. However, on this particular case - I say so with a lot of respect - the agenda is divisive. We had tried very hard to build consensus with our colleagues on the Minority side and it was practically impossible. That is the only reason I did not call Sen. Wetangula because he had told me he would never approve or support what I want; which is his democratic right. So, that is the reason I did not call him.

*(Sen. Wetangula handed Sen. (Prof.) Kindiki
a copy of the Standing Orders)*

I do not know whether he is in order to give me this.

Secondly, it is the democratic right of the Opposition to hold their view. However, it is not their right to mislead the people of Kenya. It is not their right either to impute motives on colleagues. We are here to transact parliamentary business. We have called this Sitting using the established procedure. There is nowhere in Standing Order No.29 or elsewhere which says once the request is made, wait for “x” number of days or hours.

In fact, I dare say that the Senate Minority Leader tried to impute, although cleverly, improper motives on the office of the Speaker by pretending to praise the Speaker for speed and efficiency while in essence, the import of his statement was to demean the office of the Speaker.

Having said that, I know the Speaker is gracious enough, he does not enter into the fray of partisan politics – we are here in good faith. We have three agendas.

On the third issue of the Water Bill; there was a bit of commotion. I conceded that the Senate Minority Leader needed a bit of time to prepare amendments. I recall that the Chair during that Session was Sen. Ongoro and she gave the Senate Minority Leader one day; precisely. I was there; I cannot lie to this House. I am a responsible officer of this House. That notwithstanding, on the Water Bill, if there is strong reason why the Senate Minority will require a few more minutes, that can be entertained.

However, on the issue of the Presidential Memoranda, we have tried to lobby and build consensus but we are just wasting time. So, we urge our colleagues to respect democracy. We try and if we get the vote we are looking for today, it is not the end of the world. Whoever thinks, for example, that there is an amendment they would want to bring on a particular Bill, this House is open. We are also willing to change our minds if we are convinced in the future to change our minds.

Mr. Speaker, Sir, lastly, allow me to comment on the question of the Deputy Minority Leader and the Senator for Kericho. It is very clear that any public or State officer does not assume office until they are sworn-in.

Secondly, his departure from this House can only be activated by a letter of resignation to the Speaker, not to the Senate Minority Leader who has no capacity, power or authority to come here and declare a seat anywhere in this country vacant, including his seat. That is the preserve of the Speaker of the Senate and the Independent Electoral and Boundaries Commission (IEBC).

Mr. Speaker, Sir, I rest my case and request you to allow us to proceed so that we do not waste a lot of Members' time. We have just come from recess and we want to continue enjoying it.

The Speaker (Hon. Ethuro): Order, Members! I really do not know what is required of me. I made a communication which is not contestable. However, I have heard the Senate Minority Leader asking me to suspend the Sitting to allow the House more time on the following arguments:-

That he was not consulted, the Speaker has operated with lightening speed, the business before us has no constitutional deadlines, there is a stranger in the House and he crowned it by saying: "With all humility," he prays that the good Lord may descend upon me." So, I have heard you.

Sen. Orenge introduced issues about killing democracy. He referred to former Presidents, Madison and Adam. I like the reference because it was to America. We agree that America is a democratic nation.

Sen. Mutula Kilonzo Jnr. asked; what is urgent?

There was also the issue of improper motives from Sen. Wamatangi and vacation of office as per Article 108 which was related to the stranger in the House.

Sen. Murkomen and the Senate Majority Leader put the case about the matter being as per the Order Paper; that the debate had already been concluded. So, it was just voting to follow.

Let me say the following:-

First, according to Standing Order No.29, the facts I gave you is when the particulars were completed. I did not tell you the other issues the Senate Majority Leader had raised with me much earlier but I gave you when he submitted to the office the requisite; the letter and the signatures.

We are aware that the Presidential Memoranda has been pending before us for a very long time. The matter had progressed so much that it was just pending, an issue that we hope to conclude or otherwise.

In my previous communications, I had indicated that this matter cannot just be left in abeyance but must be concluded in one way or another. I was persuaded by that particular consideration.

Secondly, that we are going to Christmas, this is the only available week. More importantly, the requirements had been complied with. I was thinking that the Senate Minority Leader will use this opportunity to commend me for operating with lightning speed, because that is what is required. If I never did it before, it can only be an improvement and that must be appreciated.

In fact, on the same Gazette Notice, there is a Special Sitting of the County Assembly of Trans Nzoia, where I know you have substantial interest. They gazetted a

meeting for Tuesday 15th December, 2015 at 2.30 p.m. The number is 9267 and ours is 9266.

Regarding the issue of Sen. Keter, the Senate Majority Leader has explained it. Until he is sworn-in and writes to say that he has resigned, I have no other way or verifying that either through 411 or before the House. In any case, I would not have recalled you. I was at pains because some of the questions you are asking, I also asked the Majority Leader whether it was necessary at this particular time. I think he persuaded me and that is the most important thing. I expected the Senate Majority Leader, in the usual tradition, to consult the Senate Minority Leader. He has owned up that it is his desire, but for some reason he did not do so this time. That is for you and the Senate Majority Leader and I agree that, in future, since we have a tradition of working together, the consultations must take place.

Regarding the constitutional deadline, this matter had been extended by a period of nine months. We actually passed the constitutional deadline for both Houses for 27th May, 2015 after an extension from 27th August, 2015. The two Bills are actually constitutional and the Water Bill is not.

On the request by the Minority Leader on more time, just because nobody asked you how much time you need to do your research, it does not mean that it is extended forever. In the HANSARD of 3rd December, 2015, the Senate Majority Leader said that one day to the interview we will come for a Special Sitting. That is what he said then and he has repeated today. The Temporary Chairperson, Sen. Ongoro, said: "No problem. When do you want to interview him? How many weeks? We are giving you the first week."

From 3rd December, 2015 to today, it is almost three weeks. That period has already elapsed. If the Senate Majority Leader is willing to consider your appeal, the Chair is here to facilitate such considerations.

Let us proceed.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I thank you for that extempore ruling, but I think we are missing the point. The issue is not whether the Chair of the day gave me a day to present amendments to the Committee, the issue is that we are on recess and Members are away. The fact that the Government machinery has whipped Members on the opposite side to come to the House, but privilege and facility is unavailable to us. They can call the District Commissioners (DCs), District Officers (Dos) and chiefs to whip everybody to come. We do not have that. The point we are raising is on fairness. I heard very ridiculous arguments that we did not base our argument on law. The hallmark of legal justice in human life is fairness. Fairness is not what is written in the book. Fairness is what even the village elder, given an opportunity to preside over a village adjudication case, must avail to parties---

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura? Let us not prolong this matter.

Sen. Kembi-Gitura: Mr. Speaker, Sir, with tremendous respect to my learned friend, Sen. Wetangula, you have made a ruling. If you allow this matter to be re-opened

and it appears that is what my colleague is doing, it will be free for all and we will not end it. I am requesting you to give us guidance on this issue.

The Senate Minority Leader (Sen. Wetangula): I will take only two minutes.

The Speaker (Hon. Ethuro): Please, take one minute.

The Senate Minority Leader (Sen. Wetangula): Yes, Mr. Speaker, Sir. You will have your way and we must have our say.

Mr. Speaker, Sir, fairness is not what is in print; it is conduct. In your heart, as I finish, you will go to bed knowing that you presided over an unjust proceeding because as a *quasi* judge as you sit here, you must be fair to them, you must be fair to us. You have been fair to them and unfair to us. I rest my case.

The Speaker (Hon. Ethuro): Order, Senator! That is a bit too harsh on me, Sen. Wetangula. I do not know what other fairness you need from me. I gave you five contributions and I gave that side you considered three interventions. I have allowed you to come back repeatedly after I made my communication. I think that is enough, let me proceed. First, the notice I gave was in the Kenya Gazette, that is the way we communicate. The SMS was just to enhance the communication.

Next Order.

BILL

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO.40 OF 2014)

(Sen. Keter on 29.10.2015)

(Resumption of Debate interrupted on 17.11.2015)

The Speaker (Hon. Ethuro): Hon. Members, before we proceed on this matter, let me clarify a few issues related to it.

As you are aware, on 23rd June, 2015, I read a Message from the National Assembly forwarding the Presidential Memorandum on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014 for consideration by the Senate. The two Bills are subject to constitutional timelines of 27th May, 2015, having been extended by nine months by the National Assembly. Indeed, Parliament passed the Bills within the timelines, but the President declined to assent to the two Bills are referred them back to Parliament.

On 23rd June, 2015, this House debated and approved the Senators to the Joint Committee to consider the President's recommendations on the two Bills. However, the timeline for the Joint Committee lapsed on 20th August, 2015 without the Committee tabling a Report as contemplated under Standing Order No.158(2).

Hon. Members, the Joint Committee having failed to table a Report within the stipulated timeline, on 1st October, 2015, I issued a communication detailing the procedure to be followed on the disposal of the Consideration of the Presidential

Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) and the Consideration of the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014).

In the communication, I directed that the two memoranda be scheduled for consideration on the week starting 6th October, 2015. After my communication, several Senators urged the Speaker to stay the consideration of the memoranda to allow consideration of the issues they had raised, including whether the President, who is not a Member of Parliament, can participate in law making by exercising little power amongst others.

Hon. Senators, on 28th October, 2015, I issued another communication responding to the issues raised by the hon. Senators then, and directed that the President's Memoranda on the two Bills be placed on the Order Paper for consideration at the Committee of the Whole. On 29th October, 2015, the Committee of the Whole considered the President's Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) and the Consideration of the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) by canvassing the recommendations by the President and deferred the putting of the question. The Committee then reported progress and sought leave to sit again. On 11th November, 2015, I issued a further communication addressing a request by hon. Senators on the threshold required to approve or reject the President's recommendations as contained in the memoranda.

In the previous communications, I gave the following guidance:-

1. The Senate, pursuant to Article 115(2) of the Constitution, may amend the Bills in light of the President's reservations or amend the Bills in a manner that fully accommodates the President's reservations. This will require the vote of a majority of the delegations in the Senate which is 24 delegations.

2. Pursuant to Article 115(4) of the Constitution, pass the Bills a second time without amendment or with amendments that do not fully accommodate the President's reservations. This will require the vote of two-thirds of the delegations in the Senate which is 32 delegations.

I also gave guidance on what will happen in the event that the Senate does not obtain the 24 delegations required to accept the President's reservations or where the Senate does not obtain the 32 delegations required to reject the President's reservations. I ruled that the only action that would take the agenda forward is either an acceptance or rejection of the President's reservations by the requisite numbers and as such, any other action that does not result in an outright acceptance or rejection of President's reservations would put the Bill in constitutional purgatory requiring some new actions that will reignite and bring the legislative process to a close.

On 17th November, 2015, the President's recommendations on the Public Procurement and Asset Disposal Bill were voted on in the Committee of the Whole. After the Division and the announcement of the results, the Chairperson of the Committee of the Whole, based on the previous rulings by the Speaker, informed Senators on the implications of the results of the Division, being that the Senate had not made a clear decision on the recommendations by the President regarding the Public Procurement and

Asset Disposal Bill (National Assembly Bill No. 40 of 2014). While in the Committee of the Whole, the Senate Majority Leader moved a Motion, pursuant to Standing Order No.139, to report progress and seek leave to sit again to consider the President's Memoranda on the the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014). The Motion was carried.

However, when the House resumed, several Senators raised points of order on the manner in which progress was reported. This led to the Chairperson of the Committee of the Whole declining to report to the Senate the Committee's consideration of the President's Memoranda on the the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014). In the absence of the report by the Chairperson of the Committee of the Whole, the Speaker deferred the matter and undertook to give further directions which I am giving now.

Hon. Senators, I have read the HANSARD and followed what transpired in the House and in the Committee of the Whole keenly on the consideration of the President's Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014). I wish to point out the provisions of the following Standing Orders.

Standing Order No. 171 reads:-

"A Committee of the Whole shall not consider any matter other than a matter which has been referred to it or which it is required by these Standing Orders to consider."

Standing Order No.172 reads:-

"A Committee of the Whole may not adjourn its own sitting or the consideration of any matter to a future sitting, but the Chairperson may, by Motion, be directed notwithstanding that all matters referred to the Committee have not yet been considered, to report progress to the Senate and ask leave to sit again."

Standing Order No.173 reads:-

"When all the matters referred to a Committee of the Whole have been considered, the Chairperson shall be directed by Motion to report to the Senate."

Standing Order No.174 (1) reads:-

"When a Motion is made in Committee of the Whole to report or to report progress and ask leave to sit again, the Question shall be put forthwith and decided without amendment or debate and if the Question is agreed to, the Chairperson shall forthwith leave the Chair."

Standing Order No. 174 (2) reads:-

"Except as otherwise provided by these Standing Orders, every report under paragraph (1) shall be made without Question put, and may, by Motion, be agreed to or negatived by the Senate or re-committed to the Committee of the Whole, or postponed for further consideration."

Hon. Senators, the Committee of the Whole had pronounced itself having agreed to report progress and to seek leave to sit again. The Chairperson of the Committee of the Whole was under obligation to report the same pursuant to Standing Order No.173 as the matter seized being the prerogative of the Chairperson. The specific Standing Orders that I have cited do not give room to the Chairperson to decide as to whether he should report or not. However, in the event that a Chairperson of the Committee of the Whole refuses

to report progress as directed by the Committee of the Whole, he or she will be deemed to be out of order and the Speaker shall require any other Senator present to do so.

I also wish to point out that in the event of the Motion in the Committee of the Whole as contemplated in Standing Order No.174 (1), to report progress is negatived, the Speaker shall resume the Chair and the Chairperson shall report the resolution of the Committee of the Whole. In addition, upon a Motion that the Senate do agree in the said report, the Senate has three options. The Motion may be agreed to with amendments recommending specific clauses of the Bill or negatived.

As indicated in Order No.2 in today's Order Paper, the Senate will resume consideration of the President's memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014), and I will be calling upon the Chairperson who chaired the Committee of the Whole on the consideration of the President's memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) on Tuesday 17th November, 2015 to report to the Senate the consideration of the Committee of the Whole on the President's Memoranda on the on the Public Procurement and Asset Disposal Bill.

Thereafter, we shall proceed as per the Standing Orders and the guidance that I have given. The guidance that I have given shall also apply to the consideration of the President's Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) which is listed in Order No.3 in today's Order Paper.

Thank you.

Chairperson of the Committee, report progress.

PROGRESS REPORTED

PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. I beg to report progress that the Committee of the Whole has considered the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and seeks leave to sit again.

Thank you.

The Senate Majority Leader (Sen.) (Prof.) Kindiki: Thank you, Mr. Speaker, Sir. I beg to move that House do agree with The Committee on the said report.

Sen. Keter seconded.

(Question proposed)

Sen. Elachi: Thank you, Mr. Speaker, Sir, I also support. However, pursuant to Standing Order No.141(3), I beg to move:-

THAT, the Motion be amended by inserting the following words at the end therefore:-

“Subject to the recommittal of the Presidential recommendations on Clause 51(3) and Clause 124 to the Committee of the Whole.”

The Speaker (Hon. Ethuro): Order, Members! I, therefore, wish to propose the question. This is a procedural Motion for everybody. So, we will do a voice vote.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for the Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Murkomen) took the Chair]

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

The Temporary Chairperson (Sen. Murkomen): Order, Hon. Members! We are back to the Committee of the Whole to reconsider the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014).

Clause 51(3)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the words “and licensed” immediately after word “registered.”

(Question proposed)

The Temporary Chairperson (Sen. Murkomen): No contribution? I will put the question at the end.

Clause 124

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting subclause (4) and substituting therefor the following new subclause:

*Selection
methods for requests for
proposals*

(4). Subject to the foregoing provisions of this section, in the evaluation of tenders by public entities, the criteria for assessing the technical and financial capability of the tenderers shall as may be prescribed by the accounting officer in the tender documents.

(Question proposed)

Sen. Orendo: Mr. Temporary Chairman, Sir, a little bit of explanation will do good to us. As the Chairperson said that we are here to vote or pass, he should give some justifications as why this amendment is necessary then we can follow.

The Temporary Chairperson (Sen. Murkomen): Sen. (Prof.) Kindiki, if you may explain.

The Senate Majority Leader (Sen. Prof. Kindiki): Yes, Mr. Temporary Chairman, Sir. The amendments are in the Order Paper. So, it is self-explanatory. We are trying to maximize on time.

Sen. Orendo: Thank you, Mr. Temporary Chairman, Sir.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I will put the question at the end. Now, I want us to move and consider the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014).

THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC AUDIT BILL
(NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

Clause 4

The Senate Majority Leader (Sen. Prof. Kindiki): Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 4 (2) of the Bill be amended by deleting the existing sub-clause and substituting therefor the following new sub-clause-

(2) The Office shall comprise the Auditor –General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 (5) of the Constitution.

(Question proposed)

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, I oppose this amendment. This is for the reason that all independent constitutional offices have been given authority to recruit their own staff. The Ethics and Anti-Corruption Commission (EACC), the Kenya National Human Rights Commission (KNHRC) and Parliament, recruit their own staff. The input of this amendment for colleagues who are just waiting to vote is that we are taking away the power and authority of the Auditor-General in recruiting his own staff and giving it to the Public Service Commission (PSC) under Article 234 of the Constitution.

That the PSC will sit and recruit staff for the Auditor-General and impose them on him to work with him. The Auditor-General's office is one of the independent constitutional offices with power to hire their own staff. This is the beginning of the destruction of the office of the Auditor-General, more particular, at a time when the country is bedeviled with serious questions of accountability of public funds.

The Members may have been coerced to come and vote, but they are presiding over the destruction of a constitutional office that when time comes for them to superintend and oversight Government, they will realize the folly---

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I oppose this amendment. I will quote Article 249(2) of the Constitution;

“The commissions and the holders of independent offices—

(a) are subject only to this Constitution and the law; and

(b) are independent and not subject to direction or control by any person or authority.”

Mr. Temporary Chairman, Sir, to subject the office of the Auditor-General which under Article 229 is an independent office to the PSC is unconstitutional and the President must be told so.

In addition, Article 234(5) which is referred to, of functions and powers of the PSC, there is no clause that the PSC has been given the mandate to recruit staff under Article 229. To that extent, therefore, I want it on record that Clause 4 as proposed by the President is unconstitutional.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Chairman, Sir. I appreciate the Opposition and their views. However, their views are not new, but we respect them. This matter is actually just supposed to come for Division and not for debate. Therefore, is it in order for us to debate a matter that is coming for Division?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, a Motion was moved to recommit these clauses. They have appeared here as if they have never been debated before. We have a duty to point that out. Otherwise, there is no point for you to have asked him to move. You could have just put the question.

Mr. Temporary Chairman, Sir, you are a lawyer. You have to have fidelity to the law and the Constitution. When we bring issues here, we are not just being a destructive Opposition. We are patriotic Kenyans. Perhaps, I am more patriotic than some people. We are not opening debate. We have a duty at this stage to point out what we think.

The Temporary Chairperson (Sen. Murkomen): I have heard you, the Senate Minority Leader.

Hon. Senators, I would like to dispose of this issue. I am sorry. It is my fault. The previous Order Paper stated that the Bill that was recommitted was the Public Procurement and Asset Disposal Bill which we have finished. Order No.3 was not recommitted. It is my fault that I allowed that opening. The Senate Minority Leader is right that we should finish the debate on this matter as written on the Order Paper on 29th October 2015. Look at your Order Papers and you will see that all that was left is Division. Could the Division Bell be rung for seven minutes? We need to vote on the two Bills?

(The Division Bell was rung)

The Temporary Chairperson (Sen. Murkomen): Order, Members! I will substantiate a ruling I had made earlier for purposes of satisfying every Member. The Chair was asked to substantiate the ruling delivered before. I hereby draw Members to the HANSARD of 29th October, 2015, where the whole business was transacted, except the Division. I do not wish to tire you by reading, but it is available on the Table for perusal.

I would like us to proceed to division on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014). I now put the question. You have 60 seconds to vote.

DIVISION

ELECTRONIC VOTING

(Question, that the President's recommendations on Clauses 51(3) and 124 of the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) be approved, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County; and, Sen. Wamatangi, Kiambu County.

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NOES: Sen. Hassan, Mombasa County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Mohamud, Wajir County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Orengo, Siaya County; and, Sen. Wetangula, Bungoma County.

ABSTENTION: Sen. (Dr.) Machage.

The Temporary Chairperson (Sen. Murkomen): Order, hon. Senators, the results of the Division are as follows:-

AYES: 26

NOES: 9

ABSENTION: 1

The "Ayes" have it.

(Question carried by 26 votes to 9)

*(The President's recommendations on Clause 51(3) and
124 of the Public Procurement and Asset Disposal Bill (National
Assembly Bill No.40 of 2014) agreed to)*

The Temporary Chairperson (Sen. Murkomen): Let us move on to the next Division. I now put the Question, that the President's recommendation---

(Sen. Wetangula spoke off record)

The Temporary Chairperson (Sen. Murkomen): Order, the Senate Minority Leader! We shall do that later because we have the HANSARD.

You must respect the order from the Chair. First of all, you cannot ask the Chair to give you the Floor on account that you have a history on---

(The Senate Minority Leader spoke off record)

The Temporary Chairperson (Sen. Murkomen): Order, Senate Minority Leader! There is no history in this Senate for rigging election.

(Sen. Wetangula stood up in his place)

Order! Sen. Wetangula, could you sit down?

(Sen. Wetangula resumed his seat)

If there is an order for rigging elections in this nation, that is only known to you, but not me and other people.

Hon. Members, I will put the Question.

DIVISION

ELECTRONIC VOTING

(Question, that the President's recommendations on Clause 4(2) and 8(a) (b) (c) (d) (h) and (j), new Clause 11A, Clauses 16(1) and 19(2), New Clause 40A and Clause 66 of the Public Audit Bill (National Assembly Bill No.38 of 2014) be approved, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Karaba, Kirinyaga County; Sen. Kariuki G. G., Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

NOES: Sen. Hassan, Mombasa County; Sen. Kajwang' M., Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Mohamud, Wajir County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Orengo, Siaya County and Sen. Wetangula, Bungoma County.

ABSTENTIONS: Sen. (Dr.) Machage.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, the results are as follows:-

AYES: 26

NOES: 9

ABSTENTIONS: 1

The "Ayes" have it.

(Question carried by 26 votes to 9)

(The President's recommendations on Clause 4(2) and 8(a) (b) (c) (d) (h) and (j), new Clause 11A, Clauses 16(1) and 19(2), New Clause 40A and Clause 66 of the Public Audit Bill (National Assembly Bill No.38 of 2014) agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its reconsideration for the Presidential Memorandum on the Public Procurement and Asset

Disposal Bill (National Assembly Bill No.40 of 2014) and its approval thereof without amendments.

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, I beg to move that the Committee reports to the Senate its consideration of the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Murkomen): You can open the doors.

(The House resumed)

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

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, let us continue with business. We have to finish the business.

REPORT

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and its approval thereof without amendments.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the House agrees with the Committee of the Whole in the said report.

I request Sen. Kivuti to second.

Sen. Kivuti: I second.

(Question proposed)

*(Remarks attributed to Sen. (Dr.) Khalwale ordered
expunged by the Deputy Speaker)*

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. Maybe there is a small confusion. We are voting on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014).

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Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I am sorry.

The Deputy Speaker (Sen. Kembi-Gitura): That is the one that we are on now and not the other one. Is that okay?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, most obliged.

The Deputy Speaker (Sen. Kembi-Gitura): Does Sen. (Dr.) Machage propose to speak on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)?

Sen. (Dr.) Machage: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): With respect to what you have said, it will be expunged because it was on the wrong Order. You will get a chance when we get to the correct one.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, as we conclude the end product of this Bill, it is important to note a few things. One, I noticed in this House a level of intimidation on some Members. It will not be good at my age and status not to raise this. Hon. Members of this House have their own minds. When a Member makes his or her mind, it is not good for another Member to intimidate him to the point of near fight. It is not acceptable. The democratic situation should have been acceptable. We know and we have been told by the Senate Minority Leader what it means to vote the way the voting has been done. The conscience of the voting should be left to individual Members to decide.

Sen. Elachi: Mr. Deputy Speaker, Sir, I also thank the House. When the drafters of the Constitution thought of the Senate, it meant that there is a delegation. Within the wordings, it never said that the delegation will be coerced by either of the political parties that brought them here. Even the Constitution gives Members freedom that you can walk out of your party without being de-whipped from the House, but continue being an independent Member.

It is time that in a democratic manner, we must appreciate those women who vote in delegations should also not be intimidated and told that they are not part of those delegations.

The Deputy Speaker (Sen. Kembi-Gitura): We are in a debate towards a vote. So, I will not allow too much time on this.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. My request for the Floor is not necessarily in the manner in which one votes. Sen. Elachi said that the Constitution allows you to walk out of your party. If you walk out of your party, it means that you go and seek fresh mandate. It is as simple as that. The Political Parties Act ---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The trouble with this debate the way I see it is that, first of all, even when Sen. (Dr.) Machage raised it, if I remember correctly, he talked about intimidation. He did not mention any names or incidences.

So, I sit here as you speak, I do not understand exactly what or who you are discussing. Unless you are talking in the abstract, I propose that we end that matter. Unless you go to the substance of it which none of you has done and then we vote and move on. Party issues are not issues that I would like to encourage here.

Order, Senators! Sen. Wetangula, you have not sought the Floor.

(Sen. Wetangula spoke off record)

If you are seeking the Floor on a point of order, you have two minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I just want to put it on record that we are in a multiparty democracy. The Constitution enshrines on the obligations, duties and responsibilities of party members. That is why in our Standing Orders, we have traditions, customs, usage and so on. You and everybody who deserves to be here know how to vote on moral, religious issues and other matters.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, let me just say this---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! As the Senate Minority Leader, you know that I would normally not deny you the Floor.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you gave me two minutes and I have spent one.

The Deputy Speaker (Sen. Kembi-Gitura): Order! The problem I have with these interventions, right from the one made by Sen. (Dr.) Machage, is that I do not understand what is going on.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I told you that you were wrong in allowing it. Now that you allowed it, let us go on with it.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula. I did not know what Sen. (Dr.) Machage was going to say until he said it. We are now doing it in the abstract.

Order, Senators!

There being no other Senator seeking the Floor, I will put the question.

(Question put and agreed to)

(Sen. Wetangula consulted loudly)

Order, Sen. Wetangula!

We have finished on the procurement issue. Now we are on the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014). Chairperson, please make your report.

REPORT

THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014) and its approval thereof without amendments.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. Keter seconded.

(Sen. Wetangula spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! If I may recall, a ruling was made on that earlier.

(Question proposed)

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity. This afternoon goes down in history as one of the saddest days in the history of democracy in this country under the new Constitution.

The Auditor-General is a servant of Parliament. He works for Parliament, reports to it and helps it to oversight the Executive. Regardless of which side we sit, we have a duty to oversight the Executive. In one afternoon, in a hurriedly convened sitting, we have just destroyed the Office of the Auditor-General, by taking away the Auditor-General's independence and ability to recruit staff to help him oversight the Government. We have just handed over to the Public Service Commission to do what they do best; recruit mediocre staff and hand them over to the Auditor-General. We know that part of the militating factors for this is to create an environment to whitewash Eurobond and other matters that we are talking about in this country.

Mr. Deputy Speaker, Sir, this Senate is on the forefront of demanding for accountability even in the counties. How shall we be demanding the Auditor-General to audit counties that we are talking about when we are destroying his office? I wish to go on record that we have just passed an unconstitutional Bill. We will meet in court, the same way we did with the security Bill. At least, there is an authority above this Senate that will not be summoned to State House for a sumptuous lunch and be told to get here and open our mouths louder than crocodiles to vote in a manner least expected of very decent Members of this House.

Mr. Deputy Speaker, Sir, I beg to put this on record.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I have consistently warned Sen. Wetangula against calling people names. Did you hear him call us crocodiles? The last person to call anybody a crocodile should be Sen. Wetangula because the highest court in the land declared that he is unfit to hold office for bribery. None of us on this side has been declared so by the court. In the public domain he has been linked to many scandals; whether Tokyo or Tobacco scandals. So, he should be the last person to call us names.

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

(Sen. (Dr.) Machage spoke off record)

Order, Sen. (Dr.) Machage! I do not wish to have this debate deteriorating or degenerating to name calling. You all understand our Standing Orders. When you make statements, you should not impute on the character of a fellow Senator.

Sen. Wetangula, I am sorry I did not hear what you said. However, the HANSARD could tell me what you said. It is not my wish to protract this issue. We need to be sufficiently decent to carry out our business in a decent here. So, I want to end that debate now, so that we can go back to what we are discussing.

Sen. (Dr.) Machage, I hope you are seeking the Floor to speak on a matter that is not related to this issue.

(Sen. Wetangula spoke off record)

Order, Sen. Wetangula!

Order, Senators! It is important to remind all of us who we are and what our role is. As I said, I will not allow Senators to call each other names across the aisle of the Senate. It is wrong. Let us conduct the business that is ahead of us decently, in a way that upholds the respect of the Senate.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. With your wise advice and remembering the tradition and rules of this House, when a Member mentions another Member without a substantive Motion, it is out of order. Regardless of what the subject was, am I in order to request that Sen. Murkomen withdraws his remarks?

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

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order Senators. Let us have some order and deal with this business in an orderly fashion.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir. This House has consistently been upheld, known to be a House of rules, procedure and decorum. One responsibility that beholds the seat that you sit on, is of dispassionately making rulings and giving directions to this House. It is not imaginable that the seat that you sit on, to direct this House at any one time, should shy away from any issue no matter how that issue may seem to be difficult.

Mr. Deputy Speaker, Sir, an issue has been raised here that consistently, repeatedly, many times over and over, that the Leader of Minority in this House has made it a custom of insulting Members of this House. Even after you have made your ruling, from the place where he seats he says: "Can you configure the idiocy of these Members?" It is completely unacceptable that we should allow ourselves to be intimidated by one Member that our character should continue to be assassinated and insulted by one Member of this House. If there is anyone who is supposed to withdraw, it is the Senate Leader of Minority.

Is it in order that he continues to sit without you declaring that he should withdraw and apologize or suffer the consequences of this House? With all due respect, that should be the way to go.

The Deputy Speaker (Sen. Kembi-Gitura): Order Senators. Sen. Wamatangi, I have heard you and I will not shy away from my duties when I seat on the Chair. I think everyone in this House knows that. What I said after Sen. Murkomen had made his statement was that I want to bring this debate to a close. This is because I did not, in honesty---

(Loud consultations)

Order, Senators. You know we are in a Special sitting and I do not want to tell you that I am going to look at the HANSARD and make a ruling when we come back in February because it will be meaningless. So much water would have passed under the bridge at that moment. That is the reason I said that we end this debate for the reason that I did not hear what Sen. Wetangula said at the first instance because I was consulting with Sen. Keter and with the Clerk-at-the-Table. That is why I was looking for sobriety and asking you to let that be water under the bridge and we proceed. That is still my request, and that is why I asked that we let the matter rest.

The request I will make finally is that, however strongly you may feel about the business we have done today, we must respect each other as individual Senators and not perpetuate that feeling of wanting to throw words across the two sides of the House. That is my request and I am sure you are going to respect that. I want to close that debate between Sen. Murkomen and Sen. Wetangula so that we can proceed.

I have a lot of requests from the Floor and seeing that we are debating before I put the final question, I am going to grant each of you a maximum of three minutes.

Sen. Orenge: Thank you, Mr. Deputy Speaker, Sir. I would still urge our colleagues that even at this late hour, we should reconsider this matter and refuse to agree with the report of the Committee. This House should have some kind of role in quality control in terms of the legislation that we are passing. We cannot on the face of it pass legislation which if you look at it, is contrary to the Constitution and contrary to what it says.

If you look at Article 234 (5), the delegation by the Commission is not a delegation of members of staff or officers to another Commission or independent office. What that section is saying is that the Commission can delegate any of its members or any of its officers to any other body to perform its functions. That is the function of the PSC and not the functions of the office of the Auditor-General.

Mr. Deputy Speaker, Sir, I agree with the Leader of the Majority that this is very tragic. There used to be this gentleman called D.G Njoroge. I do not think there will be a member of the public service like him. He stood firm and for many years, when similar legislation was brought against his office, he stood firm and ensured that the Office of the Controller and Auditor-General maintained its responsibility to Parliament.

This being the case, it looks like the Jubilee Government is out to undermine the authority of the Constitution, and I can tell you that in another one or two years, the

people sitting on the opposite side will regret what they have passed today. This is a very sad day for this Parliament and I think you should reconsider it because we do not agree with the report of the Committee.

Thank you.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I rise under Standing Order 98 (2) that the question be now put.

The Deputy Speaker (Sen. Kembi-Gitura): Order Senators. Sen. Murkomen has the right to raise the point of order and I have the right to make a decision. Let us listen to a few more Senators who have sought the Floor.

Sen. (Prof) Lesan: Thank you, Mr. Deputy Speaker, Sir. I also wish to agree with the Speaker's ruling that these matters that are secondary to the matters that are on the table be deferred and we deal with the issue of voting which is a matter that we have come for.

Thank you.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate the House and the team for having voted today. I want to urge our colleagues to embrace the spirit of unity, thinking and of forward looking. We have a new Constitution and we should not spell doom to this country. This is a positive Bill and we should take control of the work that we are doing and not predicting that there will be doom in this country.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, this is a sad day for this country and the Constitution. Fortunately, no Government is in power forever and neither are bad manners.

There are six clauses that we have made. All of them are unconstitutional. However, that is not my point. We, as a Senate, have allowed ourselves to be used. We have allowed ourselves to be used to rubberstamp decisions that are not constitutional. Our Bills have been rejected at the National Assembly. The CDF law has been passed without our input. We have been forwarded documents from the National Assembly and we have not bothered to interrogate them. Nobody in the Jubilee side thinks they should question a comma in a memorandum of the President.

Hon. Moses Kuria appears to be right. Maybe we do not need this Senate. The National Assembly can do this. What is the purpose of sitting here and just voting? What we have done is not any different from what the National Assembly has done. The only wise person here is Sen. Keter who will join the Cabinet. All of us do not need to be here. We actually need to go back to our professions and do something else.

There is no reason to sit here and just press buttons when we have a document that tells us that one cannot interfere with an independent office. What is so difficult about seeing something so simple? Some people have told us that they came with a conscience today to vote. What happened to that conscience before? However, the beauty about doing legislation and what we studied in law school about interpretation is, it does not end here. One day somebody will go into the record and ask why we amended Clause 234 or 229, so that the officers of an independent office are subject to another office. They will look at the record and will find that we did not serve as Senators as we should have.

Lastly, we have petitions from Mandera, Nandi and Narok counties about the Auditor-General. I will be glad to sit in those committees and look at the Senators of Jubilee in their eyes and tell them; "I told you so."

Sen. Hassan: Mr. Deputy Speaker, Sir, like those who have said, it is a sad day. Indeed, it is a sad day for this country. When Sen. Dullo and I were in the Kenya National Commission on Human Rights, we said there are four ingredients of commissions to make them independent;

1. The process of recruitment of members.
2. To have an independent budget.
3. The mandate of any Commission.
4. The independence of that commission to recruit its own secretariat.

When any of these cornerstones are made fragile, then the entire institution is made weak. Today, I am not feeling too well. However, I have to speak to this.

(Sen. Bule raised a point of order while seated)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! You cannot talk to me when you are sitting down.

Sen. Hassan: Mr. Deputy Speaker, Sir, sometimes when we prosecute some of these matters in this House, we must think of today and tomorrow. The Senate Majority Leader was my classmate. It is not a question of us being in the Opposition; it is a question of us irking our consciousness that Sen. Elachi talked about. I have never seen a day when most of my colleagues from the other side voted with consciousness. It is only conscious when my colleagues from the CORD coalition appear to vote with you. This is a very skewed conscious.

I urge, as we go forward, to seek your hearts---

Sen. Bule: On a point of order, Mr. Deputy Speaker, Sir. This is a House of rules and procedures. Sen. Hassan and my former friends---

(Laughter)

I want to tell them that today I am in another court. The way I appear today, I am very different. They should understand that the tendency of insulting any Member of either side is a criminal issue. We are grown up men and women of integrity; Senators. We have been dragged by these fellows. We came here for a purpose and a reason.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Bule! If you are on a point of order, you make a point of order. If you want to contribute, you press the button to contribute. If you want to talk about what I have heard you talk about, we have moved on.

Sen. Hassan: Mr. Deputy Speaker, Sir, I am bit delighted that Sen. Bule regarded us as his former friends. We are still friends. That said and done, I am urging my colleagues that this is not the end of it. The Senate Majority Leader should find his conscience to bring this amendment back so that we remedy this defect to this

constitutional anomaly. That way, we, as a country, can move forward. I am one of those who are convinced that today was nothing but a travesty to the Constitution of this Republic.

Sen. Mungai: Mr. Deputy Speaker, Sir, I rise to contribute to this particular limit. In the changes suggested by the Executive, we are talking about an office becoming vacant because of various reasons. The PSC is supposed to appoint someone to run it for 90 days. If the Opposition is not comfortable with this, they should have suggested a reduction of the number of days. This is not a permanent replacement. It would have been right for them to apparently come with credible changes that we would have listened to.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the memorandum before the House on which a decision is being made has been brought by the President who has told the country that he is committed to fight against corruption. I appeal to the President, the Senate Majority Leader and the entire membership of the House from the Jubilee side, because looking at them, they are younger Members of this House, by allowing the death of the Office of the Auditor-General, they are, therefore, saying they support corruption. Kenyans have fought for this long before they left primary school. Kenyans will not stop. At the end of the next few months, some of us shall be replaced, others shall come back and the country hopes that the fight against corruption shall be won.

There is no way the Standing Committee on Finance, Commerce and Budget or the County Public Accounts and Investments Committee can speak with finality unless guided by the reports of the Auditor-General. So, if we make it a weak office, we will never have answers. Not in this House, not in the lower House. Answers on the scandals of Eurobond, Galana Irrigation project, NYS or procurement of specialized medical equipment.

We must fight corruption.

Mr. Deputy Speaker, Sir, the President is wrong. All of you who want to vote for this Bill will also be wrong. Kindly change your minds. Let us disagree with the Committee by leaving the Bill as it was.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, you exhorted us to reflect on our role as a Senate. Until today, I believe that our role will be the House that offers a sober second thought on matters of national importance. That underpins our aspirations to be considered the “upper” House in this nation. What we have demonstrated today is that just like the other House that we are so critical about; we are just another House that votes under the influence of *ugali*. There is nothing that differentiates us from the other people.

We rely on the Auditor-General to give us reports from the county governments. If we emasculate that office and fail to give it the powers that can allow it to effectively operate, who are we going to rely on to get audit reports? Today, as the Opposition, we did not bring about some of the arguments that have been going around about the legality of Presidential Memorandum. There have been arguments that the President has got no business legislating through the backdoor. This is an example of legislation through the back door.

Mr. Deputy Speaker, Sir, we are calling on colleagues to look at the substance of these amendments. If we say that the Auditor-General shall get employees from

somewhere else, we are killing their independence. I can dare say that long live the people like Hon. Moses Kuria and other agents of ill will who believe that the Senate is irrelevant, of no consequence and that it should be abolished. Today is the date that we have confirmed that the Senate should be “castrated.” As you all know, a castrated cow has got no other use, but for the butcher to make use of it by converting it into meat so that those who love *ugali* can partake it.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, I will not give you a chance because I had made a ruling that, that would be the last person to contribute. Therefore, let me put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE

THE WATER BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. We have consulted as the Jubilee Coalition and agreed that we should be given more time to consult on the Water Bill (National Assembly Bill No.7 of 2014). One of the reasons that I gave in good faith is that this Bill has taken an overly long time. Water is a shared function and there was need for legal clarity. We have also considered that even if we pass it, it would still have to go to concurrence. Therefore, the urgency is mitigated by the fact that it would still have to go to the National Assembly for concurrence. On that note, I request that with your permission, we defer the debate on this Bill to the next Sitting.

The Deputy Speaker (Sen. Kembi-Gitura): At the request of the Senate Majority Leader, I reschedule the Order Paper so that Order No.4 of the Committee of the Whole on the Water Bill (National Assembly Bill No.7 of 2014) is dealt with when we resume or such an earlier date as the Speaker may determine.

(Bill deferred)

Please, proceed, Sen. Keter.

Sen. Keter: On a point of order, Mr. Deputy Speaker, Sir. I wish to make a personal statement under the Standing Orders No.46---

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I have said before that unless we insist that we stick to the rules of this House, five years down the lane, there might be no rules in this House. The rules are very clear that if the House is invited from recess, usually, the business to be transacted is specified. In our invitation, there was no indication we would receive a personal statement from any Senator. It would be completely contrary to the provisions of the Standing Orders and the law for you to allow – as much as he is my very good friend – Sen. Keter, to address the House. That agenda was not one of the reasons why we were called. That is provided by Standing Order No.29(5).

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. I am aware that rules must be stuck too. However, I believe that rules have room for discretion. I say this with a heavy heart to my Chairman. This is the last opportunity for us with Sen. Keter. He is our friend and we have lived with him dearly. I would really like him to put his statement on record and for some of us to also say one or two things on record. We have had our own running as Members of different coalitions, but he has been our dear colleague. It is, therefore, important that we listen to him. Although we differed with the Jubilee Coalition on the Order No.1, I would like us to agree on this order and give our colleague a send off.

Sen. Bule: On a point of order, Mr. Deputy Speaker, Sir. Most of the issues that I wanted to raise have been clearly elevated by my friend and colleague, Sen. Hassan.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I understand that you rose under Standing Order No.29(5). Sen. Keter's personal statement has been construed by Sen. (Dr.) Khalwale as extra business because it was not gazetted. This being the last day of Sen. Keter to sit with us, I would have gladly given him the Floor because I think that it is important. However, Standing Order Nos.1 and 2 which Sen. (Dr.) Khalwale likes to invoke very often states as follow:

“(1) In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

(2) The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

The problem I have here is that Standing Order No. 29 (5) provides that whenever the Senate meets for a Special Sitting under paragraph 1, the Speaker shall specify the business to be transacted on the day or the days appointed and the business specified shall be the only business before the Senate during the Special Sitting following which the Senate shall stand adjourned until the day appointed in the Senate calendar.

Standing Order No. 46, under which Sen. Keter rose, provides that during the Statements hour, a Senator by indulgence of the Senate may explain matters of personal nature. However, that refers to Statement hour in a normal sitting. With great respect, I think Sen. (Dr.) Khalwale is right. I do not think we can transact any other business. I do not know what Personal Statement Sen. Keter wants to make.

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

Order, Sen. (Dr.) Khalwale! Why can you not have little decorum? It is not possible for you to have a kick. You sought my interpretation and then you continue to talk about it. In my view, the only window that can be opened is with the indulgence of the Senate.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I think the Chair has a leeway because Standing Order No. 46 provides for Personal Statements. It makes it clear that:-

“During Statements Hour, a Senator may, by the indulgence of the Senate, explain matters of a personal nature although there is no question before the Senate, but such matters may not be debated.”

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. We are discussing another serious issue to do with our own Standing Orders. Let us deal with it the way we deal with a serious situation.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I was looking for the definition of Statement Hour and I did not get it. Any Member may lead me to that. However, I propose that the definition of Statement Hour is based on Standing Order No. 1. The Speaker can use the Chair’s discretion to allow two or three minutes to become the Statement Hour for the purpose of creating a vehicle for our colleague to make his Personal Statement.

Although the same section provides that:- “Although there is no question before the Senate”

Sen. Billow: Mr. Deputy Speaker, Sir, earlier, there were concerns by Members regarding the status of the Senator for Kericho County following the announcement in the Press that he has been cleared for appointment as a Cabinet Secretary. Is it in order to request the Senator to clarify to this House that he intends to resign as a Senator or whether he wants to continue? It is in public interest that he takes his time.

The Deputy Speaker (Sen. Kembi-Gitura): What I expect from you Senators, because I have given you an indication of what my inclinations are, if we have a Standing Order or a constitutional provision that allows me to do what Sen. Keter is seeking, being his last day here, show it to me and I will allow it. My inclination would have been to allow Sen. Keter to make a Personal Statement because he is here with us for the last day. However, we are a House of rules and we are here under a Gazette Notice for a Special Sitting under Standing Order No.29 (5). Therefore, it is not an issue that I am protracting. You are the same Members who will come here next time and tell me I breached the rules. My view is, with great respect, Standing Order No. 29 (5) is *prima facie* clear.

Sen. (Eng.) Muriuki: On a point of order, Mr. Deputy Speaker, Sir. Whereas there is Standing Order No.29, we came for a Special Sitting. However, we are also confronted by a very special circumstance that the drafters of the Standing Orders and the House could not have envisaged. Therefore, with due respect, the dust falls under Standing Order No.1. You can direct the House to vote so that we allow the Personal Statement under this very special circumstance. I move that the House agrees on that.

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I find this situation very tricky because we came here for a Special Sitting. If you want to put the business of the work we have done in jeopardy, then allow Sen. Keter to make the Personal Statement because it can be argued that we used a special sitting to transact a business which was not published or notice given in the Kenya Gazette.

Secondly, the question of a Personal Statement is provided for under the Standing Orders. Standing Order No.1 will only help you if it is a matter which is not provided for. I am saying this because we are lucky that you are on the Chair. However, on another occasion in a different circumstance, somebody else could come with something even

more substantive on a Special Sitting and transact business which had nothing to do with the Special Sitting.

I plead that we do not render the appointment of Sen. Keter in jeopardy. Secondly, we should not jeopardise the business that we have transacted. In any case, you have already been given notice that there are some people who want to go to court. Therefore, these proceedings may be challenged on the basis that the Special Sitting was abused and other business transacted. However, more importantly, I am one of the people who are very accommodative and grateful to the appointment. However, let us do things in the right way. That is why we even leave the rules of debate and degenerate in other businesses that we transact. I do not think it is correct to start using certain rules because you may abuse them when you want to do a particular thing.

Sen. Keter: On a point of order, Mr. Deputy Speaker, Sir. I do not wish to say more because we are waiting for your ruling. However, I did not have anything great, but just to thank my colleagues for the three years that we have been together and nothing much.

Another issue is that I do not fear courts. I have been to courts and I will continue going there because they are there for me. I know my conscience is very right. We have worked together as a team and I thought I should take this advantage to thank each one of us, my people of Belgut, the President and everybody. These are colleagues that we have worked together since 2002 when I joined Parliament with hon. Sen. (Dr.) Khalwale. You remember the last time we said that we should wait for the vetting process to continue. Now that vetting was done and Parliament has approved the candidates, I will resign officially in a few minutes. I am being awaited to do so, so that it can be published in the Kenya Gazette. I thought I should take this advantage to thank my colleagues.

Thank you very much.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! That will be the last point of order. My ruling is as I had indicated that if you ---

(Laughter)

Order, Senators!

Like I said, what Sen. Keter has in his point of order, that is the last point of order that will be allowed. The truth of the matter is that all of you can read Standing Order No. 25 and you will see that it is a Special Sitting. You can also read Standing Order No.46 which talks about Statement Hour and this is not. If you read Standing Order No.1, you will find that I do not have the discretion because there is a specific provision under Standing Orders Nos.29(5) and 46. That is the basis on which I declined to allow Sen. Keter to make a personal statement. I want it to be understood that way.

Sen. Keter, as I stand here, I am sure that you can take my personal congratulations on your appointment to the Cabinet.

(Several Senators stood up in their places)

Order! Order, Senators! I have a short communication to make. You may take your seats.

(Sen. (Prof.) Lonyangapuo entered the Chamber)

Order, Sen. (Prof.) Lonyangapuo! You can take the seat nearest to you.

COMMUNICATION FROM THE CHAIR

SUSPENSION OF SENATE COMMITTEES SITTINGS

The Deputy Speaker (Sen. Kembi-Gitura): I have a short communication to make on the suspension of sittings of the Committees of the Senate.

Hon. Senators, as you are aware on Thursday, 3rd December, 2015, the Senate proceeded on recess until Tuesday, 9th February, 2016, as per the Senate calendar. It has been a long and hectic year for us. I am sure that every one of us is looking forward to take a well-deserved break to relax during the festive season.

The recess at the end of the Session provides an opportunity for us to reflect on the achievements and challenges through the year. We can only do this when our minds are relaxed and devoid of the hustle and bustle of our busy schedule.

Hon. Senators, I believe we are looking forward to the December festivities with our families, friends and constituents. I, therefore, direct all Senate Committees to suspend their sittings as from 18th December, 2015 to 15th January, 2016. This will enable Senators to take a break from the heavy business of the Senate and be with their families and voters.

In the same breath, it is an opportunity for the officers to take their annual leave and join their families and friends during the Christmas season, as well as invigorate and recharge in readiness for the next Session in 2016.

Hon. Senators, it is with great pleasure now that I wish to extend to you a Merry Christmas and a prosperous year, 2016

I thank you.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday 9th February, 2016, at 2.30 p.m. as per our calendar.

The Senate rose at 6.20 p.m.