

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 8th May, 2013

*The Senate met at the Kenyatta International
Conference Centre at 9.00 a.m.*

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

PRAYERS

NOTICE OF MOTION

SERVICING OF LOANS AND DEBTS INCURRED BY FORMER
LOCAL AUTHORITIES BY THE NATIONAL GOVERNMENT

Sen. Orengo: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, acknowledging that County Governments are an essential framework, pillar and structure of governance and democracy in Kenya and exercise constitutional authority and functions; aware that the work and performance of county governments may be undermined, burdened and frustrated by debts and loans incurred by local authorities as previously constituted under the new law; recognizing that devolved system of Government must be protected and defended in order to attain the underlying principles, objects and functions as set out in Articles 1, 6, 10, 174, 175 and 186 as well as the Fourth Schedule of the Constitution of Kenya, 2010; the Senate resolves that the National Government takes over the servicing and payment of all major debts and loans owed and incurred by all the local authorities or other such entities that existed before the establishment of County Governments.

MOTION

ESTABLISHMENT OF PUBLIC UNIVERSITIES IN ALL COUNTIES

THAT, aware that during the first years after independence the best equipped public schools were established in certain regions of Kenya to the exclusion of other regions, resulting in such regions having undue advantage in producing educated manpower; appreciating that the

introduction of the devolved system of Government in the Constitution of Kenya, 2010 was aimed at achieving equalization of development and other opportunities, including education, across the country; noting that the Government has lately embarked on establishing more public universities in the country; concerned that the majority of public universities are currently concentrated in a few regions of the country to the exclusion of the rest of the country; the Senate urges the Government to take urgent and immediate steps to ensure that there is equitable distribution of universities in the country and to ensure that at least one public university is established in every county in Kenya before the expiry of the term of the current Government.

(Sen. (Dr.) Khalwale on 7.5.2013)

(Resumption of Debate interrupted on 7.5.2013)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, the reminder of the Motion is for you to reply. I am aware of the need for a Communication from the Chair on what transpired yesterday. So, we will do that before we put the final vote.

Proceed with the reply.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. In replying, I want to thank all the hon. Senators who found time to contribute to this important Motion. It is with a lot of pleasure that all hon. Senators who contributed, supported the Motion. Apparently, Sen. Karaba was the only hon. Senator who spoke against the Motion. Having listened to other hon. Senators, I hope he has changed his mind. I hope is now supporting us.

Mr. Speaker, Sir, the only thing I would like to react to was raised by Sen. Mutahi Kagwe. I believe the Deputy Speaker, Sen. Kembi-Gitura, mentioned this issue. This is, when a university, for argument's sake, is built in Meru County, for example, it is not necessarily students from Meru County who attend the university. So, this does not matter anyway. This may be true. But the Motion is aware that it is this same lie that has prevailed for over 50 years when students used to be told: "Much as you come from Luoland and you are enrolled in a school in Central Province, you have not been stopped from going to Central Province, so it is all well when the national school is in Central Province." We want to defeat this lie because it has come to pass, with evidence today, that these regions that had the best institutions have got the best manpower in the country.

Mr. Speaker, Sir, the boy who topped last year's Kenya Certificate of Secondary School Education (KCSE) national examination was from Turkana County. So, to assume, as Sen. Karaba assumed yesterday, that we have to, first of all, develop primary and secondary schools in certain regions before we establish universities, is assuming that we do not have raw talent. The raw talent is there, only that it is not exposed to facilities.

Mr. Speaker, Sir, finally---

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

Sen. (Dr.) Khalwale: Yes, the hon. Senator for Bungoma County and Senate Minority Leader, I would like to be informed.

The Senate Minority Leader (Sen. Wetangula): Thank you, Sen. (Dr.) Khalwale for allowing me to inform you that further to what you have just said, and in rebuttal to the flawed arguments of Sen. Kagwe and Sen. Karaba, universities are also very major economic entities if you cite cases of cities like Oxford and Cambridge. If you look at towns of Kakamega and Bondo, which were dead towns, you will notice that universities are very important commercial entities that spur economic activities and growth in any area. That is why Mt. Kenya region and environs of Nairobi County have taken advantage over the rest of Kenya, by the previous flawed arrangements to have all the universities around here.

Sen. (Dr.) Khalwale: Thank you, Sen. Wetangula for informing me. In fact, just to emphasise what the distinguished hon. Senator from Bungoma County is saying, if you imagine a town like Kakamega with ten thousand students, assuming that every student spends Kshs500 per day to eat, drink, brush his or her teeth, to go to the gents or ladies and another Kshs500 to do the other things, including what people used to do in Koinange Street, although in our days it used to be Karumaindo and the box---

(Laughter)

Sen. Orengo: Tell us more!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, protect me from Sen. Orengo!

The Speaker (Hon. Ethuro): Order, hon. Senators!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, if a student spends Kshs500 a day and there are 10,000 such students, simple arithmetic says that Kshs5 million is spent in that town every day. So, how can Sen. Kagwe, a man I respect, pretend that he does not know these things? How can Sen. Karaba, who is a former principal, pretend that he does not know these things? He was also a chair of the Departmental Committee on Education, Research and Technology in the Lower House.

When we are discharging in this Senate, we must desist from defending archaic tribal interests. I do not think that was the intention of the creation of the Senate. The Senate is supposed to ensure fairness and address issues of social injustice.

Mr. Speaker, Sir, I must, once again, end by pleading with the Chair. The Chair was very tolerant yesterday, through the Deputy Speaker. You accommodated our points of orders. We look forward to a favourable ruling, so that this matter should not die until we give life to the fairness that we would like to see in the education system in this country.

Mr. Speaker, Sir, with those remarks, I beg to move and thank all hon. Senators and the entire House.

The Speaker (Hon. Ethuro): Yes, Senate Majority Leader!

POINT OF ORDER

ADJOURNMENT MOTION UNDER STANDING ORDER NO.33
TO DISCUSS RISING INSECURITY IN SOME COUNTIES

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The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I rise under Standing Order No.33, on a matter of urgent national importance, to request the House to set aside time this afternoon to discuss the unfolding insecurity situation in the country, particularly in the counties of Bungoma, Busia, Garissa, to some extent, Tana River, Baringo and many other parts of the country where we have seen an unfortunate resurgence of criminal gangs and groupings that are terrorizing citizens of this country, maiming, killing and destroying their property.

Mr. Speaker, Sir, this is a matter that befits an adjournment of the Senate, as a custodian of the interests of counties, to discuss and enrich the process of providing peace and security to our people and to encourage the Government to take its responsibility in this regard as effectively as it possibly can. In fact, I have had consultations with my colleague, the Senate Majority Leader and we will be moving this Motion in a bi-partisan manner, if time is created by the Chair. I have also complied with the necessary requirements by giving notice to the Speaker, more than two hours in advance before rising on this point of order.

Thank you, Mr. Speaker, Sir.

(Several hon. Senators stood up in their places in support of the adjournment Motion)

The Speaker (Hon. Ethuro): There are more five hon. Senators in support of this. It seems all hon. Senators present have stood up in support of this Motion. So, you satisfy the requirements.

Hon. Senators, you may resume your seats. This being a Wednesday, we will allocate time for this matter from 5.00 p.m. today.

COMMUNICATION FROM THE CHAIR

VOTE ON AMENDMENT TO MOTION ON ESTABLISHMENT OF PUBLIC UNIVERSITIES IN ALL COUNTIES

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make in relation to Sen.(Dr.) Khalwale's Motion as regards to the vote on the amended Motion, which we agreed to communicate before we put the vote on the substantive Motion.

This Communication was promised yesterday in response to a request by Sen. Wetangula, supported by a number of other hon. Senators seeking the guidance of the Chair on the appropriate procedure for disposing of a Motion affecting counties.

The issue arose when a proposed amendment to a Motion by Sen.(Dr.) Khalwale was lost despite the result being 23 in favour, none against and none abstaining. The argument was advanced by Sen. Wetangula with support from Sen.(Dr.) Khalwale, Sen. Murkomen and others, that from the result, it appeared that the proposed amendment could not have been passed from the onset, and that the Chair should not have allowed the vote to proceed because the delegations present were not enough to pass the Motion.

Sen. Wetangula argued that the Chair should have involved Standing Order No.68(1) of the Standing Orders of the National Assembly of the Tenth Parliament, which provided that:-

“In every instance where the Constitution lays down a fixed majority, it is necessary to decide on any question, the House shall not proceed to a division on that question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division.”

It is important to note, and I emphasise this, that this procedure was not carried over into the Standing Orders of the Senate. For better or for worse, there is no similar provision in the Standing Orders of the Senate under which we are operating. Our nearest equivalent to the Standing Orders cited by Sen. Wetangula is Standing Order No.60(1), which provides that, and I quote:-

“Instances where the Constitution requires a fixed majority

(1) In every instance where the Constitution lays down that a fixed number of Senators is necessary to support the moving of, or to decide any question on a Motion, any amendment motion to such motion shall not be passed unless supported by the fixed number of Senators required to pass the original motion.”

It is clear, therefore, that that the amended Motion moved by Sen.(Dr.) Kuti, to Sen.(Dr.) Khalwale’s Motion required the fixed number of 24 delegations, which the original Motion required to pass. It is also clear that no express provision of the Standing Orders of the kind was Standing Order No.68 of the National Assembly exists to require the Speaker to first ascertain that there are at least 24 delegations present before proceeding to a division.

The Speaker was, however, urged to invoke Standing Order No.1 and exercise the powers provided there under to rescind the decision that the amended Motion by Sen.(Dr.) Kuti had been negatived and to further, for the future, order that the necessary threshold of 24 delegations, be first established before proceeding to a division on a matter affecting counties.

The issues which the Speaker was asked to determine using Standing Order No.1 are as follows:-

One, whether to rescind his finding that the amendment Motion by Sen.(Dr.) Kuti had been negatived and, therefore, order a fresh division only when there are at least 24 delegations present in the Senate.

Two, whether for the future, the Speaker must first ascertain whether there are at least 24 delegations present in the Senate before calling a roll call vote on a matter affecting counties.

Hon. Senators, Standing Order No.1(1) provides as follows, and I quote:-

“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.”

Standing Order No.1 must be invoked sparingly and judiciously. It is used to complement the Standing Orders and to fill in the gaps, not to substitute existing Standing Orders, or to re-write them. In particular, Standing Order No.1 comes into play where matters are not expressly provided for by the Standing Orders.

Before ruling on the request to rescind the decision of Sen.(Dr.) Kuti’s amendment Motion, I wish to draw the attention of the Senate to Standing Order Nos.47 and 51. Standing Order No.51(1) provides that:-

“When a Motion has been moved and if necessary seconded, the Speaker shall propose the question thereon in the same terms as the Motion, and debate may then take place upon that question.

(2) At the conclusion of the debate, the Speaker shall put the question.

(3) Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

That is definitely what was done to the substantive Motion at the request of Sen.(Dr.) Khalwale. Indeed, Sen.(Dr.) Khalwale made this request for deferral of his Motion yesterday. The conduct and disposal of business of the Senate is the collective responsibility of not just the Speaker, but also of all the hon. Senators. The Mover of a Motion must be presumed to be the best judge of his or her own interests. Therefore, where he or she feels to invoke an available mechanism for deferral of putting the question, he or she must be presumed to know and to intend the consequences of the ensuing decision of the Senate.

Hon. Senators, Standing Order No.47 too permits a Motion to be moved to rescind the decision of the Senate on the question on another Motion. Such a Motion can be moved with the permission of the Speaker. There are remedies for a Senator who wishes to have the Senate rescind his decision on the question of a Motion. That is provided for in Standing Order No.47(2).

I, therefore, rule that where an express remedy is available in the Standing Orders, the Speaker will not invoke the extraordinary powers conferred by Standing Order No.1 *in lieu* of the ordinary remedy available. The request to rescind the decision that the amended Motion by Sen.(Dr.) Kuti was negatived is, therefore, disallowed.

Hon. Senators, that leaves us with only one other matter to sort, namely whether the Speaker can rule, that in the future, the threshold of 24 hon. Senators be first established before a division can be proceeded with and a roll call vote taken on a matter affecting counties. There are no easy answers. We engaged ourselves almost for the better part of last night. One thing is certain though, this is not a requirement of the Standing Orders in this Senate. However, I recognize that is hardly the end of the matter as the Speaker will be called upon to advance the jurisprudence, extend the horizons and promote good practise. Different arguments can be made. The argument that the Senate should not act in futility when the outcome of a vote is pre-determined and known by all

is a good one. But it is also countered by the argument that matters affecting counties are so important that when put to a vote, every county has the right to go on record, voting for or against, whether the Motion will be won or lost. The argument can be made further that invoking Standing Order No.36, which requires the Speaker on his own motion to stop a vote or division if there is no quorum, that the Speaker should similarly stop a roll call vote, which will obviously result in a negative of the question. But this argument can be countered on the basis that Standing Order No.36 had been intended to extend to the failure to attain a threshold of 24 delegations. Nothing would have been easier than for that to be expressly provided for at the Standing Order. Further, it can be argued that when a question is put, no particular outcome is desired or expected and that both an affirmative vote and a negative one are legitimate outcomes with winners and losers. It can, therefore, be argued that the time of the Senate is valuable and should not be spent on predetermined outcomes and that the Speaker owes it to the House to ensure that this is so. But it can also be countered as the Speaker is not one of the players on the Floor of the Senate, but a neutral arbiter.

From this perspective, hon. Senators, the Speaker owes neither side of any question any deed of care to safeguard his interest. His argument will be that the Mover of a Motion must exercise due diligence and defer a vote until he or she has established the necessary support. Similarly, of course, it is a legitimate political device for those opposing a Motion to keep away from a roll call vote and deny the necessary threshold, so that the question is automatically negated should it be the role of the Speaker to stop or avert a legitimate political process. The arguments are many and the debate must continue. It is good that these questions are coming up at this particular time when the Rules and Business Committee has commenced a review of the Standing Orders of the Senate. This is where these matters will be settled.

The proposal by Sen. Wetangula that a day be designated for putting the question on all Motions debated during the week will be one that the Senate may wish to consider. So also, of course, is the proposal that there will be a rule that the Speaker must confirm the threshold of 24 delegations present before allowing a division. These will remain grey areas for debate and determination as we go along.

Finally, hon. Senators, this matter needs to serve as a wakeup call to all Senators to study carefully the Standing Orders of the Senate. The procedures of the Senate are new and are in many respects totally different from those applicable in the National Assembly in the Tenth Parliament or, indeed, at any time in the history of the Parliament of Kenya. You are also aware that even the Tenth Parliament changed its own Standing Orders. The Business of the Senate will be much assisted if hon. Senators carefully consider the Senate Standing Orders and their ramifications on each action or inaction. For now, as determined yesterday, I direct that the Question on the Motion by Sen. (Dr.) Khalwale will be put this morning and I will proceed to put the question.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I want to thank you for your ruling. But in view of the fact that this morning, there is an intended service for our departed friend, Sen. Mutula, I am afraid that a few Senators might have taken the opportunity of attending the mass and it could affect the outcome of the vote. I, therefore,

rise under Standing Order No.51(3) to request that the vote be deferred on this matter for that reason.

(Loud consultations)

The Speaker is the one who is supposed to nominate the time, but I would suggest it be done in the afternoon.

The Speaker (Hon. Ethuro): Indeed, Sen. (Dr.) Khalwale, the Chair considered the possibility of you coming up with that request.

(Laughter)

Hon. Senators will recall that this will be the second time in a row you are putting the request, because we adjourned yesterday you did it and as we have started today, you have just done it. The question the Chair was grappling with is how many times will a Member be able to use this particular provision.

(Laughter)

When you read that particular provision carefully, Standing Order No.51(3)--- You can even start with the entire Standing Order No.51(1):-

“(1) When a Motion has been moved and if necessary seconded, the Speaker shall---

It is an imposition on the Speaker.

“---shall propose the question thereon in the same terms as the Motion, and debate may then take place upon that question.

To propose the question is an obligation on the Speaker; it is a duty. But for the Senators to debate the Motion is optional; it is “may.”

Then it goes ahead and says:-

(2) At the conclusion of the debate, the Speaker shall put the question.

Notice the word “shall.” So, it is also an obligation on the Speaker to propose and to put the question. Which means that a Motion must be determined, or any matter must be determined in reasonable time.

Now, Standing Order No.51(3), which you are quoting gives you a window of opportunity to postpone, which says:-

“(3) Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

So, you did it yesterday. The following day of yesterday is today. Now, for you to do the same today in order to take it to tomorrow---

Hon. Senators: To this afternoon.

The Speaker (Hon. Ethuro): This afternoon?

Hon. Senators: Yes.

The Speaker (Hon. Ethuro): It is still a different time.

(Laughter)

“---in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

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

The Speaker (Hon. Ethuro): I am on my feet!

Ideally, I would have declined, but given the mood of the House, I will give you one more chance today afternoon, and that will be the last one.

Thank you.

Sen. (Dr.) Khalwale: What about the timing?

The Speaker (Hon. Ethuro): Immediately we begin!

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, as I said yesterday, we are developing our jurisprudence in this Senate. Unless we foreclose issues that can hurt us in future, Standing Order No.51(3) does not say that a Senator seeking to invoke this Standing Order to ask the Speaker to defer putting the Question can only do it once; it does not say so. You can do it today, if you run into difficulties tomorrow, you can do it again because it is quite open that when you see danger ahead, you can ask the Speaker to defer putting the question. So, I want to urge you to be as liberal minded as you have always been so that you do not foreclose issues that can end up being roadblocks to developing our own jurisprudence in this House.

Thank you, Mr. Deputy Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Wetangula, while you can determine it did not say the number of times, it did not just say to one other time. But neither did it say as many times as possible when the hon. Senators sees danger, you can exercise your liberties. But do not offend the liberties of others in ensuring that the other Business on the Order Paper must be prosecuted. It cannot be the same Business. So, these really are matters, Sen. Wetangula, that I have argued in my communication are grey areas. So, the Chair will exercise a bit of discretion in a liberal manner, but not too liberal a manner for Senators also to misuse the same Standing Order.

What is it, Sen. Kajwang?

Sen. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Following on the point of order that was raised by Sen. Wetangula, which you have already ruled on, the request I am making is that when appointing the time, Mr. Speaker would appoint the specific time, even to the minute so that he does not ambush us. Because you come in, we pray, we go to the Motion while some people are still standing outside there; we lack the quorum of 24 and we lose it. So, I wish that the Speaker will specify the time, so that if it is 3.00 p.m., then we say 3.00 p.m. Even if something else is going on, we adjourn it, we put the question and then we continue. That would take us somewhere.

So, Mr. Deputy Speaker, Sir, I want to propose that you may amend your ruling to suggest that the time for taking the vote will be 3.30 p.m. this afternoon, so that we whip each other and be here on time.

The Speaker (Hon. Ethuro): Maybe Sen. Kajwang you are quite busy with your neighborhood. I actually said that it should be the first business when we resume in the afternoon; and the first business is from 2.30 p.m., of course, at the relevant order for Motions.

Sen. Kajwang: Mr. Deputy Speaker, Sir, when we had Questions in the other House, we knew that the Motions will come sometimes an hour after we have started. So, if you do not have an interest in a Question, you could sometimes come a little bit late, but be sure that you will be there to vote. But voting is becoming a very important matter, especially in this Senate. People actually wanted the Motion to pass yesterday. They all voted for it, but somehow, they still lost it because they were not aware that would be the appointed time. In fact, when it comes to delegating for heads of delegations who want to delegate their voting power to somebody else in the delegation, you should be able to know the time when the voting will be done, so that you write a letter to your colleague saying: "Please, make sure you are in the House at 3.30 p.m. because the voting will be at 3.30 p.m." So that if they do not want to attend any other business, but they must come to vote. This will help us a great deal. I think eventually we will have to amend the Standing Orders, so that we know when the vote will take place. This is because the vote is a very important matter in this House. This House may sit here for a year and never pass a Motion because of the way we are doing things. We could destroy the reputation of this House and not make a change in this country. We will be a laughing stock. We cannot be prisoners of our own rules which we can see are dangerous for the development of the law in this country.

Thank you, Mr. Deputy Speaker, Sir.

The Speaker (Hon. Ethuro): Maybe just to satisfy Sen. Kajwang, even in the Tenth Parliament, the Speaker always ruled that the business begins at 2.30 p.m.; even the communication, and sometimes it would come at 5.00 p.m. The intention was that really when you talk of the Business, I mean that day allotted for the Business of the House, the expectation is that you should be present. But I hear you to the extent that in a situation of ours, where decisions are made by heads of delegations, especially on Motions on matters affecting the counties, then it is important for either the head of delegation or the designated Senator to be fully aware of the exact time. I think that is the argument we are saying, with the team we have set up to review our Standing Orders, then that is an appropriate place where we will factor it, but for purposes of today's Motion by Sen. (Dr.) Khalwale, it is 2.30 p.m. Of course, we have to go through the normal motions and it will come maybe 15 minutes after that. But I do not presume it to be at 3.00 p.m. The fear is that if we say 3.00 p.m. and you go to the other business, so do you just stop or suspend the other business in order to start another business? It will not be neat.

What is it, Sen. Orenge?

Sen. Orenge: Mr. Deputy Speaker, Sir, without prejudice to what you have just directed and what you just said, but I was asking the Chair to be a little more pragmatic and take cognizance of the objective situation today, knowing that we are going for the funeral service of the late Sen. Mutula Kilonzo and we do not know how long it is going

to take. It will be wrong for us, as Senators, to walk out of that funeral service in order to come and discharge a particular business.

Mr. Deputy Speaker, Sir, I was going to plead with you that notwithstanding what you have said, that for this particular Motion, we put it 3.30 p.m. because of the objective situation that we have today and that this being the very first Motion before the Senate. In fact, the first substantive business in terms of making resolutions or enacting Bills, that we do not let it fail because of the absence of the necessary numbers. I think you may send the wrong signal that sufficient delegations were not present to vote for the Motion affirmatively or negatively. I want to plead with you---

The Speaker (Hon. Ethuro): Order! You do not need to plead more. I think you have done enough pleading. The vote will be taken at 3.30 p.m.

Sen. Orendo: Thank you, Mr. Deputy Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

But before then, we will take Order No.10 and then Order No.9.
Leader of the Majority?

MOTIONS

APPROVAL OF SEN. ELACHI AND SEN. BULE TO COMMITTEES TO REPLACE SEN. (DR.) KHALWALE

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

THAT, pursuant to Standing Order No.135(3) and 177(3), the Senate approves the following hon. Senators nominated by the Rules and Business Committee to be members of the respective committees as indicated below, to replace Sen.(Dr.) Khalwale, who has been discharged from the respective committees pursuant to Standing Order No.178.

STANDING COMMITTEE ON FINANCE, COMMERCE AND
ECONOMIC AFFAIRS

Sen. Beatrice Elachi

SESSIONAL COMMITTEE ON IMPLEMENTATION

Sen. Ali Abdi Bule

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, Sen.(Dr.) Khalwale who is the Senator elected on the United Democratic Front Party (UDF), which party has a coalition agreement with the Jubilee Coalition which was deposited with the Registrar of Political Parties on 15th April, 2013, has decided not to support the activities of the Jubilee Coalition. He has said it in the media; he has also said it by conduct, namely that he has actually jeopardized the committee formation and committee chairing processes in this House and, currently, there exists a stalemate in one of the Committees. More importantly, when the Committee elections were taking place, he has sponsored candidates of the Minority to take over the leadership of committees when the majority are candidates.

So, Mr. Deputy Speaker, Sir, we have decided as a coalition to grant Sen. (Dr.) Khalwale the time---

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. The Senate Majority Leader has made a very serious allegation. How did he know how the Members of those Committees voted when I know very well that voting in Committees is secret? How did he know it was Dr. Khalwale?

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I have said and I want to repeat it very clearly for the benefit of Sen. (Dr.) Machage and others---

(An hon. Senator stood up in her place)

The Speaker (Hon. Ethuro): Order! He is responding to the earlier point of order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): That the most grievous of crimes, according to us which is against the spirit of multiparty democracy and the Political Parties Act is that despite an existing agreement between UDF and the Jubilee Coalition, Sen. (Dr.) Khalwale actually proposed and supported the minority candidates both for the Chair and Vice Chair in the Implementation Committee. That is in the public domain. He has even registered the same sentiments in the media.

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Order, hon. Senators! He is moving the Motion.

(Loud consultations)

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

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. By now, we expect that the Senate Leader Majority has now understood the rules of debate. The rules of debate do not provide that in moving a Motion, you refer to newspapers and the media. He says according to the media, I am supporting the minority.

Secondly, he has twice referred to a document between UDF and Jubilee. I challenge him to table that document so that the Senate can see what agreement is there between Jubilee and UDF. Indeed, there is no post election coalition between Jubilee and UDF; what is there is a document of co-operation. Co-operation is not a coalition. He is a professor of law.

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

Sen. Abdirahman: Mr. Deputy Speaker, Sir, what the Leader of the Majority is trying to present this morning in this House is going to create a very bad precedence. Do you know what is happening in the Lower House as we speak? There seems to be a stalemate. Formation of committees and election of chairpersons are not necessarily the

prerogative of the majority; the minority parties has equal stake and it actually negates democracy. Is he in order to actually remove Sen. (Dr.) Khalwale's name?

The Speaker (Hon. Ethuro): Order, Sen. Abdirahman! You know, you are on a point of order; make your point!

Sen. Abdirahman: Mr. Deputy Speaker, Sir, is he in order really to remove Sen. (Dr.) Khalwale in such an unprocedural manner? Look at how it impacts negatively on the honour of this House.

The Senate Majority Leader (Prof. Kindiki): Mr. Deputy Speaker, Sir, first of all, I want to clarify that the business of nominating Members to sit in Committees is a party affair. So, it is the business of the Majority or the Minority to decide, subject to the approval of the House, which Members they want to sit in what Committees. But that aside, I just want to say that we---

(Sen. Ongoro stood up in her place)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, protect me so that I can respond even to the Points of Order which have been raised---

The Speaker (Hon. Ethuro): Let us take the last one from Sen. Ongoro and then you can dispose of all of them.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir. According to my Order Paper, I can see that we are now tackling Motion No.10. I have not been given any convincing reason why we have bypassed Order No.9. Is it in order that we have an Order Paper that we are not going to respect?

The Speaker (Hon. Ethuro): Sen. Ongoro, I will respond to you as follows. Check Standing Order No.39(2). If you only listened to your good neighbours to your right – the Senator for Homa Bay and the Senator for Siaya – they have made very serious arguments petitioning the Speaker on several things, which they were all granted. So, when the Senate Leader Majority, the Mover of the Motion also and his camps come to request that he just needs one before the other one--- both Motions are his actually – I think the Chair really does not have much objection to such requests.

Proceed, Sen. (Prof.) Kindiki!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. So, I think for us, we believe that Sen. (Dr.) Khalwale is no longer representing the interests of the Jubilee Coalition in the Committees. We have discharged him of those duties pursuant to the relevant Standing Orders. Therefore, we are just requesting that this House approves the proposals of the Jubilee Coalition to that respect.

Thank you, Mr. Deputy Speaker, Sir.

The Speaker has not asked that I should table any document, so I just want to say that the alleged existence of documents or rather, the alleged confirmation by Sen. (Dr.) Khalwale that there exists a coalition agreement is just a confirmation that a transgression has occurred.

So, Mr. Deputy Speaker, Sir, I want to invite Sen. Kembi-Gitura to second this Motion.

(Several hon. Members stood up in their places)

The Speaker (Hon. Ethuro): Order, hon. Senators! Let us allow the Motion to be moved; you will have the opportunity to contribute and we will give everybody an opportunity.

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

The Speaker (Hon. Ethuro): You are out of order, Sen. Orengo! Proceed, Sen. Kembi-Gitura!

Sen. Kembi-Gitura: Thank you, Mr. Deputy Speaker, Sir. I have listened to the arguments that have been propounded by the Senate Majority Leader and for those reasons, I wish to second the Motion.

It is imperative, Mr. Deputy Speaker, Sir, that party heads in a coalition must respect the position of a party. If a Member who has been appointed into a Committee by a party or a coalition of parties does not agree to toe the line or agree with the policies of the party, then I believe that, not just in tradition, but also in the procedures and the rules of the House, that person or Member must be or could be asked to, or be discharged from that position as per the Standing Orders.

Since this is what the party is doing, I wish to support the Motion that Sen. (Dr.) Khalwale be discharged from the two Committees that have been mentioned in the Motion.

Thank you, Mr. Deputy Speaker, Sir.

(Question proposed)

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I beg to seek your direction really on a point of order that debate on this Motion should be deferred. Now, I am saying it should be deferred because if we continue with this debate in the manner in which it has been presented, it will undermine the authority and the dignity of the Senate.

Mr. Deputy Speaker, Sir, I am beginning to regret the fact that, by the partisan way in which the establishment of the Committees and the manner in which the elections were conducted is being thoroughly undermined. If I can give an example to the Senate Majority Leader when he came to the Committee on Security, he advised us to elect hon. Haji as the Chair in order to encourage the spirit of bipartisanship. He was proposed by the Minority Leader and seconded by the honorable Senator standing and we elected the Chairman of the Committee on National Security and Foreign Relations as CORD without really caring whether he came from the Jubilee Coalition or not. All that we wanted was the business of this House to proceed in a manner that is dignified. The consequence of what is being brought before us this morning--- My only regret is that it is coming at a time when we are going for a service of a very dignified Member of this Committee. In fact, the choice to bring this Motion today in the fashion that it is being brought is disrespectful to the late Sen. Kilonzo.

Mr. Speaker, Sir, I will plead with you that we defer debate on this matter and both leadership of the House could consult on this matter fully before it is brought to the House. The consequences would be undermining the authority of---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I find it difficult to understand this Motion on the Floor and I join Sen. Orengo in urging the Chair that the debate on this Motion be deferred. This Motion is cheeky, dangerous; it is an affront to our Constitution---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You know better. If you want to contribute, I will give you the chance but not to rise on a point of order to make a contribution. Yesterday, you ventilated and challenged the Chair. The Chair must enforce this one. I will give you the chance to contribute when you rise to contribute.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. Let me argue my point for deferral.

The Speaker (Hon. Ethuro): No, you cannot. Sen. Wetangula, resume your seat. It is my job to ensure there is orderly conduct in this House.

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

The Speaker (Hon. Ethuro): And better be a real point of order.

Sen. Murkomen: Mr. Speaker, Sir, is it in order for the CORD Coalition Senators to meddle with the affairs of the Jubilee Coalition? Sen. (Dr.) Khalwale was not nominated to that Committee by the CORD Coalition. Why are they agitated? What is their business with it?

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

The Speaker (Hon. Ethuro): Are there no contributors? Sen. Haji!

Sen. Haji: Mr. Speaker, Sir, apparently I do not know whether the rules of the Senate are different from those of the National Assembly because people are standing on points of order but instead making points of argument. Is it in order, really?

The Speaker (Hon. Ethuro): It is definitely not in order and I ruled as such. My ruling on the request for adjournment by Sen. Orengo is that the Motion has been proposed and Sen. Orengo knows how to propose adjournments, if he wishes, but he did not do so. Really, it is not up to the Chair to meddle with how the Committees are constituted. That is the job of the respective political parties. One thing I can confirm is that this Motion was actually passed by the Rules and Business Committee where all political shades are fully represented and they actually agreed that it should proceed. So, I am yet to listen to a more satisfactory explanation to do otherwise.

Proceed, Sen. Billow!

Sen. Orengo: You denied me to proceed.

The Speaker (Hon. Ethuro): I did not deny you; you just used the wrong vehicle.

Sen. Billow: Mr. Speaker, Sir, I rise to support this Motion. The House is governed---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The rules of debate and common decency require that a Senator who has an interest in a matter, before he contributes, must declare his interest in that matter. The Senator who is on the Floor speaking, before you gave me the opportunity to rise on a point of order---

An hon. Senator: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! Let us listen to Sen. Wetangula and if you want to inform him, he must agree to be informed.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I must accept the information, but I do not need it.

An hon. Senator who wants to speak on any matter, as a matter of common decency and practice must declare his interest. The hon. Senator for Mandera who stood up to speak is the direct beneficiary and probably the engineer of the mischief that we are seeing this Motion. For him to even make an effort to support such a mischievous Motion, he must first declare his interest before he does so.

The Speaker (Hon. Ethuro): Hon. Senators, let me explain this: While Sen. Wetangula is very right and correct in his contribution, he should be kind enough to the other contributor because he had not even uttered a single word. So, how did you anticipate whether he was not going to declare his interest in the matter? He simply said he supports and he stopped there. That support could have been on the basis of what you assume to be his declared interest, which he was to declare or otherwise. I just felt it was a bit premature for you to make that contribution. You should have waited for him to at least say one or two things, then you realize he has not declared the interest.

Proceed, Sen. Billow!

Sen. Billow: Mr. Speaker, Sir, I think it is incumbent upon all of us to really respect one another in this House. I think it would be wrong for our colleagues from the minority party to continuously accuse our Members of bringing mischievous Motions. They complain of lack of decorum and when they get the opportunity, that is what they are exactly doing. We need to respect each other because we came here to represent our counties in contributing to the business of this House. I do not think anybody can represent Mandera County in this House. I have the right as a Senator of this House to stand up and contribute to any Motion.

Mr. Speaker, Sir, with regard to this particular issue, the decision on whether one has to express an interest or not for a particular post, it will take place when that meeting of that Committee is actually convened by the Clerk of this House. Before that meeting is convened, you cannot say that you have an interest in that particular position. Therefore, it is wrong for the Leader of the Minority Party to stand up here and suggest that I indeed engineered this Motion. We have to be governed by the Standing Orders.

The Senators from the CORD coalition who have contributed to this debate are learned friends; they are lawyers. I think it is important to appreciate the rules that govern this House. The rules are very clear with regard to replacement of a Senator.

Standing Order No.178 that the Senate Minority Leader referred to is very clear on this issue. It reads:-

“A Parliamentary party that nominated a Senator to a Select Committee may give notice in writing to the Chairperson of the Rules and Business Committee that the Senator is to be discharged from a Select Committee”.

That means that it is a political party's decision to replace its Senator from a particular Select Committee, reasons notwithstanding. So, I think it is frivolous, wrong and unacceptable for the CORD coalition Senators to stand here and argue that the Jubilee Coalition has no power to replace any of its Senators. It can replace me and any Senator for that matter. I think that decision has already been made.

The Motion before this House is about the appointment of two Senators to two different committees. The Motion is to debate the appointment of Sen. Elachi and Sen. Bule to the respective committees that have been mentioned. Otherwise the removal of any Senator is not a matter that should be brought to the House for debate. As per the Standing Orders, that matter has been decided by a letter.

I support the appointment of Sen. Elachi and Sen. Bule to the respective committees. I had been a Member of the Opposition as you all know and I have respect for the Senators on the minority side, but I think it is unacceptable to continuously accuse the Jubilee Coalition in the media, National Assembly and everywhere else of the tyranny of numbers. This is what is now being done in this House. At every opportunity, a Senator from the CORD Coalition wants to stand on a point of order to frustrate the business of this House. I do not think this is acceptable. We should have respect and decorum.

I beg to support. Thank you.

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Order, hon. Senators! There is enough time for everybody to contribute. I want to entertain contributions. You will still make your points; just note them down and you will prosecute them.

ADJOURNMENT OF DEBATE UNDER STANDING ORDER NO.97

Sen. Orenge: Mr. Speaker, Sir, according to Standing Order No.97 (1) – I shall read it so that it is clear from the outset that it is a proper point of order. It reads:-

“A Senator who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move that the debate be now adjourned or in Committee of the Whole, that the Chairperson do report progress”.

Mr. Speaker, Sir, you have already proposed the question from the Chair, and I now do move that the debate be now adjourned.

First of all, just looking at the time and the fact that the funeral service of the late Sen. Kilonzo is starting right away and it would be a matter of great disrespect for this Senate to continue to deliberate on this question when that service is going on. As a matter of courtesy, this Senate has a committee which was appointed to deal with issues relating to the funeral of the late Sen. Kilonzo, and Sen. Musila has already left for that purpose. Sen. Muthama is also not here for that purpose. I am in that Committee and my continued sitting here may be misunderstood.

Mr. Speaker, Sir, so this is a dilatory Motion not to frustrate the appointment of the people proposed to be in those particular committees but just arising from the fact that in ten to 15 minutes, we need to be at the Nairobi Baptist Church.

I beg to move.

The Speaker (Hon. Ethuro): Maybe the honorable Senator for Siaya should have been kind to all of us and read the entire Standing Order No.97 (1). For starters, he needed somebody to second him which did not happen.

The Senate Minority Leader (Sen. Wetangula): I stood up to second him, Sir.

The Speaker (Hon. Ethuro): You do not just stand; you know the rules. The Mover will always indicate who is supposed to second him. He did not and many of you stood up. So, how do I know that it is you and not the other one? The Standing Order goes on to state:-

(2) The debate on a dilatory Motion shall be confined to the matter of the Motion.

(3) If the Speaker is of the opinion that a dilatory Motion is an abuse of the proceedings of the Senate, the Speaker may forthwith put the question thereon or decline to propose it.

It then goes on up to four. But since I do not want to be seen like a player in the proceedings, I will grant Sen. Orengo his wish that the debate be now adjourned, but he needs to indicate who is seconding.

Sen. Orengo: Mr. Speaker, Sir, Sen. Wetangula will second.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I second the Motion and I want to urge the House to take emotions out of this. The reasons advanced by Sen. Orengo are very noble and very important.

Mr. Speaker, Sir, we are a new House. We are a very small family of Senators and many of us may not have the opportunity to go to Mbooni for the burial tomorrow. It is only important that---

Sen. Haji: On a point of order, Mr. Speaker, Sir. I thought my colleague Sen. Orengo spoke about the adjournment of the House and not adjournment of debate. In any case, is it in order for the House to adjourn its important business simply because people want to attend a funeral service? It is optional; we must not all go, but the country must continue working.

The Speaker (Hon. Ethuro): Just to clarify, we are adjourning debate on this Motion. So, Sen. Wetangula is on the right path.

Yes, Sen. Murkomen!

Sen. Murkomen: Mr. Speaker, Sir, I am not sure whether it is a point of order but I am learning. I think even if it is the adjournment of this Motion, it should be clear up to what time. It should not be indefinite. If we are told that it is up to the afternoon, we shall be happy. The reason is this---

The Speaker (Hon. Ethuro): Order! I am glad you prefaced your remarks by saying that you are not sure whether it is a point of order or something else. If you read the Standing Order, it does not specify up to when. Secondly, you are already anticipating that it might go that way and we are not allowed to anticipate. So, we shall cross that bridge once we reach there.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I think we need to have some clarity here. My colleague, Sen. Orengo, my senior in the profession, gave a specific application in the first instance about adjourning this Motion. I would like to understand whether we are now discussing about adjourning the House to attend a church service. This is important - I want to attend the service - Sen. Kilonzo was a very close friend of mine and a senior

colleague. I would like to attend the funeral service. However, the question that you must, with respect, address is whether or not you are adjourning this Motion for the reasons that Sen. Orengo gave in the first instance or whether you are acceding to his second request that we adjourn the House and give the reason. That is what we need to know because like Sen. Haji has said, maybe not everybody wants to attend the funeral service this morning. Some people may want to continue with the business of the House and that must be respected.

I am requesting you to give a specific ruling on what we are adjourning so that we are all clear.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, hon. Senators! Sen. Kembi-Gitura was addressing the Speaker and there is only one Speaker on the Chair now.

I, therefore, rule that the Motion being requested by the Senator for Siaya hon. Orengo says;

That the Debate be now adjourned.

This is the Debate on Motion No.10 but not the adjournment of the House. Let us make that very clear. I would also like to remind you that even if there is a route that you are forcing me to take, I will decline. Sen. Murkomen, I do not recommend that you pursue that path. Even if we were to adjourn this debate, that would not stop us from proceeding. That is why Sen. Kembi-Gitura is right to say that we should differentiate between the debate and the House. Even if we were to adjourn the debate, that would not mean that we adjourn the House because we still have another Motion.

Therefore, the business will continue. However, hon. Senators, the point is that those are arguments that I should entertain when the question has been proposed. The Motion is being seconded. Therefore, there is nothing on the Floor of the House.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, we are moving to adjourn debate on this Motion because we want to attend a service. I am disheartened by what I have heard from some colleagues and to know that we can be that callous and heatless towards our own colleague. I hope that when I die, similar statements will not be made about me.

I want to urge that you accede to Sen. Orengo's Motion because the matter before the House and why we want to adjourn to go to the service is because we want to ventilate fully on this Motion. This Motion, if passed, lays an extremely dangerous precedence for this House and for the growth of democracy in this country. With regard to constitutionalism, it is seeking to entrench intolerance and we need time to debate the Motion and assist the Chair. At some point, we may ask the Chair to make rulings on constitutional issues that are in the Motion. Consequently, I urge you to exercise your discretion under the Standing Order cited and adjourn debate on this Motion for the reason that many Senators, keen to debate it fully, are also obligated by their inner feelings unlike some of us to go and see of our departed colleague who would have made

tremendous arguments on law and fact on a Motion such as this in this House. It is befitting to do so.

I second.

The Speaker (Hon. Ethuro): Order, hon. Senators! I think it is important for us to read Standing Order No.97 because hon. Sen. Wetangula, as he seconded got it all wrong. It is not up to me. In fact, my job is much easier than he is trying to make it seem.

97(3) “If the Speaker is of the opinion that a dilatory Motion is an abuse of the proceedings of the Senate, the Speaker may forthwith put the question thereon or decline to propose it.”

I am therefore, under no obligation. As you had said, I was being requested by hon. Orengo to do so. The route I will take is the opposite. Since this is a House of distinguished Senators, I wanted to make this extremely participatory. It is up to the House to determine. I will propose the question and put the question. It is up to the Senate to decide and we dispose that matter in the most expedite manner. In any case, if you did not allow many points of order, we would have concluded this matter and attend the service.

(Question proposed)

I will now put the question with a reminder that this Motion does not affect counties and, therefore, we do not need someone to be a head of the delegation.

(Question put and agreed to)

Hon. Senators, for the purpose of when this Motion will be brought next, we will bring it back this afternoon.

ESTABLISHMENT OF SENATE LIAISON COMMITTEE

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

THAT, the Senate resolves to establish a Committee to be designated as the Liaison Committee comprising Chairpersons of all Senate Committees excluding Joint and *ad hoc* committees to coordinate the activities and operations of all committees of the Senate.

It is the tradition of Parliament that Parliamentary Committees may need to meet and work in harmony. This will promote holistic workings of this House. We have already put in place a number of departmental committees, Standing Committees and Sessional Committees. The meetings for those committees have started being held. What we are lacking is a Liaison Committee which traditionally would be expected to be chaired by the Deputy Speaker involving Chairpersons of Committees other than *ad hoc* Committees and Joint Committees. These are committees that comprise both the Senate and the National Assembly. It is of utmost urgency that this Senate considers the

establishment of a Liaison Committee that will act as a fulcrum for the activities of the various Committees that this House has put in place.

Mr. Speaker, Sir, this is a fairly straightforward Motion which I think this Senate should put into consideration and approve as soon as possible so that we can start working for this country according to our mandate under the Constitution.

With those remarks, I beg to move and request Senator Beatrice Elachi to Second.

Sen. Elachi: Thank you, Mr. Speaker, Sir. Indeed, we need a Liaison Committee that will allow the Chairmen to move on with the work of the committees. I know that whoever will Chair that Committee will guide the House in the mandate that we have been given by the country.

I beg to second.

(Question proposed)

(Question put and agreed to)

The Speaker (Hon. Ethuro): The Motion does not affect counties.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Members, there being no other business, the Senate is, therefore, adjourned until this afternoon, Wednesday, 8th May, 2013, at 2.30 p.m.

The Senate rose at 10.20 a.m.