



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, MARCH 13, 2019 AT 2.30 PM

1. The Senate assembled at thirty minutes past Two O'clock.
2. The proceedings were opened with prayer said by the Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair –

(a) **Communication from the Chair on visiting students and teachers from Gilgil Hill Senior School.**

“Honorable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Gilgil Hill Senior School.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(b) **Communication from the Chair on Voting on the National Assembly Amendments to the Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) and the Assumption of Office of the County Governor Bill (Senate Bills No. 1 Of 2018)**

“Honourable Senators, as you may be aware, the Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) and the Assumption of Office of the County Governor Bill (Senate Bills No. 1 of 2018) were listed in the Order Paper for yesterday, Tuesday, 12th March, 2019 at the Committee of the Whole Stage; more specifically for consideration of National Assembly amendments to the two Bills.

When the Orders were reached, the House proceeded to the Committee of the Whole to canvass the National Assembly amendments. As has been the practice, after canvassing the amendments, the House proceeded to a Division.

However, on closer scrutiny of numbers and Senators present in the House, I have established that there was no quorum as stipulated in Article 121 of the Constitution read together with Standing Order 35 of the Senate Standing Orders. For clarity, Article 121 of the Constitution states as follows-

The quorum of Parliament shall be—

(a) fifty members, in the case of the National Assembly; or

(b) fifteen members, in the case of the Senate.

Honourable Senators, as you are aware, Article 123 (4) of the Constitution, read together with Standing Order 78 of the Senate, sets out the threshold for passage of a Bill in the Senate, and I quote—

123 (4) Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties—

- (a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation;*
- (b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting the other members of the delegation; and*
- (c) the matter is carried only if it is supported by a majority of all the delegations.*

Honourable Senators, pursuant to Article 121 of the Constitution, read together with standing order 37, for the Senate to proceed to a Division on a Bill or a Motion affecting counties, there must be quorum, which is 15 Senators. However, you need a majority of all delegations, which is 24 delegations, to pass a Bill or Motion affecting counties.

Honourable Senators, Standing Order 85 states that -

In case of a technical failure, confusion or error occurring in the course of an electronic or a roll call vote concerning the numbers or names recorded, which cannot otherwise be corrected, the Speaker shall direct the Senate to proceed to another round of electronic voting or to another roll call vote.

Noting that the required threshold of 15 Senators was not attained, I direct that pursuant to the provisions of Standing Order 85, the Divisions on the National Assembly amendments on the Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) and the Assumption of Office of the County Governor Bill (Senate Bills No. 1 of 2018) be nullified and the record of the purported voting be expunged from the House records. I further direct that

the two Bills be listed in the Order Paper for tomorrow Thursday, 14th March, 2019 for the Senate to proceed to another round of electronic voting on the Bills.

I thank you.”

4. **PAPERS LAID**

The following Papers were laid on the Table of the Senate –

- (a) Report of the Auditor-General on the Financial Statements of the County Executive of Embu for the Year ended 30th June 2018;
- (b) Report of the Auditor-General on the Financial Statements of the County Executive of Nyeri for the Year ended 30th June 2018;
- (c) Report of the Auditor-General on the Financial Statements of the County Executive of Meru for the Year ended 30th June 2018;
- (d) Report of the Auditor-General on the Financial Statements of the County Executive of Kilifi for the Year ended 30th June 2018;
- (e) Report of the Auditor-General on the Financial Statements of the County Executive of Migori for the Year ended 30th June 2018;
- (f) Report of the Auditor-General on the Financial Statements of the County Executive of Kisii for the Year ended 30th June 2018;
- (g) Report of the Auditor-General on the Financial Statements of the County Executive of Marsabit for the Year ended 30th June 2018;
- (h) Report of the Auditor-General on the Financial Statements of the County Executive of Taita Taveta for the Year ended 30th June 2018;
- (i) Report of the Auditor-General on the Financial Statements of the County Executive of Kitui for the Year ended 30th June 2018;
- (j) Report of the Auditor-General on the Financial Statements of the County Executive of Tharaka Nithi for the Year ended 30th June 2018;
- (k) Report of the Auditor-General on the Financial Statements of the County Executive of Isiolo for the Year ended 30th June 2018;
- (l) Report of the Auditor-General on the Financial Statements of the County Executive of Mombasa for the Year ended 30th June 2018;
- (m) Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the Year ended 30th June 2018;

- (n) Report of the Auditor-General on the Financial Statements of Kakamega County Executive for the Year ended 30th June 2018;
- (o) Report of the Auditor-General on the Financial Statements of Siaya County Executive for the Year ended 30th June 2018;
- (p) Report of the Auditor-General on the Financial Statements of Mandera County Executive for the Year ended 30th June 2018;
- (q) Report of the Auditor-General on the Financial Statements of Busia County Executive for the Year ended 30th June 2018;
- (r) Report of the Auditor-General on the Financial Statements of Tana River County Executive for the Year ended 30th June 2018;
- (s) Report of the Auditor-General on the Financial Statements of Bungoma County Executive for the Year ended 30th June 2018;
- (t) Report of the Auditor-General on the Financial Statements of Turkana County Executive for the Year ended 30th June 2018;
- (u) Report of the Auditor-General on the Financial Statements of Kisumu County Executive for the Year ended 30th June 2018;
- (v) Report of the Auditor-General on the Financial Statements of Trans Nzoia County Executive for the Year ended 30th June 2018;
- (w) Report of the Auditor-General on the Financial Statements of Lamu County Executive for the Year ended 30th June 2018;
- (x) Report of the Auditor-General on the Financial Statements of the County Executive of Kirinyaga for the Year ended 30th June 2018;
- (y) Report of the Auditor-General on the Financial Statements of the County Executive of Nyamira for the Year ended 30th June 2018;
- (z) Report of the Auditor-General on the Financial Statements of the County Executive of Samburu for the Year ended 30th June 2018; and
- (aa) Report of the Auditor-General on the Financial Statements of the County Executive of Murang'a for the Year ended 30th June 2018.

(Sen. Christopher Langat, MP, on behalf of the Senate Majority Leader)

5. **NOTICE OF MOTION** – (Sen. (Dr.) Isaac Mwaura, MP)

THAT AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act,

2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang'a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba's contribution to our Nation, to rename Murang'a University of Technology to Kenneth Matiba University of Technology.

6. **STATEMENTS**

(a) Statements pursuant to Standing Order 47(1)

- (i) The Senator for Makueni County (Sen. Mutula Kilonzo Jr, MP) issued a Statement regarding the air accident involving Ethiopian Airlines, Flight ET 302.

The Senator highlighted that the air crash had taken place on Sunday, 10th March, 2019 and that all 157 passengers and crew on board had lost their lives, among them, 32 Kenyans.

The Senator made reference to another air crash involving Lion Air, which took place on Monday, 29th October, 2018 in Indonesia. He pointed to the fact that the two accidents, involving the same aircraft type, happened in near similar circumstances, drawing to the attention of the House that while the Lion Air accident happened within thirteen (13) minutes after take off from Jakarta International Airport, the Ethiopian Airlines accident happened within six minutes after take off from Bole

International Airport, both pilots reported difficulties in flight control of their respective aircrafts before the crash.

The Senator informed the Senate that in the wake of the Sunday's incident, several countries and airlines had banned the flying of the particular aircraft model, the Boeing 737 MAX-8/9 pending an investigation into the crash and possible guidance from Boeing Corporation, who are the aircraft manufacturer.

The Senator concluded by urging the Kenya Civil Aviation Authority (KCAA) to liaise with the Federal Aviation Administration for quick investigations to be carried out to determine the cause of this crash and assure the world on the safety of using the Boeing 737 MAX-8/9 aircrafts.

- (ii) The Senator for Vihiga County (Sen. George Khaniri, MP) issued a Statement regarding the increased insecurity in Vihiga County.

In his Statement, Sen. Khaniri stated that insecurity was increasing at an alarming rate in Vihiga County and that every week there were incidences of robbery, burglary, violence and murder being reported.

The Senator further stated that the latest incident had occurred on the night of Saturday, 2nd March 2019 where five (5) night watchmen were killed and two others left with life threatening head injuries by an alleged gang. The Senator highlighted that the local community had blamed the police from Kilingili Police Station, which was about 500 meters from the crime scene, for the deaths stating that, according to some of the family members of the deceased, the police had been informed of the impending attack yet mitigating measures were not taken.

The Senator informed the Senate that there was a re-emergence of gangs that recruit young boys and girls into crime and that urgent, action by the Cabinet Secretary for Interior and Coordination of National Government was necessary to curb the situation. He urged the national government in conjunction with the county governments to consider providing benevolence funds to the affected families and ensure that the perpetrators were brought to book.

(b) Statement pursuant to Standing Order 48(1)

The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a Statement from the Standing Committee on Health regarding the expiry of drugs at the Kenya Medical Supplies Authority (KEMSA) warehouse.

7. THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 27 OF 2018)

(Sen. Abshiro Halake, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 12th March, 2019)

(Division)

Order deferred.

8. **COMMITTEE OF THE WHOLE**
THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)

(The Senate Majority Leader)

Order deferred.

9. **COMMITTEE OF THE WHOLE**
THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO. 4 OF 2018)

(Sen. Amos Wako, MP)

Order deferred.

10. **COMMITTEE OF THE WHOLE**
THE IMPEACHMENT PROCEDURE BILL (SENATE BILLS NO. 15 OF 2018)

(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

Order deferred.

11. **COMMITTEE OF THE WHOLE**
DATA PROTECTION BILL (SENATE BILLS NO. 16 OF 2018)

(Chairperson, Standing Committee on Information and Technology)

Order deferred.

12. **COMMITTEE OF THE WHOLE**
THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)

(Sen. Aaron Cheruiyot, MP)

Order deferred.

13. **THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018)**

Motion made and Question proposed;

That, the County Statutory Instruments Bill (Senate Bills No. 21 of 2018) be now read a Second Time.

(Vice Chairperson, Sessional Committee on Delegated Legislation)

Debate interrupted on 12th March, 2019 resumed;

There being no other Senator wishing to contribute;

The Mover replied;

Raising a point of order pursuant to Standing Order 61 (3), Nominated Senator (Sen. Farhiya Haji) requested for the deferment of putting of the question to a later date;

And the Temporary Speaker (Sen. Rose Nyamunga) acceding to the request, nominated Thursday, 14th March, 2019 as the day when the Question shall be put.

14. **THE DETERMINATION OF THE NATURE OF BILLS (PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)**

(Sen. Mutula Kilonzo Jnr., MP)

Order for Second Reading read;

Order deferred.

15. **THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 31 OF 2018)**

(Sen. (Dr.) Agnes Zani, MP)

Order for Second Reading read;

Order deferred.

16. **THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL (SENATE BILLS NO. 34 OF 2018)**

(Chairperson, Standing Committee on Finance and Budget)

Order for Second Reading read;

Order deferred.

17. **THE TEA BILL (SENATE BILLS NO. 36 OF 2018)**

Motion made and Question proposed-

THAT, the Tea Bill (Senate Bills No. 36 of 2018) be now read a Second Time.

(Sen. Aaron Cheruiyot, MP)

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Rose Nyamunga), interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

18. **SENATE ROSE** – at thirty minutes past six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on Thursday, March 14, 2019 at 2.30 p.m.