

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 3rd July 2019

The House met at 9.30 a.m.

*[The Deputy Speaker
(Hon. Moses Cheboi) in the Chair]*

PRAYERS

QUORUM

Hon. Deputy Speaker: Order, Hon. Members. We are short of the required quorum. I, therefore, order that the bell be rung for 10 minutes.

(Quorum Bell was rung)

Order, Hon. Members! We now have the required quorum. Therefore, business will begin.

PETITION

COMPENSATION OF NAIVASHA-MARAIGUSHU LAND OWNERS BY KETRACO

Hon. Deputy Speaker: On that particular Order, we have the Member for Naivasha, Hon. Kihara. You have the Floor.

Hon. (Ms.) Jayne Kihara (Naivasha, JP): Thank you, Hon. Deputy Speaker and good morning. Hon. Deputy Speaker, I rise to present this Petition on behalf of my constituents in two wards, Naivasha East and Biashara.

I, the undersigned, on behalf of the land owners of Naivasha-Maraigushu blocks 6, 3 and 1, who are citizens of Kenya, draw the attention of the House to the following:

THAT, KETRACO is a Government-registered company established to develop a high-voltage electricity infrastructure including planning, designing, building and maintaining electricity transmission lines;

THAT, KETRACO has been erecting electricity transmission lines across the country and most of the time, the electricity lines are laid on private land;

THAT, a framework exists for compensation of land and property owners which is prescribed in KETRACO's resettlement policy framework depending on the extent to which their parcels of land are affected;

THAT, the land owners of Naivasha-Maraigushu blocks 6, 3 and 1 in Biashara Ward have been affected by the erection of KETRACO infrastructure on their land, but no compensation has been received by the land owners;

THAT, efforts to have the matter discussed with KETRACO management have been futile;

THAT, the matter is not pending before any court of law or any other legal or constitutional body;

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Lands:

- (i) recommends investigation into objective valuation of the land in question to determine its current market value;
- (ii) engages KETRACO to see to it that the petitioners receive full, fair and prompt compensation; and,
- (iii) makes any other further order(s) deemed fit in the circumstances of the petitioners.

And your petitioners will forever pray.

Hon. Deputy Speaker: Very well. I see there are a few Members who want to speak to it. Actually, there are many. I do not know why this Petition is popular. Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I support the Member for Naivasha because KETRACO built a line from Kindaruma all the way to Garissa cutting across many constituencies. They have compensated people, including some in my constituency, even when they do not have documents. Some of them did not even have a letter of allotment. It is mandatory. I want to bring this matter to the attention of both the Departmental Committee on Energy and the Committee on Lands. The KETRACO has no choice. It must pay the people of Naivasha. If their transmission lines pass through your compound and they put up those big towers, they have no choice.

I support the Member that KETRACO must be compelled by the two committees to pay the poor people affected in Naivasha.

Hon. Deputy Speaker: Is there any other Member who wants to speak to this one? Let us have Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Deputy Speaker. I also rise to support my colleague, Hon. Jayne of Naivasha, on this particular Petition.

I wish to stress that it is not only KETRACO that has been involved in this. I support the Member for Naivasha on this aspect of the Petition. It is not only KETRACO that has been involved in usage of land owned by members of the public in Kenya. This should also be considered in future. They should be compelled to compensate the people that have either lost their land or had their pieces of land used by the companies. In fact, where there is delayed compensation, there should be consideration of interest on that compensation.

I support the Petition.

Hon. Deputy Speaker: I will give an opportunity to two more Members. I will start with Hon. Atandi Onunga. Do you want to speak to this one or the next one?

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker. I support the Petition. I am concerned that in the last two weeks, we have received more than 10 petitions touching on the Ministry of Lands and the Departmental Committee on Lands. I am concerned because these petitions point to the fact that we have ineffective Government agencies, more so, the National Lands Commission (NLC). I urge the Departmental Committee on Lands that perhaps they need to consider inviting that commission to find out if they are really serving Kenyans. We cannot have petitions touching on a particular agency of Government every day. This is something that we need to check. There have been more than 10

petitions within two weeks touching on a particular matter. As Parliament, we need to see whether these agencies are working and serving Kenyans. These petitions will continue coming and Parliament may not have time to go through all of them effectively in time.

Hon. Deputy Speaker: Let us have Hon. Mutua Barasa of Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Asante, Mheshimiwa Naibu Spika kwa kunipa nafasi hii. Pia nami naunga mkono *Petition* ya Mheshimiwa Jayne Kihara. Lazima taasisi tofauti za Serikali ziheshimu haki za raia. Hata kama wanaleta maendeleo, lazima pia waheshimu yale maendeleo raia tayari wameweka kwa kutumia pesa zao. Lazima swala hili la mashamba liangaliwe kwa kina. Kama Bunge, najua kuna *petitions* nyingi ambazo zimewekwa katika kamati tofauti za Bunge.

Hon. Deputy Speaker: What is your point of order, Hon. Junet?

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, the Standing Orders are very clear that if you use one language, you must continue with that language all the way to the end of your contribution. The Member is talking about petitions and he is speaking in Kiswahili. Can he tell us what the Swahili word for “petition” is? He chose to speak in Swahili. Is it “*petishoni*”? Could it be “*swala nyeti*”?

Hon. Deputy Speaker: Hon. Junet, you are obviously right. There are always difficulties with these languages that were brought by boats and ships.

Proceed, Hon. Member for Kimilili. Try as much as possible to use the Standing Orders properly.

Hon. Didmus Barasa (Kimilili, JP): Asante sana, Mheshimiwa Naibu Spika. Najua Mheshimiwa Junet hakifahamu Kiswahili vizuri. Neno “*petishoni*” liko katika kamusi ya Kiswahili. Naunga mkono kwamba swala hili liangaliwe kwa kina.

(Laughter)

Hon. Deputy Speaker: I only promised to give an opportunity to two Members, but I will give an opportunity to the Vice-Chair of the Departmental Committee on Energy because the Petition will be referred to them. I am curious to hear what he has to say. Are you speaking as the Member for Endebess or as the Vice-Chair?

Hon. (Dr.) Robert Pukose (Endebess, JP): Both, Hon. Deputy Speaker.

Hon. Deputy Speaker: That will be conflicting, but let me hear you.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Deputy Speaker, I am a representative of the people of Endebess, but in the Committee I am the Vice-Chair. One of the challenges that KETRACO has recently faced is in terms of compensation. We have asked them.

Hon. Deputy Speaker: Hon. Pukose, without having to interrupt you, I wanted you to speak as the Member for Endebess. When you go back to the Committee, you will speak as the Vice-Chair.

Hon. (Dr.) Robert Pukose (Endebess, JP): I will speak as the Member for Endebess.

Hon. Deputy Speaker: You could easily be having issues yourself.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Deputy Speaker, as the Member for Endebess, I support the Member for Naivasha on this Petition. We know that KETRACO provides transmission lines for power in the country, but they must be able to compensate land owners despite the fact that there are no commissioners in the NLC.

Hon. Deputy Speaker, this House passed the Land Value Index Laws (Amendment) Bill yesterday that was mediated by the National Assembly and the Senate. We are waiting for the

President to assent to the Bill. That will speed up the compensation of land for the people in Naivasha.

With those few remarks, I support the Petition.

Hon. Deputy Speaker: Very well. Before we go to the next Order, let me recognise, in the Speaker's Gallery, engineers from the University of California, who have visited the National Assembly. Their leaders are Engineer Victor Korir from Kuresoi North Constituency, Sirikwa Ward and Engineer Linus Kipkoech from Kiramwok in Bomet East Constituency and are accompanied by their guardian, Ms. Albina Rono. I also want to recognise students from the newly registered Boron Secondary School from Kuresoi North Constituency in Nakuru County, who are seated in the Speaker's Gallery.

Next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: On that particular Order, we do not have a Statement. So, we will go straight to Questions. They are Ordinary Questions. Starting us off is the Member for Mathare, Hon. Anthony Tom Oluoch.

ORDINARY QUESTIONS

Question No.307/2019

DUPLICATION OF ROADS CLASSIFICATION IN MATHARE CONSTITUENCY

Hon. Anthony Oluoch (Mathare, ODM): Hon. Deputy Speaker, I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing, and Urban Development the following Question.

(i) Is the Cabinet Secretary aware of the duplication of roads classification affecting several roads falling within Mathare Constituency leading to difficulties in delineation of roads classified as falling under the Kenya Rural Roads Authority (KeRRA) and those falling within the ambit of the Kenya Urban Roads Authority (KURA)?

(ii) Could he provide a list of all the roads under the two Authorities, KeRRA and KURA, in Mathare Constituency by name and description?

(iii) Could he also provide a list showing the contractors engaged in the last three financial years to undertake the works on the said roads and specify whether the works were minor repairs or construction of roads?

(iv) Could he provide details on the criteria applied to award the special fund for emergency road repair purposes in Nairobi City, indicating the distribution of the awards in Nairobi's 17 constituencies for the last three financial years and list the contractors?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. Next is Hon. Vincent Kemosi Mogaka, Member for West Mugirango.

Question No.308/2019

STATUS OF AFRICA STAR RAILWAY OPERATION COMPANY

Hon. Vincent Kemosi (West Mugirango, FORD-K): Hon. Deputy Speaker, I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

(i) Could the Cabinet Secretary provide details of the local and foreign shareholders of the firm known as Africa Star Railway Operation Company and indicate the date the company was incorporated in Kenya?

(ii) How much money has been paid so far to the company by Kenya Railways Corporation for running the Standard Gauge Railway (SGR)?

(iii) What was the rationale of forming a Special Purpose Vehicle (SPV) to run the SGR yet China Road and Bridge Corporation is capable of running the same?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. Next is the Member for Kanduyi, Hon. Athanas Wafula Wamunyinyi Misiko.

Question No.309/2019

IRREGULAR ALLOCATION OF GOVERNMENT LAND AND HOUSES

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Deputy Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning:

(i) Is the Cabinet Secretary aware that public land set aside for a police station and administrative offices in Marakaru/Tuuti Ward in Kanduyi Constituency has since been irregularly allocated to private individuals?

(ii) Is he further aware that some Government houses and various parcels of land in Bungoma Town have been converted to private use and are now owned or occupied by individuals?

(iii) What measures has the Ministry put in place to repossess all those irregularly allocated pieces of Government land and houses?

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Lands. The next Question should have been asked by the Member for Kesses, Hon. Swarup Mishra. It will be placed in the next available opportunity because he made a request which has been accepted.

Question No .310/2019

MEASURES TO REDUCE AGENCIES OPERATING AT PORTS

(Question deferred)

Let us go to the nominated Member, Hon. Gideon Keter.

*Question No.311/2019*MEASURES TO ENSURE LOCAL AGENTS ARE ENGAGED IN
PRE-EXPORT VERIFICATION OF CONFORMITY PROGRAMME

Hon. Gideon Keter (Nominated, JP): Hon Deputy Speaker, I wish to ask the Cabinet Secretary for Industry, Trade and Cooperatives:

(i) Is the Cabinet Secretary aware that the Pre-Export Verification of Conformity (PVOC) programme, a process of quality inspection of imports to ensure the safety and quality of goods imported into Kenya, is currently dominated by foreign inspection agents appointed by the Kenya Bureau of Standards to carry out these inspections?

(ii) Could he state why most of the approved inspection agents are based in countries that most goods imported into Kenya originate from?

(iii) What measures is the Ministry taking to ensure local agents are engaged in the PVOC programme and further build local capacity to undertake inspection?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Trade, Industry and Cooperatives. That is the last Question. Let us move to the next Order.

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDER 40(3)

Hon. Deputy Speaker: The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Procedural Motion:

THAT, this House orders that the business appearing as Order No.12 in the Order Paper be exempted from the provisions of Standing Order No.40(3) being a Wednesday morning, a day allocated for business not sponsored by the Majority or Minority Party, or business sponsored by a Committee.

Hon. Deputy Speaker, the House Business Committee (HBC) met last night. If the House agrees with us based on our calendar, we will go for a short recess for 10 days. We felt that Order No.12, which is a Special Motion on the mandate of the National Assembly within the bicameral setup of Parliament, is important. We must deal with it today in the morning, so that we can go home and ponder and allow the Senate to listen to our side of the story because they discussed a similar Motion. They gave their side of the story to the people of Kenya. So, we will have an opportunity this morning to give our side of the story based on facts and evidence. We felt that we exempt the morning sitting from the Private Members' business. It is a decision of the HBC. I ask Members to agree with us. I ask the Deputy Leader of the Minority Party who was in the HBC to second. Hon. Junet and many other Members were there.

Hon. Deputy Speaker: Second the Motion, please.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Deputy Speaker. The Leader of the Majority Party confused me because he mentioned the Deputy Leader of the Minority Party. I looked around and my friend and brother here was not in the HBC. I was there. So, I will second

the Motion. As the Leader of the Majority Party has mentioned, we are aware that we transact business that comes from Private Members or individual Members on Wednesday mornings.

We request the House to agree with us and consider the Motion that will be moved by the Leader of the Majority Party. Of course, it has my signature appended to it. We need to discuss the relationship between the two Houses of Parliament.

Hon. Deputy Speaker, the Senate has already spoken to the country and the world about what they consider as interference with their work, mandate, responsibilities and functions by the National Assembly. It is in order for this House to pronounce itself and give its side of the story as the Leader of the Majority Party has mentioned. So, I request the House to agree with us.

I beg to second.

(Question proposed)

(Question put and agreed to)

BILLS

Second Reading

THE LAW OF CONTRACT (AMENDMENT) BILL

(Hon. Aden Duale on 26.6.2019)

(Debate concluded on 26.6.2019)

Hon. Deputy Speaker: I confirm that we have the required numbers. So, I proceed to put the Question.

(Question put and agreed to)

(The Bill was read a Second time and committed to the Committee of the whole House tomorrow)

First Readings

THE KENYA UWEZO FUND BILL

THE EQUALISATION FUND BILL

(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)

Hon. Members, before we go to Order No.12, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

CONTENT OF MEMBERS' SPEECHES

Hon. Deputy Speaker: Hon. Members, before proceeding to consider business indicated as Order No.12 in today's Order Paper, I wish to draw to the attention of the House provisions of Standing Order No.87, content of speeches, specifically paragraphs 3, 4 and 5. Hon. Members, for avoidance of any doubt, paragraphs 3, 4 and 5 of the Standing Order No.87 provide as follows:

(3) It shall be out of order to use offensive or insulting language whether in respect of Members of the House or other persons.

(4) No Member shall impute improper motive to any other Member or to a Senator except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of the Member or Senator.

(5) It shall be out of order for a Member to criticise or call to question the proceedings in the Senate or the Speaker's Ruling in the Senate but any debate maybe allowed on structures and roles of Senate or Parliament.

Hon. Members, I, therefore, urge all of you to strictly abide by the provisions of the said Standing Order while debating this particular Motion. You must refrain from using un-parliamentary language and imputing improper motive to any Senator or Member of Parliament. I will not allow any Member to criticise or discuss any individual Senator. Members are allowed, however, to canvass on establishment, mandate of the Houses of Parliament, structure, role and functions of Parliament as set out in the Constitution or in any other legislation as set out in terms of the Motion before the House.

The House is, therefore, accordingly guided. Thank you.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, we are guided by your Communication, but your Communication contradicts the tenets of the Chamber of Parliament where Members enjoy free speech and conscience. We know our boundaries. But if we follow that Communication, then we will be going back to the dark days of KANU.

(Laughter)

Hon. Deputy Speaker, can you clarify that your Communication is not taking back the country to the days before the multiparty era? We have a free conscience. The only place a Member of Parliament can enjoy free conscience and discuss anything is in the Chamber. But

now, unless you withdraw this Motion, the way you have communicated it, Members are now scared. Hon. Junet has serious issues on leadership.

Hon. Deputy Speaker: Leader of the Majority Party, I have confirmed beyond doubt from the Minister for Energy that we will not have any darkness in the House. From the House leadership, it is confirmed that we have a back-up. So, we will not go back to any dark day. In terms of what I have just read, I have merely restated the Standing Orders.

Hon. Members, feel free to debate very robustly, indeed, but let us abide by the Standing Orders. Nobody will be gagged. I have said Members should debate as robustly as is possible. That is allowed. What is not going to be allowed is what the Standing Orders have guided us not to infringe upon. So, Hon. Members, you should not feel gagged at all. In fact, I assure you that you will be free as possible to discuss and canvass this Motion. That should not be a worry to any Member.

The Leader of the Majority Party, we will start with you to move the Motion as robustly as you can.

SPECIAL MOTION

THE MANDATE OF NATIONAL ASSEMBLY WITHIN THE BICAMERAL SETUP OF PARLIAMENT

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, you will allow me to move the Motion in an amended form:

“COGNISANT THAT, the matter of whether the question as to whether a Bill concerns counties could routinely arise has been addressed by the High Court of Kenya in the matter of *Nation Media Group Limited & 6 others versus Attorney General & 9 others (judicial Review, Miscellaneous Application No.30 of 2014)*, where the court held that the requirement contained in Article 110(3) of the Constitution comes into play when there is a question or doubt as to whether or not a Bill concerns counties”.

I want to add the following words after counties, “where the demarcation of funding between the national and county governments is clear”.

Hon. Deputy Speaker: For Members’ information, the Leader of the Majority Party has skipped reading the entire terms of the Motion because it is very long. So, Hon. Member, please, read through the Motion. It is in the Order Paper. He is proceeding to the resolutions.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Motion:

Aware that Article 93 of the Constitution of Kenya establishes two Houses of Parliament, each with a distinct mandate as outlined under Articles 95 and 96 of the Constitution, respectively;

Whereas Article 95 of the Constitution specifically mandates the National Assembly to-

(a) represent the people of the constituencies and special interests in the National Assembly;

(b) deliberate on and resolve issues of concern to the people;

(c) enact legislation in accordance with Part 4 of Chapter Eight of the Constitution;

(d) determine the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve of the Constitution, and appropriate funds for expenditure by the national government and other national State organs;

(e) exercise oversight over national revenue and its expenditure;

(f) review the conduct in office of the President, the Deputy President and other State officers and initiate the process of removing them from office; and,

(g) exercise oversight of State organs;

And whereas Article 109(2) of the Constitution provides that any Bill may originate in the National Assembly and Article 109(3) of the Constitution provides that a Bill not concerning county governments is considered only in the National Assembly, and passed in accordance with Article 122 of the Constitution and the Standing Orders of the National Assembly;

And whereas the National Assembly of the 12th Parliament has, pursuant to the powers conferred by the said Article 109(3) of the Constitution, passed several laws that do not concern county governments as contemplated by the Constitution;

And whereas Article 110(1) of the Constitution defines a Bill concerning county governments as:

(a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;

(b) a Bill relating to the election of members of a county assembly or a county executive; and

(c) a Bill referred to in Chapter Twelve affecting the finances of county governments;

And whereas Article 109(4) provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

And whereas Article 110(3) of the Constitution provides that before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

Cognisant that, the matter of whether the question as to whether a Bill concerns counties would routinely arise has been addressed by the High Court of Kenya in the matter of Nation Media Group Limited & 6 others v Attorney General & 9 others (Judicial Review Misc. Appl. No.30 of 2014), where the court held that the requirement contained in Article 110(3), comes into play when there is a question or doubt as to whether or not a Bill concerns counties. The absence of consultation and resolution between the two Speakers of the Houses on whether or not a Bill concerned counties is not in itself unconstitutional or a violation of the Standing Orders;

Cognisant that, the power of the Speakers of the Houses of Parliament under Article 110(3) is limited to resolution of a question as to whether a Bill concerns county governments or not;

Aware that in furtherance to Article 110(3) of the Constitution, the House, through Standing Order 121, has mandated the Speaker to determine, in the first instance whether a Bill concerns county governments as and whenever a question arises and to establish an appropriate framework for jointly resolving the question with the Speaker of the Senate;

Further aware that the Speaker has and continues to actively engage the Speaker of the Senate on the establishment of an appropriate framework for jointly resolving any question as to whether a Bill concerns county governments as and when the question arises;

Cognisant that in accordance with Article 109(5), a money Bill may be introduced only in the National Assembly in accordance with Article 114;

And further whereas Article 114(2) of the Constitution provides that if, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of a money Bill, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the National Assembly after taking into account the views of the Cabinet Secretary responsible for finance;

And further whereas Article 121 of the Constitution provides that the quorum of Parliament shall be fifty members, in the case of the National Assembly, or fifteen Members, in the case of the Senate;

And further whereas Article 122(1) of the Constitution provides that except as otherwise provided in the Constitution, any question proposed for decision in either House of Parliament is to be determined by a majority of the Members in that House, present and voting;

Concerned that contrary to the express requirements of Articles 121, 122 and 123 of the Constitution with regard to the quorum required for the convening of a session, voting on any question proposed for decision by a House of Parliament and decisions of the Senate, the Senate has and continues to convene part of its sessions and vote on matters not affecting counties without the requisite quorum and thresholds being met and thus prejudicing the legality of National Assembly business that is subject to the bicameral process, and, indeed, Senate decisions;

And whereas Article 108 of the Constitution establishes the offices of a Leader of the Majority Party and a Leader of the Minority Party, being the person who is the leader in the National Assembly of the largest party or coalition of parties and the person who is the leader in the National Assembly of the second largest party or coalition of parties;

And whereas the said Article 108(4) of the Constitution exclusively accords certain order of precedence to be observed in the National Assembly, being the Speaker of the National Assembly, the leader of the majority party and the leader of the minority party, hence the one in the Senate is unknown to the Constitution and any law;

Concerned that despite the provisions of Article 108 of the Constitution, the Senate has irregularly established and caused the Parliamentary Service Commission to facilitate and

continues to so irregularly facilitate the offices of the Leader of the Majority Party and the Leader of the Minority Party, offices that are unknown to the Constitution and any laws of Kenya;

And whereas Article 132 of the Constitution generally mandates the National Assembly to receive names of persons nominated for appointment to public office by the President, vet their suitability or otherwise and to approve or reject their appointment;

Concerned that despite the express provisions of the Constitution, the Senate continues to participate in the approval of the appointment of persons to State Offices, through a duplicate process, resulting in a procedure unknown to bicameral parliaments anywhere in the world, since in bicameralism vetting of persons for appointment to state and public offices is exclusively vested in one House;

Concerned that, despite the express provisions of Article 95(5)(b) of the Constitution, the Senate has established parallel Committees duplicating the mandate of the Committees in the National Assembly and County Assemblies and has, on diverse occasions, sought to exercise oversight of state organs in a manner that does not accord with the functions of county governments outlined under Part 2 of the Fourth Schedule to the Constitution;

Further concerned that in complete disregard of the provisions of Articles 109 and 114 of the Constitution mandating the origination of a money Bill only in the National Assembly, the Senate has on various occasions introduced and considered Bills with a money bill effect;

Cognisant that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution;

Further cognisant that Article 110(3) of the Constitution requires the Speakers of the Houses of Parliament to resolve any question as to whether a Bill is a Bill concerning county governments as and when such a question arises;

Further cognisant that Article 229(6) of the Constitution requires the use of public funds in a lawful and effective manner;

Further aware that the continued engagement of the Senate in matters outside its express mandate, its irregular duplication of the mandate of the National Assembly and County Assemblies and its establishment and facilitation of irregular and unconstitutional offices constitutes imprudent use of public funds;

Recognising that, the Speaker of the National Assembly has always implemented the provisions of Article 110(3) and Standing Order 121 with regard to resolving a question as to whether a Bill concerns county governments or not;

Now therefore this House:

1. Reiterates and reaffirms its commitment to respect, uphold and defend the Constitution in terms of Article 3 of the Constitution;
2. Further reiterates and reaffirms the exclusive role of the Speaker of the National Assembly and the relevant Committee of the House in the consideration of any motion

that makes provision for a matter listed in the definition of a money Bill under Article 114 of the Constitution;

3. Further reiterates And reaffirms its oversight role over national revenue and its expenditure, including the lawful and effective use of public funds by all state organs;
4. Urges the Speaker to continue engaging the Speaker of the Senate on establishing an appropriate framework for jointly resolving any question as to whether a Bill concerns county governments as and when such a question arises;
5. Reaffirms that, pursuant to the provisions of Article 95(4) and (5) of the Constitution, the mandate of oversight of State Organs exclusively vests in the National Assembly and the duplication of this role is unconstitutional;
6. Resolves:
 - a. That, the House continues upholding the provisions of Article 109(3) in the passage of Bills that do not concern county government;
 - b. That, the House continues upholding the provisions of Articles 109(5) & 114 of the Constitution and Standing Order 143 in considering Bills originating from the Senate;
 - c. That, in the first instance, the Houses of Parliament always explore alternative mechanisms of resolving any dispute that may arise between the Houses from time to time as is the practice in comparative jurisdictions;
 - d. That, in the event of failure of the alternative dispute resolution mechanisms, the National Assembly institutes legal proceedings to seek interpretation of the Constitution with respect to the foregoing concerns and also with respect to the scope of its mandate vis-à-vis that of the Senate including-
 - (i) whether it is lawful for the Senate to continue duplicating in entirety the National Assembly's legislative, representative and oversight mandates and its' organisational and institutional structures with the resultant pressure on public resources; and
 - (ii) the enforcement of Articles 108 (Party Leaders), 121(Quorum) and 122 (Voting in Parliament) of the Constitution with regard to the operation of the Senate.
 - e. That, in the meantime, the House Business Committee, upon this Resolution, inquires into the foregoing concerns and presents a report to this House as soon as is practicable.

Hon. Deputy Speaker, allow me to state that before we got here, we restrained ourselves from acting and gave time to our colleagues in the Senate since the Senate is still a baby learning how to walk, how to appreciate, how to understand and familiarise itself with its new functions.

We have now said we cannot wait anymore for the baby to walk. This baby must stand. We must teach the baby how to walk and how to eat solid food. The baby cannot drink milk forever. We must teach the baby where to walk and its boundaries. If we do not do this, I am afraid the traction for abolishment of the Senate will gather momentum and soon we will have no baby to talk about.

History repeats itself. In 1963, the Senate was once a House in the history of this country. Our Senate needs to sober up. Kenyans are getting tired of using their taxes to finance the operations of a moribund House. The last straw came especially with myself and the Leader of the Minority Party when we had been appointed by this House to represent the National Assembly in five mediation committees. What we saw was horror. What we experienced, if replayed, will cause anger. Worse still, if what we experienced was to be played on national television, Kenyans would weep. It is a House that has no interest for Kenyans in its heart. It is a House that flourishes in flouting the Constitution. It is a House that thrives when there is an impasse like mediation. I dare say it is a House that smiles when Bills fail. If you think it is a joke, why would a Bill like the Roads Bill, a critical Bill for defining standards for both the national trunk and county roads, fail? That is the question we must ask ourselves. Why should a Bill like the Division of Revenue that is important to the county governments fail?

It is very unfortunate that this House has sat and watched helplessly as the Senate wallows into oblivion of un-constitutionalism. Why do I say so? How can the Senate purport to represent counties and protect devolution when it focuses on passing legislation that seeks to promote the interest of county governments? How can the Senate purport to say that? That it seeks, affirms, protects and defends the Constitution when it is constantly offending the provisions of Articles 96, 109 and 110 of the Constitution. Article 96 is very clear. We want to tell the Senate and the people of Kenya that we have no mischievous tendencies. I am sure lawyers and experts including the Committee of Experts must be watching this deliberation.

Article 96 says that the Senate represents counties and serves to protect the interests of the counties and their governments. It is clear. It is in black and white both in spirit and the letter of the Constitution. Article 109 says, for record purposes, that Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President. Article 109(2) says that any Bill may originate in the National Assembly. This House has a blanket cheque. Any Bill under the sun can originate in the National Assembly.

Article 109(3) says that a Bill not concerning county government is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly. Any Bill that does not concern county governments can only be discussed in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the National Assembly.

Article 109(4) says that a Bill concerning county governments may originate in the National Assembly. We have powers to originate Bills that concern county governments. A Member of this House can bring a Bill concerning Early Childhood Development (ECD). The Chairman of the Kenya Union of Post Primary Education Teachers (KUPPET) and the Secretary General of the Kenya National Union of Teachers (KNUT) have an opportunity to bring a Bill to discuss ECD. Senators have no powers to bring a Bill on the other sections of the education sector, namely, primary, secondary and tertiary institutions. It further says that a Bill may be introduced by any Member or committee of the relevant House of Parliament, but a money Bill may only be introduced in the National Assembly in accordance with Article 114. If they have a money Bill where the Cabinet Secretary for the National Treasury must have an input, then, that

Bill, before publication or before the House decides, must be sent to the relevant committee, which is the Budget and Appropriations Committee.

Finally, is Article 110, which is very critical. It says that a Bill concerning county governments means all that. So, they are violating Articles 96, 109 and 110 of the Constitution on the legislative process through origination of money Bills. I have records, which I can table if the House allows me.

Secondly, how can the Senate purport to protect counties through ensuring adequate funding when they are at same time rejecting the procedure of checking public expenditure through Article 114 of the Constitution, the Public Finance Management Act and the Standing Order No.143 on how money Bills are supposed to be processed? How can the Senate, in full hypocrisy, have Standing Orders implementing Article 114 yet they challenge Article 114 without implementing its own rules? They have amended their Standing Orders, so that they can deal with money Bills yet Articles 114, 110 and 109 of the Constitution are very clear on where money Bills must originate and which House has the jurisdiction. So, this one is not only shameful, but we can also call it a thing out of the insincerity with which the Senate treats us.

How can the Senate say that the procedure of considering Senate Bills as contemplated in Standing Order 143 are meant to kill yet our Budget and Appropriations Committee has approved over 10 Bills from the Senate which had no money Bill effect? Seven of them have been passed by this House and assented to by the President.

What am I about to say? It is even more shameful: How can the Senate, as an alleged defender of the Constitution, allow just two Senators to start House proceedings without observing the quorum rule? If you look at the Senate this afternoon, when the Speaker walks in at 2.30 p.m., you will see two, three or four Senators seated in the Chamber yet the Constitution says that the quorum of the Senate is 15 Members. That means all the laws they have passed are illegal. If you do not have a quorum, you cannot start the business of the House. I am sure the HANSARD will show that there are two Senators and the Speaker started their business. It is never seen in any other jurisdiction.

I do not know where the other 65 Senators are. You will be shocked that there are usually 64 Senators when the Senate is deliberating on the interests of counties. That is why Bills get stuck there for over two years. The quorum issue is a matter of great concern. We had to postpone several mediation committee meetings because of Senators. We used to postpone meetings because we could not raise quorum. I hope Hon. T.J. is here to confirm.

I am even told every Senator...

(Hon. (Ms.) Gladys Wanga searched her purse)

Hon. Deputy Speaker: Order, Hon. Wanga. What are you doing behind there? You know that this House is for specific purposes; not the one I have just seen you do.

Proceed, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I am even told every Senator is a chair or vice-chair of a committee. They have over 20 committees. You can imagine 67 Senators, each one of them is a chair or vice-chair. We need to ask ourselves what the relevance of the Committee on Defence and Foreign Relations in the Senate is. What is the relevance of the Committee on National Security? Tell me the aspect of national security that has been devolved to counties. Tell me why the Cabinet Secretary for Foreign Affairs appears before the Senate. Why should the Cabinet Secretary for Interior and Coordination of National

Government appear before the Senate? I thank Hon. Matiang'i who sent an advisory seeking opinion from the Attorney General but he has not replied until today. Why should the Cabinet Secretary for Energy and Petroleum go to the Senate to discuss the Kenya Pipeline Company (KPC)? If you read the Fourth Schedule of the Constitution, you will see that KPC is under the national Government. So, why should the Chair of the Committee on Energy invite Hon. Munyes? I think this House's Departmental Committee on Energy must call the Cabinet Secretary for the Ministry of Energy and Petroleum and ask him under what constitutional jurisdiction he appeared before the Senate. If he does not have a good answer, that is a process for impeachment. When Prof. Magoha goes to the Senate, he can only answer Questions concerning ECD education. He should be very clear. If they call him for any other thing, we are telling him he must defy. We must tell these State and public officers that the Senate has no powers to impeach them. The Senate has no powers to remove them from office. Even if they indict or threaten them, the only House that has the powers, under the Constitution, to vet and remove State officers from office is the National Assembly. So, even if you are threatened as a Cabinet Secretary, they cannot remove you. Even if you want to remove the President or the Deputy President, the process must be initiated from this House. We must call a spade a spade. The framers of the Constitution had intention when they did that. Can you imagine how much allowances Kenyans pay to have every Senator as a chair or a vice-chair of a committee? I leave this to the Parliamentary Budget Office. The reality of the cost could bring tears to the eyes of every Kenyan.

Finally, it is time we also set the record straight on the role of the Senate in terms of vetting State officers. The Constitution, in Article 132(2), says: "The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss..." So, the power to appoint or nominate lies with the President. The power to appoint and vet, as provided by Article 132(2), lies with the National Assembly. The Director-General of the National Intelligence Service (NIS) and Principal Secretaries are constitutional office holders. So, I wonder. It is very clear and within the exclusive jurisdiction of this House. How did the Senate get to vet the Inspector-General of Police (IG)? The only reason was that there was a place written "Parliament". They want to read the Constitution in a very selective way that, anywhere written "Parliament" means both Houses. We have no problem. When we were doing the mediation on the Report of the Land Index Bill and the Irrigation Bill, they changed anywhere written "Parliament" and they said we must write "National Assembly" and "Senate". You vet the IG yet you have no powers to appropriate his money. You have no powers to oversee his functions and you have no powers to remove him from office.

So, there is confusion. This baby has crawled for too long. We cannot feed this baby with milk forever. This baby must be told how to eat solid food, how to swallow, how to walk and walk within its boundaries. The baby cannot walk in the precincts of Parliament the way it wants. This baby must be secluded to its jurisdiction. If they have not gone to school, we need to take this baby to a school, not a baby class. You can take him even to university.

I would go on and on. These are some of the issues this House must be guided about. The Constitution is very clear on our different roles and how the Senate has blindly followed on their mandate in terms of the Constitution. This must stop. I am saying this because you are aware that this Motion has nothing to do with this House. We are seeking to protect the gains that this House has achieved on behalf of the people of Kenya.

The Senate says that we passed 17 Bills unconstitutionally. If the Senate makes good its threat and goes to court to challenge the laws that we have passed in this House, according to the

Constitution, I want Kenyans to know that it would have stood against their interests as envisaged in our various laws. Kenyans should know that the Senate will have sought to destroy that which Kenyans regard as being for the economic development of the country. For this reason, allow me to say that if only the Senate can stick to its mandate according to Article 96 of the Constitution, it can be of great help to our counties. They have so much in their plate that they do not need to move around and become “squatters” on legislative functions of the National Assembly.

Therefore, we need to explore alternative dispute resolution mechanisms between the two Houses. If that fails, we will have no option, but to go to court. At the end of this Special Motion, the House Business Committee has been asked to turn itself into a committee under the Speaker, interrogate this matter and bring a report to the House.

I see the Director of Public Prosecution (DPP), the Director of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) appearing before the Senate committees every day. The only committee since I joined Parliament in the 10th Parliament that deals with those institutions is the Departmental Committee on Justice and Legal Affairs. It vets them, appropriates their money and they report to it quarterly. The Chief Executive Officer of the EACC is approved by this House. This House gave the DCI Kshs7.9 billion. There is a lot of time wastage by public servants. A number of times, the President and the national Government have complained that its Cabinet Secretaries and State officers are within the precincts of Parliament a lot of time. If we observe our respective jurisdictions, then those who are supposed to be overseen by the National Assembly will appear before the National Assembly and they will leave the Senate to deal with governors and CECs for Finance and Environment. That way, the Government will not spend more time in Parliament. I am sure the Members will talk about this. The Constitution says that the Senate participates in law making and the National Assembly enacts legislation. There is a difference between participating and enacting. So, enacting is ours and participation is theirs. Participation can even be public participation.

The other thing that is expensive is that when a Bill originates from this House, it goes through public participation. When passed, it goes to the Senate. The Senate conducts a fresh public participation yet we have the HANSARD. The people we are seeking to participate are the same people of Kenya. So, you will find different public participation reports from the Senate and the National Assembly. We are confusing the people of Kenya. That is why we felt that, that committee will call respective Cabinet Secretaries. Today, I want to send a warning to Cabinet Secretaries that they have no business appearing before the Senate. If they appear before the Senate, the relevant committee of this House will summon them and they will have to tell us under which provision of the law they appeared before the Senate. If they will have no serious answers, we will impeach them. One of the reasons that a State officer can be impeached is due to violation of the Constitution. So, Cabinet Secretaries, Monica Juma, Fred Matiang’i and Rachel Omamo, when they enter the precincts of Parliament, their domain is the National Assembly and its committees. They have no county functions. Prof. Magoha should appear before the Senate on only ECD matters. If they ask him any other question outside that, he should tell them that is not their jurisdiction. They have no constitutional backing to ask him those questions. There was a time I saw a Senate Bill on Potato Farming that was sponsored by the former Senator of Nyandarua County. That Bill should have been in the County Assembly of Nyandarua.

(Laughter)

If you want to regulate camel meat, you do it in the county assemblies of Garissa, Wajir and Samburu. You do not bring it to the Senate. You will find issues that should be dealt with by the county assemblies being brought to the Senate and then to this House.

Finally, the Division of Revenue Bill - my colleagues who are experts on budgeting will talk about it - is an exclusive Bill of this House. The Supreme Court erred in its opinion on the Division of Revenue Bill. It was populist. If you read the dissenting opinion of Judge Njoki Ndungu, it was the right position. The rest were populist. Going forward, the Division of Revenue Bill must be dealt with. It is the reason today we are in a quagmire. The Budget is a domain of the National Assembly. The Minister for the National Treasury, Hon. Rotich, can only appear in the Senate when he is dealing with the county revenue allocation and presenting them with the Budget Policy Statement (BPS).

I beg to move and ask Hon. Mbadi, the Leader of the Minority Party, to second. I lived by your guidance, Hon. Deputy Speaker.

Hon. Deputy Speaker: Indeed, you did. You have been robust in transacting this business and you did not invade anybody's Standing Orders. Proceed, Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Deputy Speaker. In the year 2010, Kenya, as a nation, decided to give itself a bicameral Parliament. The Parliament of Kenya is established under Article 93 of the Constitution. We only have one Parliament in Kenya. Article 93 of the Constitution says that there is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate. The Parliament of Kenya is one, but it has two Houses. It is a bicameral system of government. The same Constitution has decided to give the two Houses distinct roles that are specific and clear. It was not the desire of the people of Kenya to have the two Houses duplicating their roles. That is why Article 93(2) says the National Assembly and the Senate shall perform their respective functions in accordance with this Constitution. Meaning that the two Houses have been given distinct functions to perform and deliver.

There is history of having the Senate in this country. We are aware that immediately after Independence, Kenya gave itself a bicameral system of government. The Senate then had a role of protecting the interests of the seven regions and the minority communities which feared that they will be dominated by the majority communities. By then, there were two dominant majority communities - the Gikuyu and Luo communities. The role of the Senate then was to protect the interests of other communities which were considered as minority communities. The other role was to protect the seven regions and their interests. However, because the Senate veered from their responsibility, it got attacked by the Kenya African National Union (KANU) regime and the Kenya African Democratic Union (KADU) failed to protect it. It became weak and Kenya became a one House Parliament with a unicameral system of government.

In the year 2010, the people of Kenya decided to have again two Houses of Parliament, namely, the Senate and the National Assembly. In fact, if you want to understand the relationship between these two Houses, you need to first, look at the Committee of Experts Report and two, the HANSARD Report of the Committee that met in Naivasha to discuss and deliberate the relationship between the two Houses. There was a proposal by Members of the Parliamentary Committee that sat in Naivasha... There are a number of Members of Parliament sitting in this House who were in that Committee - I know of Hon. Millie Odhiambo, Hon. Kioni, Hon. Chachu Ganya and Hon. Sophia - and they recommended that we should have the Senate, clearly defined as a lower house of Parliament because of its limited and specific functions.

That came from that Committee, in their minutes. The reason they proposed that the Senate should be a lower House is because it has limited and specific functions. Those are two parameters: limited and specific. Therefore, how come that was left out? It was left out because the Committee of Experts, which was chaired by Kitonga, gave advice that modern principles of constitution-making do not support the creation of a hierarchy between the two Houses of Parliament. They were very clear that modern systems do not allow or promote that one House should be upper and another one lower. I am saying this because our brothers in the Senate have ego problems; they always want to call themselves the upper House. That is not in line with the modern systems of democracy and of relationships between bicameral systems, as was advised. Otherwise, the Senate would be referred to as the lower House in the Constitution.

The people of Kenya decided, in their own wisdom, to clearly define the functions of the two Houses of Parliament. That is found under Articles 95 and 96 of the Constitution. What is the responsibility and function of a Parliament? Anywhere in the world, parliaments have three functions; representation, oversight and legislation. The people of Kenya decided to distinguish the functions of the two Houses in line with the three functions. If you go to representation, what did the people of Kenya give the National Assembly as their representation role? The people of Kenya said that the National Assembly represents the people of the constituencies and special interests in the National Assembly; that the National Assembly deliberates on and resolves issues of concern to the people. What of the Senate? What did the people of Kenya, through this Constitution, give to the Senate? It says the Senate represents the counties and serves to protect the interest of the counties and their governments. That is very clear. That is the representation role that the people of Kenya decided to allocate each House of Parliament.

The other function that has been allocated to the two Houses by the people of Kenya is that of oversight. What is the oversight role that is given to the National Assembly? This is the role: The National Assembly determines the allocation of national revenue between the levels of government as provided in Part 4 of Chapter 12. The role of the National Assembly is to divide revenue between levels of government. That is vertical division of revenue between the national and the county governments. That is the role that is given to the National Assembly. It goes ahead to say that the National Assembly shall appropriate funds for expenditure by the national Government and other national State organs. So, any expenditure, any money that will be spent by the national Government or any national State organ is appropriated by the National Assembly and exclusively so. Paragraph (c) says the National Assembly exercises oversight over national revenue and its expenditure. The final job of the National Assembly in terms of oversight is to review the conduct in office of the President. The House that reviews the conduct in office of Uhuru Muigai Kenyatta is the National Assembly. For the Deputy President, William Ruto, it is the National Assembly. And any other State officers. The National Assembly initiates the process of removing them from office. So, the House that reviews the conduct of any State officer who is in office and initiates the process of removing them, in fact, including senators because they are defined as State officers, is the National Assembly.

(Laughter)

What is the role of the Senate? The House should listen to this! Senate determines the allocation of national revenue among counties. Whereas the National Assembly has a responsibility of dividing revenue between the two levels of government, the Senate, under Article 96, determines the allocation of national revenue among the counties, which is horizontal

allocation of revenue, as provided in Article 217 which talks about the formula of allocating resources to various counties. It is the work of the Senate to determine how much Kirinyaga, Lamu or Homa Bay counties should get. It also exercises oversight over national revenue allocated to the county governments. They only exercise oversight over national revenue that we allocate to counties, not even locally-generated revenue by the counties. By the way, the High Court has already pronounced itself that Senate cannot oversee locally-generated revenues by counties. That is the exclusive mandate of the county assemblies. I want to wind up the oversight role of the Senate by reading Article 96(4):

“The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145”.

They cannot initiate the process of removing the President or Deputy President. They only review and consider a resolution that has been passed by the National Assembly. That is the work of the Senate and the National Assembly as far as oversight is concerned.

Finally, in terms of the responsibility of the two Houses, what is the legislative role? How is it defined and allocated to the two Houses? Under Article 95, the National Assembly enacts legislation in accordance with Part 4 of this Chapter. It enacts legislation. I want to repeat that the National Assembly enacts legislation in accordance with Part 4 of this Chapter, but the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties. That is where you end. They only participate in Bills concerning counties. That to me is so clear. The question which the Senate has been asking and which they want to take to court is that they do not understand what it means by “Bills concerning counties”. The question is this: Is it true that it is not clear what “Bills concerning counties” are? The answer is no. “Bills concerning counties” are clearly defined in the Constitution. By the way, under Article 110, it is not just Bills concerning counties. It says Bills concerning county governments. These are the Bills that concern county government that the Senate needs to participate in legislating.

In this Constitution, a Bill concerning county governments means a Bill containing provisions affecting the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution. You just need to go to the Fourth Schedule and understand what the roles are and where the Senate should participate. Some of them are under agriculture, that is, crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control and fisheries.

When you go to health, there are many of them such as: County health facilities, ambulances, veterinary services, cemeteries... If you do not have a cemetery in your place, it is for the Senate to answer. They need to find out why there is no cemetery. Others are funeral parlours and crematorium. There is now an improved desire for these. We saw the body of Brother Bob Collymore - and may God rest his soul in peace - cremated yesterday. So, we need many of these because the demand is increasing. That is the work of the Senate. Others are: Refuse removal, refuse dams and solid waste disposal. Actually, there is a committee in the Senate in charge of refuse removal, garbage and solid waste disposal.

(Laughter)

Hon. Deputy Speaker, I cannot mention all of them. We have museums, libraries, animal control and welfare - including licensing of dogs - and facilities for accommodation, care and burial of animals. These are distinct limited functions that are given to the Senate.

So, the Constitution has clearly defined the issues that concern counties, functions and powers of county governments that Senate can legislate on. There is also a Bill relating to the election of Members of a County Assembly (MCAs) or a County Executive. That is a Bill concerning counties.

Finally, there is a Bill referred to in Chapter 12 that is affecting the finances of county governments. This is where there has been a problem. In Chapter 12, there are two Bills that deal with finances: The Division of Revenue Bill and the County Allocation of Revenue Bill but, in the Constitution, it says a Bill. If the Constitution expected that both Bills could be dealt with by the Senate, it would have said so; that it is Bills contained in Chapter 12.

That is why I have consistently said from 2013 that it is a mistake to have the Division of Revenue Bill transacted in two Houses. When you look at the County Allocation of Revenue Bill, it is very clear that it can only override the Senate by a super majority. How can you just leave an important Bill such as the Division of Revenue Bill for the mediation of two Houses? That was a mistake and I continue to believe so.

Hon. Deputy Speaker, I hope you will add me some more five minutes. What the Senate has been questioning is whether Hon. Speaker has been right in having some Bills transacted only in the National Assembly. If a question does not arise as to whether a Bill concerns counties the people of Kenya did not expect that every time Members generate Bills, the two Speakers have to sit. That would be wastage of time and the High Court in 2014 made that determination.

Hon. Deputy Speaker, just allow me say the last bit about money Bills because that is my area. If you would add me two more minutes, I would deal with it.

Article 109 says all Bills can be generated from the National Assembly, but no money Bill shall be generated from the Senate. The Senate has been asking this and they want to go to court: What is a money Bill? Surely, you do not need to be an economist, a finance expert or a lawyer to understand this. You just need to be literate and sober in your mind to understand that this is what the law and the Constitution says about money Bills. Article 114 (3) (a) to (e) states thus:

(3) In this Constitution, “a money Bill” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or,
- (e) matters incidental to any of those matters.”

Hon. Deputy Speaker, why do you have to go to court? Why do you want to spend the court’s time to define for you what is clearly defined in the Constitution? You just need to ask my girl who is in Standard Three to read for you what is written under Article 114, so that you can understand and come to the House to deal with it.

I wind up by concluding that we are where we are because we have a Senate that wants to expand its territory beyond what is in the Constitution. In fact, Senators are now behaving like

bandits. They are bandits attacking the responsibility and functions of the National Assembly. We should call them legislative bandits for what they are.

Hon. Deputy Speaker, I second.

Hon. Deputy Speaker: Hon. Members, before I propose the Question, let me recognise in both the Speaker's and Public galleries, many schools that have come here to observe the roles of Parliament and probably the Senate. These are Ngaru Primary School from Kirinyaga Central, Kirinyaga County; Kaharo Girls Secondary School from Maragwa in Murang'a County; Ngaru Girls Secondary School from Kirinyaga Central, Kirinyaga County and Karangi Primary School from Gatanga, Murang'a County. All of them are in the Speaker's Gallery.

In the Public Gallery, we have Thika Road Academy from Ruiru Constituency, Kiambu County and Shammah Springs Academy from Embakasi South, Nairobi County.

Hon. Members I am going to only read the resolutions in terms of proposals because you must note that it is in an amended form.

(Question, that the words to be added be added, proposed)

Hon. Daniel Maanzo (Makueni, WDM-K): On a point of order.

Hon. Deputy Speaker: What is your point of order, Hon. Maanzo?

(Hon. Aden Duale spoke off the record)

Hon. Deputy Speaker: Let us hear Hon. Maanzo please.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Deputy Speaker. As you can see, the House is full. I am moving that each Member speaks for five minutes instead of 10 minutes. Let us reduce it.

Hon. Deputy Speaker: Hon. Members, it is up to you to make the decision. So, I will put the Question. Hon. Maanzo is requesting the House to resolve to reduce the time of contribution from 10 to five minutes. He rightly says that we have many Members requesting to make contributions - that is 29 Members. That is the option that we have. You will make a resolution or, in the alternative, you will agree as Members that, even if you were to go the 10 minutes way, you should be speaking for less. So, I will put the Question. That is my business and I have no control.

(Question, that debating time be reduced to five minutes, put and negatived)

The "Noes" have it. But even if they have it, it was very close Members. It, therefore, means that 50 per cent of Members want to speak for five minutes and another 50 per cent want to speak for 10 minutes. So, this is my request to Members: Speak for as few minutes as possible so that other Members can have an opportunity. We will start with Hon. Junet Mohammed.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Deputy Speaker. I will try my best to be as brief as possible so that other Members can get a chance to speak. I rise to support the Motion with a heavy heart. This is because it appears to me that the Second Senate of the Republic has learnt nothing from the first one. In 1966 just three years after Independence, Kenyans decided to do away with the Senate that existed then. It was one of the issues Kenyans

identified at that point in time. They could not live with the Senate, including illiteracy, ignorance, poverty and disease. At that time, the Senate was put in this category. Kenyans said they could not live with it and it had to go.

Bicameral Parliament failed at that time and now it has failed a second time for the last three years. People might say this Motion is out of sibling rivalry or one House trying to push the other. It is not so! It is the supremacy of the Constitution. We are not siblings because we are older than them due to the powers and functions we have been given by the Constitution. The other day, I attended a Mediation Committee meeting and heard a Senator saying this is the national Senate. The Constitution states the “Senate” and not “National Senate”.

Since the inception of the Senate, it summons everyone and everybody without authority and that amounts to impunity. You cannot remodel the Constitution in accordance with your comfort. That, if you want to do something, you manipulate the Constitution and summon anybody as you wish. They say they are summoning everyone because of the word “Parliament”, but the Constitution says “with authority”. You must have the authority conferred to you by the Constitution to summon anyone you feel like. But these are just my opening remarks.

The issue I want to bring to the attention of the House is that the Constitution only recognises one leader of the majority party and one leader of the minority party. Article 108(1) expressly states and I quote:

“(1) There shall be a leader of the majority party and a leader of the minority party.”

The use of the singular reference cannot be interpreted in any way or stretched to accommodate any creative legislative imagination. The Constitution says there is only one leader of the majority party and one leader of the minority party.

There are those who are masquerading in the corridors of Parliament claiming to be Leader of the Majority Party and Leader of the Minority Party in the Senate. Their mandate is based on what? The Constitution says we only have one leader of the majority party and one leader of the minority party. This, according to my understanding means that under Parliament, we must have leadership and anybody who is a leader in the Senate must report to the leaders of the National Assembly. The Leader of the Majority Party in the Senate must report to the Leader of the Majority Party in the National Assembly and the Leader of the Minority Party in the Senate must report to the Leader of the Minority Party in the National Assembly. That is what the Constitution states.

Article 108(2) and (3) goes ahead to specifically designate the people to be leaders in the National Assembly from the largest party and the second largest party or coalition of parties. The Standing Orders are derived from the Constitution and they give privileges to these leaders. There is leadership in the other House that is enjoying some privileges which are not enshrined in any law. The Auditor-General must examine and tell us where that vote-head is coming from. That is because you must account for every coin of Kenyans. You cannot just assign yourselves and enjoy privileges that are not based on any law. This has gone on for the last eight years. Then, you are claiming here that money should be increased to the counties in the Division of Revenue Bill, when you are enjoying privileges which are not yours. When creating committees to oversee, they must be in accordance and relevant to the functions you have been given.

We have a Standing Committee on Defence and Foreign Relations in the Senate and a Departmental Committee on Defence and Foreign Relations in the National Assembly. I thought in the bare minimum, they must have committees which are in accordance to the functions and the Fourth Schedule. For example, if the Senate’s function is animal husbandry which is in the

Constitution – and I am not making it up - they should have a standing committee on refuse collection and animal husbandry. Why are they shying away and those are very important functions that this country requires? Our country is full of solid waste and you are feeling shy to form a committee on refuse collection and animal husbandry or a committee on cemeteries and crematoriums.

Why feel shy if those are the services that Kenyans need? I wish I was serving in the Senate! I would have been the chairman of refuse collection and garbage disposal committee. Honestly speaking, so as to clean up the City. Look at the kind of suffering that we go through because of lack of garbage collection. Then somebody is feeling shy to be the chair of the garbage collection committee in the Senate.

I want to tell the Senate that this cannot be allowed to go on. The Senate is claiming that they can summon anybody as per the Constitution. As the other Members have said, what business do they have with functions which are not devolved? This matter must be put to rest because if we continue like this...

Actually, one of the reasons why I support a constitutional amendment in this country is the Senate. My view is that the Senate should be scrapped and nobody should bother or harass me. If you look at other devolved democracies and jurisdictions, the Senate is a club of membership of eminent persons who only sit quarterly – that is three times a year - and come up with a resolution that helps govern the country. They are like advisors to the President. Not this Senate which is running around everywhere claiming to be involved in everything.

The other day, they were investigating why Kenya Airways (KQ) is collapsing. What county money is in KQ? They do not even have airstrips where KQ planes can land. They are investigating an airline which does not even fly to their county. In the Migori Airstrip, only a small aircraft can land. Then, the Senator is seated here saying: “We are investigating KQ”. This is a shame. It is not that we are trying to demean them. Some of us might become senators and we must stick to our roles as enshrined in the Constitution.

My last point is that the Senators have said that they are going to court and take all the Bills which were passed in this House. Which Bills? People participate in law-making and Bills are enacted properly through this House. My parting shot is that if the Parliamentary Service Commission (PSC) does not stop paying emoluments, allowances to those masqueraders who are calling themselves leaders, I will go to court to stop this. If you are masquerading and earning allowances for no work and positions that do not exist in the Constitution...

Hon. Deputy Speaker: I do not want to increase your time because Members want to speak. You have 30 seconds

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, the other day when houses were being demolished in Ngong by Kenya Railways, can you imagine a Chairman of a Senate Committee and his members went there with two choppers? Three Senators used two choppers – one for the Chairman and the other one for the members – to go and look at how houses were being demolished. Can you imagine?

The other day, the Kenya National Highways Authority (KeNHA) was constructing a road in Turkana. Can you imagine a Committee of the Senate was there overseeing a function of the national Government? This wastage must stop, for Heaven’s sake! If they want to increase more money to the counties, they must stop this wastage. Lastly, the Senate must be abolished.

Thank you so much.

Hon. Deputy Speaker: Hon. Amos Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Deputy Speaker. I rise to support the Motion.

Obviously, I am very concerned that Kenyans, in their wisdom, created these two Houses with the hope that they would complement each other in law-making and add value to parliamentary process. Unfortunately, perhaps, the intentions of some of the people who wanted the Senate to be created are emerging. When we were at the Bomas of Kenya and people started debating how many houses we needed, there was a whole group of people who said: “Can we create a *nyumba ya wazee* – a retirement house where people who finish their work in the National Assembly can go and rest as they transcend back into public life?” Others wanted a superior house that would oversee the National Assembly.

However, the people of Kenya, in their wisdom, decided to remove all those things and give some limited responsibilities to the Senate. There is no difference between the functions being carried out by the Senate and those that are being carried out by the Association of Local Government Authorities of Kenya (ALGAK), which was basically to oversee and protect the local governments. Part of their responsibility of oversight has been taken over by the Council of Governors, which also now protects the county governments through the framework of the Council of Governors.

[Hon. Deputy Speaker (Hon. Moses Cheboi) left the Chair]

[The Temporary Deputy Speaker (Hon. Patrick Mariru) took the Chair]

Hon. Temporary Deputy Speaker, because of the limited roles that the Senate has been given, it falls into the adage that an idle mind becomes the devil’s workshop. They have started creating mischief because they have nothing else to do. They are challenging the Appropriations Act that is basically saying how money in this country will be shared out and used. The Senate has threatened to go to court to challenge the constitutionality of several laws, including the Appropriations Act. Members, you need to ask yourselves what would happen if that challenge was to go through. You will all be out of here. There will be no money to pay you. There will be no money to pay the doctors. The Government will have to shut down. Even the Senate itself will not be flying those choppers because there will be no money to finance the activities. The whole country will be brought to a standstill. Are those the people upon whom you have bestowed the responsibility of protecting counties and doing what they are supposed to do or basically they are trying to bring this country into a standstill?

As I said, this is all mischief. I do not want to belabour the points made by other speakers. Hon. Junet has said very clearly that we envisaged a Senate that would be sitting quarterly to deliberate on a few things. Article 217 of the Constitution says that once every five years they will determine the formula. It is a function they do once every five years. That is the main responsibility of the Senate. Within Article 96 of the Constitution it is to determine the allocation of money across the counties, which they are supposed to do once every five years. We did it for them in this House in 2012. They did it again and now they are supposed to be doing it the third time. After that, they have nothing else to do because once the formula has been determined; the rest is the horizontal allocation in accordance with that formula. It is an arithmetical exercise. It does not require the Senate to sit down, determine and bring it here. Anyone at the National Treasury or the Commission on Revenue Allocation (CRA) can do it. Apart from the function that they are supposed to perform after every five years, what else does

this Senate do? The Senate is supposed to protect the counties. However, even as we created the Senate, we also created the county assemblies – to which governors account to and who approve the budgets of the counties. It is never the Senate! It is the county assemblies. So, I do not even know where they got the power to summon governors to account to them. If you are not responsible for approving the budget for somebody, how are you then going to tell them to render an account to yourself? They are extending their mandates because, obviously, they do not have enough work.

Let me also add my voice on Article 96 of the Constitution. Our roles are very clear. Article 95(4)(a) of the Constitution basically says that the vertical division of revenue will be done by the National Assembly. It is very clear. It does not say ‘by Parliament’ but ‘by the National Assembly’. The horizontal allocation, which is done once in five years by determining that formula, will be determined by the Senate for approval by the National Assembly. They actually do not even approve that formula. They determine it and then bring it here for us to approve it. They now say that they have a role to play in the Division of Revenue Bill because it has not been done the way they want. They would want more than the 35 per cent that has been allocated to the counties and yet, the Constitution clearly states that revenue going to the counties shall be a minimum of 15 per cent. Currently, we are talking of 35 per cent, but Senators are still saying that it is not enough. Instead of the Senate working together with the county governments to generate more revenue at the county level, which they can do by increasing the revenue by another 10 per cent – which will be about Kshs31 billion – all they are after is trying to increase the taxation levels on every Kenyan. From where do we get the extra money? If we go the Senate way, we will be talking of increasing VAT and other taxes and telling Kenyans that they must pay more so that money can go to the governors. We do not know what the trillions that have already gone to the counties have done so far.

It is very important that we relook at the whole architecture of our parliamentary system. I would not want to exactly state, as Hon. Junet would say, that we kill the Senate but, perhaps, we need to redefine their responsibilities. We need to redefine when they meet, including the quorum requirements. When they realised that they could not raise quorum in 2013, they changed their Standing Orders or their working mechanisms so that they could actually sit even if they do not meet the minimum threshold of 15 members. We need to relook at that kind of House. Perhaps, it has some relevance. Perhaps, it does not have. Perhaps, we should recreate the ALGAK. Perhaps, we should relocate the role of protecting the counties to the Council of Governors. Perhaps, we should even create a devolution committee in this House to oversee the counties and protect them because we all come from counties. None of us would want to see their county dying. I do not even know what the Senate protects that we cannot protect.

I believe these are the kind of things we need to do to redefine those relationships. If there is ever to be a constitutional amendment, the first amendment should be on Articles 94, 95 and 96 of the Constitution to redefine these relationships and either give the Senate more tangible work to do or remove them altogether or establish a committee of this House and charge it with the responsibility of protecting devolution without necessarily having to duplicate the roles that we have.

In the absence of time, I do not want to belabour the point. I urge that we pass this Motion so that the House Business Committee can go for public participation, invite all these experts and people who have something to say so that we enrich this debate and report back to this House in terms of a very tangible report on the relationship between these two Houses. If all else fails, I support that we go to court and get an interpretation. In the meantime, I am not

directing the courts but if somebody was to appear before a court of law to seek a stoppage of the Appropriation Act, I do not know at what point the courts will be able to offer judgement because they themselves will not have money to even...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well. Let us now have Hon. Robert Mbui.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity of right to reply because the Senate spent time discussing the National Assembly on matters that are extremely sensitive.

Kenyans were wise in bringing back the Senate in 2010. Looking at the squabbles that we have had between these two Houses, it is clear that there must be some serious misinterpretation of the roles that each of us have. Since the 11th Parliament, we have been having a supremacy fight. Most of the time, our Senators believe that they should be supreme or have more roles because of the geographical regions they cover. Unfortunately, they do not read the Constitution, which is what defines the roles of the National Assembly and those of the Senate.

I have noticed a lot of misinterpretation. Most of the time, it comes from the definition of the word “parliament”. We have agreed that ours is a bicameral parliament which means that we have the Senate and the National Assembly. At the time the Constitution was being promulgated, we had come from a single House and that meant that any reference to the word “parliament” at that time was with regard to the National Assembly. That is why you see gaps in the Constitution whenever there is reference to “parliament”, when the actual intention is to talk about the National Assembly. Those little loopholes are the ones that the Senate has consistently used to ensure that they stifle our work and make it very difficult.

The Senate is a copycat House. The Constitution gives us oversight over State organs and officers. It does not give them that role. But you see them attempting to do that. It gives us the management of money Bills. You see them attempting to pass or bring forth money Bills. It gives us a leadership structure that is in the Constitution. Like my Whip has said, you see them attempting to also copy and initiate leadership as per the National Assembly’s rights and systems in the Constitution. Going forward, if we were to conduct a referendum, I would propose that the Senate becomes a Committee in the National Assembly. The National Assembly can carry out those roles which are defined in the Constitution very easily. When you have a House that meets continuously and have made themselves full-time Senators, what it means is that the Constitution gives them very little work and they attempt to look for work which they do not have. They spend their time in the corridors looking at the Bills coming to the National Assembly and salivating and wanting to participate in those Bills. That is where the problem is.

The Senate has been attempting to amend the Statutory Instruments Act so that it allows them a role in the scrutiny of regulations and subsidiary legislation. There is a Committee on Delegated Legislation in this House. That is the only Committee that, as per law, should deal with issues of subsidiary legislation. The Senate has absolutely no role to play in the consideration of subsidiary legislation.

A clear reading of the Constitution bears this out. Article 95(3) of the Constitution grants the National Assembly general powers to enact legislation only limited in instances where it must concur with the Senate on Bills concerning county governments and constitutional amendments. In contrast, Article 96(2) of the Constitution expressly limits the legislative mandate of the Senate to participate in law-making by only considering, debating and approving Bills concerning county governments. I will not even bother going into those because my leader has gone through them very adequately. At no point does the Constitution mention such a thing

as subsidiary legislation concerning county governments. There is absolutely no such thing in law. The Senate will have us believe that this subsidiary legislation made pursuant to powers granted in an Act that was passed with the concurrence of the Senate should, therefore, be tabled in both Houses for scrutiny. That is nothing further from the truth.

Ordinarily, in considering and approving Bills, any disagreement is settled through mediation. As such, it means that there is a possibility of the loss of a Bill when the two Houses fail to agree. What does the Senate intend to happen when the two Houses are at odds when considering legislative proposals for subsidiary legislation? I doubt that this Constitution actually intended for the death of subsidiary legislation on account of disagreement between the two Houses.

Article 94(6) of the Constitution requires an Act of Parliament or legislation of a county which delegates the authority to make regulations to expressly specify - and this is important - the purpose and objective of the delegation of authority, the limits of the authority, the nature and scope of the regulations that may be made, and the principles and standards applicable to the regulations. As such, once Parliament has passed a law, the distinction on whether it concerns county governments or not no longer applies.

In conclusion, the Constitution has vested the oversight role of State officers and organs on the National Assembly. The Senate has only been allowed to exercise oversight over national revenue allocated only to the counties and participating in the impeachment of the President and the Deputy President. The general oversight powers cover both cabinet secretaries and any regulation-making body, therefore, supporting the view that any subsidiary, subordinate or delegated legislation ought to be scrutinised only by the National Assembly.

This is something that we have been going through. We have discussed it in the Committee on Delegated Legislation. It is important that, as we move forward, we make it very clear that it is only this House which has power to oversee the regulations that come from our State organs and officers, and not the Senate.

I support the Motion.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Top on the list on my right is Hon. ole Sankok David.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity to inject my voice in support of this very important Motion. As a country, we enacted a new Constitution with a view of having a bicameral system of Parliament. It seems that the “lower House” has failed in its mandate. To bring you to speed with what they have done in the past eight years, they have passed a few legislations or Bills such as:

- (1) The Control of Stray Dogs Bill (Senate Bill No.4 of 2019).
- (2) The Street Vendors Protection Livelihood Bill (Senate Bill No.10 of 2019).
- (3) The County Outdoor Advertising Control Bill (Senate Bill No.19 of 2018).
- (4) The County Law Compliance and Enforcement Bill, and
- (5) The County Early Childhood Education Bill (Senate Bill No.26 of 2018).

Clearly, this is a mandate that can be performed by county assemblies. Even county councils were performing these duties adequately.

Hon. Temporary Deputy Speaker, it is a clear indication that this is a lower House that lacks mandate and a job to do. That is why they are straying into other territories that the Constitution does not give them. We have devolution in order to have laws that are tailor-made to specific counties. You cannot sit in Nairobi and legislate on camel milk. If you are a Senator

of Nairobi County, that legislation is not required there. That legislation can be made effectively in the county assemblies where there is camel milk and meat.

Under Article 226(2) of the Constitution, financial oversight remains one of the key functions of county assemblies. This is particularly so with regard to the consideration of reports of the Auditor-General on accounts of county governments. During the first county government assembly in 2013 and also in 2017, those reports were originally submitted to county assembly. However, it was changed later. They are now submitted to the Senate because they do not have anything to do. They grabbed powers that are vested in county assemblies. The Auditor-General now tables the accounts of county governments in the Senate, which is contrary to our Constitution.

The National Assembly oversees the President and the Presidency, all Cabinet Secretaries (CSs) and national institutions. County assemblies oversee County Executive Committee (CEC) Members and the revenue that is collected within their counties. Where does the Senate sit? Whom do they oversee? If we oversee the national Government and the county assemblies oversee county governments, where do we find the Senate? That is why they have ended up having committees that are not necessarily theirs. In their ignominious narrative, they say that county assembly lacks capacity to oversee.

According to Articles 193 and 99 of the Constitution, the academic qualification of a Senator is equal to that of a Member of the County Assembly (MCA). I do not think that the county assemblies which have more than 1,800 members lack capacity versus the 67 Senators who have the same academic qualification as MCAs. That is why they are forming committees that belong to this House. The Senate has a Standing Committee on Foreign Affairs. Do foreign affairs concern the county assembly and county governments? I advise them that the best committees for them are: Stray Dogs Committee, Cemetery Committee, Dump Site and Refuse Removal Committee and Artificial Insemination Committee. That is because I have heard about animal husbandry. That is what they should have as committees. For lack of a specific function, the Senate strays into the functions of the National Assembly and county assemblies. If Dr. Matiang'i appears or refuses to appear before the Senate, will they impeach him? It could even be the other CSs, say, the CS for Foreign Affairs and International Trade. They do not have powers to impeach a chief or governors. The governors can be impeached by county assemblies but not the Senate. If you do not have powers to punish people, how can you oversee them? You only oversee an institution that you have powers to punish, in case they do not go as per the law.

Because I know everybody wants to talk, we abolished the Senate in 1966. During that time, Kenyans realised that the Senate in Kenya does not work because it does not have any function. I have a very hard stand against referendum. I will change it today and support the referendum, so that we can start by reviewing the conduct of Senate. If possible, just like what happened in 1966, we should abolish the Senate instead of having a referendum to create positions to massage the ego of a few politicians.

We can do this because it will reduce the wage bill and burden that Kenyans bear every day. In this country, *punda amechoka. Waheshimiwa wamekuwa wengi kuliko raia*. We can start by abolishing the Senate and the allowances they earn. It is very funny that the Senators go to oversee the roles of the National Assembly with two choppers and they are only three! We are wasting public funds. If Kenyans have to reduce the wage bill, services delivered to them and roads constructed, we can reduce this uncalled for wastage, including the wastage that comes with the position of the Leader of the Majority Party in the Senate, which is not anchored in law.

Kenyans should know that the positions of the Leader of the Majority Party and the Leader of the Minority Party in the Senate – which are not provided in any law - attract a lot of allowances, staff, chase cars and fuel guzzlers. This is where we are wasting public resources. Kenyans should be told the truth. Our resources are being wasted by ghost workers who have no mandate. They are in the Senate because county assemblies oversee county governments and the National Assembly oversees the national Government. What are they doing? We have to re-define it. If there is any referendum, we will re-define the Senate and we completely abolish it.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Opondo Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, I thank you for giving me the opportunity to add my voice to this important Motion. This Motion is taking our time this morning because the baby whom the people of Kenya created in 2010 in our Constitution and named the Senate has refused to grow. So, we are now forced to push the growth of this baby and bring some understanding to the reason we have it.

Kenya is a representative democracy. We are a Republic. That is the reason we are talking about the sovereign power belonging to the people under Article 1 of the Constitution. If you look at Article 93 of the Constitution after you have looked at Article 1(2) of the Constitution which says that the people can exercise that power directly or through their elected representatives, you will know where Parliament comes in as the elected representatives of the people.

Article 93 of the Constitution establishes the Parliament of Kenya. Article 93(1) of the Constitution says that there is one Parliament of Kenya with two Houses namely the National Assembly and the Senate. People take it for granted that the Houses of Parliament have been so ordered by Article 93(1) of the Constitution. But it speaks to the seniority or superiority of the Houses against each other and that is why we rejected the debates going round that the two Houses are siblings. Article 107 of the Constitution provides that when there is a Joint Sitting of Parliament, the Speaker of the National Assembly shall preside. That is the language of the Constitution, and it is very deliberate.

Article 146(2)(b) provides that when there is a vacancy in both Office of the President and the Office of the Deputy President - God forbid - the Speaker of the National Assembly shall take over as the President of the Republic. So, the debate we have been having about which is the upper House and which is the lower House is moot.

As a House of Representatives, the law, as common sense, requires that there must be some number to begin business in either House of Parliament and to transact business particularly when voting takes place. That is why we have Article 121 of the Constitution. You would not question why we put it there. We need a particular number of representatives to make a decision to begin business and to transact business that binds the people of Kenya. That is why under Article 94(5) of the Constitution – which is the supreme law of the land - says that no body or entity has power to make provision having the force of law but the Parliament of Kenya as properly established.

Article 121 of the Constitution clearly states that for us to transact business, quorum must be 50 Members of the National Assembly seated and 15 Members of the Senate seated. Just this morning, the whole nation noted that when we came in, due to our other representation roles and the numbers were not sufficient, the Quorum Bell was rung. The Bell was rung to remind all

Members of Parliament that despite the other roles that they could be engaged in on behalf of their people, they should come to the Assembly because there are decisions to be made here which would bind the people of Kenya. Standing Order No.34 says that the Quorum Bell will be rung for ten minutes and if the quorum is not realised, it will be rung again for five minutes. There is a reason for that. That number has to be present for Parliament to be convened.

A similar provision made pursuant to Standing Order No.35 of the Senate says that for the Senate, it will also be. What has our Senate done recently in their Standing Orders? It deleted sub-section (2) of their Standing Order No.35 providing for quorum to allow themselves to begin transacting business with even a single Member. How do you do that when the Constitution in Article 121 has already said that you cannot begin? Watching the afternoon session when they begin business, sometimes you see their Speaker with one Member. It becomes so idle that you see a Speaker forcing that Member to speak: “Hon. Member, do you have something to say?” Or: “Mr. Speaker, your face is looking very smooth today. Thank you for realising that I am the only one here.” That is not the Parliament we want. They do not get quorum because the Senate is busy plunging itself head-on into the functions of the National Assembly.

The other time, we were in Philippines to learn how they started their National Government Constituencies Development Fund (NG-CDF) regime when we had to revive ours following a court decision. The Kenyan Consul who came to Malaysia to meet us in Philippines told us that he was called by Senate Members in the Defence and Foreign Relations Committee. I urge Members of this House to be firm. We told the Consul that he had no business meeting something called “Defence and Foreign Relations Committee of the Senate” because that is a function remitted to the national Government. I am very happy that the consulate offices refused to do so.

Let us remind our State officers out there that, provided the provisions of Article 95(5) remain, that it is in this House where we can initiate their removal and where we oversee them, including the President. They have no business going to the other House. We have a very big difficulty as we speak, which I will be speaking to later on, concerning the Departmental Committee on Justice and Legal Affairs. While we were addressing an issue concerning the Kenya School of Law and Council for Legal Education, a Senate Committee on Justice, Legal Affairs and Human Rights was already meeting the stakeholders. This is the case and yet the resolution coming from the Committee cannot be implemented at all. You are dealing with matters important to the Presidency and the nation as corruption in national Government and you have the Senate, instead of meeting governors, they are busy with the Directorate of Criminal Investigations, Attorney-General and Ethics and Anti-Corruption Commission. If we do not put our feet down, the Senate, in their current operations, has ceased to be a House of Parliament and become an agent of confusion in parliamentary functioning and work.

Hon. Mbadi has taken us through the specific roles of the Senate. The provisions of Article 93(2) say that there will be two Houses of Parliament, but each of them will perform their specific functions. That is why the Constitution goes beyond the general provisions and picks the overall functions or the roles of the two Houses under Article 94 of the Constitution to

specifically provide for the functions of the National Assembly under Article 95, and the separate and specific functions of the Senate under Article 96 of the Constitution. The wording of Article 95(1) says that the National Assembly represents the people and special interests. So, my Senator in Homa Bay should know that I represent everybody, including his parents. I represent everybody, including him. I represent everybody including his children, his spouses and every relative. It is the business of Hon. Millie Odhiambo, Hon. Mbadi, Hon. Kaluma and all Members, including Hon. Wanga from Homa Bay, to make that representation.

The Senate in Article 96(1) represents the county as an entity or institution. That is what they deal with and not the people in the county. The wording of the Constitution is very clear on that. That is the reason why when you look at the building at the far end, you see the people of Kenya seated. It is the National Assembly or the Assembly of the nation here seated and not the Senate. The Senate is for counties.

We oversee all State officers including Senators, according to Article 260 of the Constitution. I request for two more minutes, Hon. Hon. Temporary Deputy Speaker.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Shamalla, what is out of order?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Speaker, it was resolved this morning that Members will get ten minutes to speak. The Motion has generated a lot of interest and, in all fairness, Members should donate some of their time and not utilise all the ten minutes. It is 11.50 a.m. now and if each Member uses ten minutes, only four or five more Members will contribute and not all of us.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Shamalla, earlier on, the Members were asked to resolve whether they could reduce debating time for each Member from ten minutes to five minutes, and the House resolved that each Member will take ten minutes to contribute. Hon. Shamalla, there was a persuasive statement by the Deputy Speaker that if Members could be kind enough and give room for others to speak, they may not necessarily need to take the ten minutes. They can take even five minutes. But if a Member takes ten minutes, there is nothing the Speaker can do. But Members are persuaded.

Hon. Kaluma, your time is up or is it not? You have the 30 seconds that Hon. Shamalla took in raising her point of order.

Hon. Peter Kaluma (Homa Bay Town, ODM): To summarise, the roles and functions of the various Houses have been elaborated well by Hon. Mbadi and Hon. Duale. I want to request that we undertake an audit of all laws the Senate has passed, beginning with a quorum of less than 15 following the amendment of their Standing Order 35(2) and we have them declared null and void.

As I end, as Members of the National Assembly, we need to convene. I do not think this one requires a referendum. Look at Article 255 on the matters which go to a referendum. It is only those matters concerning the structure of county government and not national Government.

It is time we invoked the process of another arm of government called the Judiciary to consider whether it is necessary to obviate wastage of money by...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well, Hon. Opondo Kaluma. Before I give the Floor to the next person, allow me to recognise students seated in the Speaker's Gallery from the following schools: Mugunda Girls High School from Kieni Constituency, Nyeri County; South Tetu Girls High School from Mukurweini Constituency, Nyeri County and Ruthimitu Girls High School from Dagoretti South Constituency, Nairobi County. They are all welcome.

Hon. Ichung'wah, you have the Floor.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I also rise to support the Motion. As I support it, for those who have been with me from the 11th Parliament, I am one of the Members who have endeavoured to avoid engaging in debate between ourselves and the other House.

The other House has got to a point where they are not only rendering nugatory our Constitution, but they are rubbishing that Constitution, misapplying it and disparaging provisions of the Constitution. I just want to dwell on the budget-making process. I have heard complaints and even threats from the Senate. I want to assume that they are just mere threats, and that they do not have the intention of taking some of the Bills that they have portended to take to court. Particularly, there is a Bill we passed last week and was assented to by the President. Anybody purporting to take the Appropriation Bill to court to render it unconstitutional is not only wishing death to Kenyans, but wants to bring this country to a standstill. Hon. Kimunya has put it right. It will not just be them missing their own salaries and the allowances they need as they take chopper rides to Ngong to view houses being demolished as if they enjoy seeing people's houses being demolished.

I am seeing the same senators, especially my senator from Kiambu – he chairs the Committee on Roads and Infrastructure, and yet roads in Kiambu County are in a pathetic state—to inspect national Government roads in Turkana County. I just ask myself: What did the people of Kiambu see in this man, who has time and temerity to inspect national Government roads when roads in Kiambu County are in a pathetic state? I do not even know if I voted for him, but I do not know why people would vote for somebody who instead of overseeing money appropriated by county assemblies for fixing roads in Kiambu County, he is busy taking over the work of Hon. Pkosing and the Committee on Roads of this Assembly. He purports to oversee roads and an airstrip in Turkana County while roads in Kiambu County are in a pathetic state. The theft in Kiambu County is unrivalled.

All we see in Senate committee business is a circus. It is a competition between senators and governors. They do not even dwell on issues that touch on matters to do with counties. I remember when the Governor for Kiambu appeared before that Committee, they dwelt on non-issues to do with monies that had been appropriated to State House instead of dealing with what was called *pigana na walevi* and issues to do with rehabilitation of roads in Kiambu County. Therefore, let us not waste time...

Hon. Simba Arati (Dagoretti North, ODM): On a point of order, Hon. Temporary Deputy Speaker.

Hon. Kimani Ichung'wah (Kikuyu, JP): There is nothing out of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Ichung'wah! You cannot say that. When a Member raises a point of order, you cannot be too judgmental.

Hon. Arati, what is it?

Hon. Simba Arati (Dagoretti North, ODM): Thank you, Hon. Temporary Deputy Speaker. Is it in order for Hon. Ichung'wah to, instead of discussing the issues of the Senate, turn the whole story against the Senator for Kiambu? He is discussing about Kiambu, nothing else.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, if Hon. Arati had listened to my, otherwise very good English, he would have known that I was giving that as an example. But I know he has a challenge with the language. Therefore, I beg to continue.

(Laughter)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Ichung'wah!

(Hon. Simba Arati stood in his place)

Order, Hon. Arati! I am not going to allow you to come back to the Floor. Hon. Ichung'wah, Hon. Arati is not way off the mark. Remember, there was a Communication earlier in the morning, but I appreciate that you are giving it as an example. In line with the Speaker's Communication earlier on, it is about the Senate, not about personalities within the Senate and any other Member within the National Assembly. It is in line with our Standing Orders.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, I appreciate that you also appreciate that I was giving that as an example to illustrate how the Senate has abdicated its role in overseeing county governments. Article 109 of the Constitution is very clear. In fact, before I go to 109, Articles 94 and 95 are clear that the Senate oversees counties and county governments whereas this House oversees the national Government and its organs. Therefore, the Senate has no business overseeing organs of the national Government. We represent the people while they represent the institution of county government and counties. Therefore, I was only making that point clear.

Moving to the budget-making process, I want to use Article 114, which is one of the things that have been raised by the Senate. They have alleged that we use Article 114 to dismiss some of their Bills. I want to illustrate that Article. I have done a little bit of research on this one.

An Act of Parliament of I think 1912 in the UK has similar provisions, almost word-for-word as what is provided for in Article 114 of our Constitution. Article 114 of our Constitution gives the exclusive mandate to the Speaker of the National Assembly. It gives you the exclusive

mandate to determine whether a Bill being introduced to the House has any monetary implications.

Therefore, when Bills are introduced to this House or the Senate, it is only the Speakers of the respective Houses of Parliament who have the exclusive mandate to determine whether they are money Bills or not. The use of Article 114 and our Standing Orders is not exclusive to Bills from the Senate. Members of this House sponsor Bills and bring legislative proposals every now and then. In fact, after the budget process, as the Budget and Appropriations Committee, we are considering legislative proposals from Members. Members in this House know it very well that it does not matter whether the Bill came from the Senate; even Private Members Motions and Bills, including my own, as Chairman, go through the same process. I have legislative proposals that had to go through the process as spelt out under Article 114 - the Budget and Appropriations Committee and the Speaker's Office for determination as to whether they have monetary implications. Therefore, it is not true that this House is using Article 114 to curtail the work of the Senate.

Indeed, the Senate's own Standing Orders speak to the provisions of Article 114. Therefore, it is outrageous for them to pretend that Article 114 of the Constitution does not exist. Indeed, it is interesting that somebody can go to court to claim that a constitutional provision is unconstitutional. I do not know what the Constitution is to them then, if they claim what is provided for in the Constitution under Article 114 is unconstitutional.

Further, I know in resolving the question under Article 110(3) of the Constitution, the Speaker of this House has always formed an opinion on whether a Senate Bill is a Money Bill or not and reminded the Senate on the provisions of Article 109(5), but they have always disregarded this and proceeded to originate Money Bills. That is contrary to the provisions of Article 109(5) of the Constitution. We have records of these Bills. If challenged, we can show them and prove to them that we have processed those Bills that are not Money Bills, and processed the Money Bills in accordance with Article 114 of the Constitution.

Therefore, even as I support this Motion, I urge the House Business Committee to seek the views of the public as they consider it and to table before us a Report that we can consider. Even as Kenyans are called upon by the House Business Committee to give their views, let them urge senators to follow the Constitution.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well. Let us get to that far end. Yes, Hon. Mishi.

*[The Temporary Deputy Speaker
(Hon. Patrick Mariru) left the Chair]*

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) took the Chair]*

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Asante sana, Mhe. Naibu Spika wa Muda. Ninashukuru sana kwa kupata hii nafasi. Ninaunga Hoja hii ya Kiongozi wa Walio Wengi.

Ningependa kuongea kwa Kiswahili kwa sababu ninaona Kimombo kimetembea sana na kuna wale watu wa mashinani wangependa kuelewa mambo ya Hoja hii.

Kwanza kabisa, ninataka kuseme kwamba si tunataka kukejeli Bunge la Seneti ama tunataka kuleta sitofahamu katika Bunge la Seneti. Hii ni Hoja ambayo inataka kuweka mambo sawa, kulingana na Katiba yetu inavyosema.

Katika Vifungu 95 na 96, Katiba yetu imezungumzia majukumu na nguvu za Bunge; kwanza, Bunge la Seneti na pili, Bunge la Taifa. Tumelileta jambo hili kwa sababu kumekuwa na dukuduku kwa wananchi kwamba “pengine pesa zetu zinatumika vibaya ama majukumu yanaweza kurudiana rudiana.”

Kwa mtazamo wangu, nilifahamu kwamba Bunge la Seneti na lile la Kitaifa lingekuwa kama vile Uingereza ambapo kuna *House of Commons* na *House of Lords*. Nilielewa kwamba ile ilikuwa inaitwa *House of Lords* ni kama vile Seneti hapa kwetu Kenya – ni Wajumbe ambao, sana, wanapeana ushauri katika Taifa la Kenya, na Bunge la Taifa katika mambo ambayo yanahuzu nyanja tofauti tofauti.

Kwa hivyo, lazima tujue majukumu ya Bunge la Seneti, haswa katika mambo ya Miswada ambayo inatusumbua sana. Tunaona Kifungu 110(1) kinazungumzia vizuri sana Miswada ambayo inahusika na Bunge la Seneti ambayo ni Miswada inayozungumzia majukumu na nguvu ambazo pengine zinaweza kuleta utata katika mambo ya kaunti.

Pia, kifungu hicho kimezungumzia mambo ya uchaguzi wa *Members of the County Assembly (MCAs)*, ama maofisa katika kaunti. Pia kinazungumzia Miswada ya mambo ya fedha. Miswada hii yote lazima iwe ni mujibu wa kaunti.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Mishi. What is it again, Hon. Simba Arati? What is out of order?

Hon. Simba Arati (Dagoretti North, ODM): Hon. Temporary Deputy Speaker, more important... There is nothing out of order, but I am just doing a follow up. You have left somebody who is known of thieving, both through the Budget and in the public, to speak and walk out. That is Hon. Ichung’wah. You do not know that he is a thief?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Simba Arati! Order! It is you who is completely out of order. You cannot refer to another Member in that manner. You are the one who is out of order!

Order, Hon. Mishi! What is it the Leader of the Minority Party?

Hon. John Mbadia (Suba South, ODM): Hon. Temporary Deputy Speaker, this is a House where we need decorum.

You have just heard Hon. Simba Arati, who has not even worn proper shoes although they are expensive, say that Hon. Ichung’wah is known for thieving or stealing; that he is a thief. Those are very serious words to utter against an Hon. Member. I think he needs to withdraw and apologise.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Simba Arati, that is completely unacceptable. You must withdraw and apologise. You are referring to another Member in that manner. It is completely out of order.

Hon. Simba Arati (Dagoretti North, ODM): Thank you, Hon. Temporary Deputy Speaker. A thief is a thief, but I want to withdraw!

(Loud consultations)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Simba Arati!

Hon. Simba Arati (Dagoretti North, ODM): I withdraw and apologise, but then it remains the same.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Members! Order, Hon. Simba Arati! You are now moving on a tangent. You are moving on a very dangerous tangent. So, we note that you have withdrawn and apologised. Be careful, Hon. Member. I know this is one of the Members who understand Standing Orders, but there are some doubts.

Proceed Hon. Mishi.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Mhe. Naibu Spika wa Muda, ninataka niseme kwamba tukiangalia Ibara ya Nne, kwa wale hawatafahamu “Ibara” ni nini, ni ile “*Fourth Schedule*”... Ibara hiyo imezungumzia haswa zile kazi ambazo zinahusu Bunge la Seneti kama kilimo, afya, usafiri katika kaunti na mambo mengi sana ambayo wenzangu waliotangulia wameyazungumzia.

Vilevile, Ibara ya Nne imezungumzia yale majukumu ya kitaifa ambayo yanafanywa na Bunge la Taifa. Iwapo Katiba imezungumzia mambo haya kinagaubaga, kwa nini tuwe na sitofahamu? Kwa nini tuwe tunarudiarudia ama ile tunasema *duplication* wakati tunafanya kazi zetu kama Wabunge?

Wakati mwingi sana, kuna suala limeangaziwa na Bunge la Seneti na Bunge la Taifa. Ripoti zinazokuja huwa tofauti na zinazoleta mg’ang’ano na tunakosa kupata mwelekeo. Ni wakati muafaka tujue sisi viongozi wa Taifa ambao tunajua majukumu yetu tujue kamati zile zitatengenezwa katika Seneti ziwe ni kulingana na majukumu, nguvu na kazi zao. Zile zitatengenezwa katika Bunge la Taifa, hili la *National Assembly*, iwe ni kulingana na majukumu na nguvu ambazo tumepewa na Katiba ya Kenya pasi na kwenda kinyume chake.

Katika Kifungu cha 94, tunaona kwamba Bunge zote mbili zinahitajika kukubali na kulinda Katiba yetu. Katika Kifungu cha 3 cha Katiba, Mkenya anahitajika kukubali na kulinda Katiba. Kulinda Katiba ni kulinda kwa kufanya zile kazi ambazo Katiba imetupa sisi kama Wabunge katika Bunge la Taifa na lile la Seneti.

Katika Kifungu cha 110(3), Spika wetu na yule was Seneti, kila wakati, wanahitajika kuangalia suala la kujua Miswada ni ya kaunti au ni inayosimamia kupitia Bunge la Taifa.

Kwa hivyo, sijui tunavurutania nini kwa haya mambo kila saa. Mambo ya kukagua walioteuliwa na Rais, tumeona ni jukumu la Bunge la Taifa linaloitwa *National Assembly* kulingana na Katiba. Kipengee cha 132(2) kinasema kwamba Rais atateua na sisi kama Bunge tutakagua iwapo aliyeteuliwa anaweza kufanya kazi ile.

Lakini, tunaona hata Seneti wamekagua yule tunamuita *Inspector General of Police (IG)* juzi. Hapo tunaona tunaleta utata na sitofahamu katika mambo yetu kama watu moja.

Je, sisi kama Wakenya tunaweza kuyapata mambo ya ugatuzi ambayo tuliweza kuwa na Seneti, ambalo jukumu lake kubwa ni kuangalia mambo ya kaunti 47? Kuna changamoto gani na tutaweza kuangalia nini? Kwa hivyo, mambo ambayo tunazungumzia, kwa mfano, kilimo, makavazi tunayoita *Museums*, leseni za pombe, wanyama na *cemetery*, tusiyaone kuwa ni mambo madogo. Haya ni mambo ambayo yanamdhuru mwananchi kila kuchao na anapata changamoto nyingi. Kwa hivyo, ni lazima tujue kamati tutakazotengeza, zitakuwa ni kamati kulingana na majukumu yetu ya kikatiba kwa mujibu wa vifungu 95 na 96 vya Katiba. Iwapo tutaenda kinyume na hayo, itakuwa si sawa.

Wizara kama ile ya *Defence* ni wizara inayoangalia mambo ya kitaifa tu. Haiangalii mambo ya kaunti. Wizara ya *Interior* inaangalia mambo ya usalama wa kitaifa. Wizara ya *Foreign Affairs*, inaangalia mambo ya kimataifa. Kwa hivyo, hizi wizara ambazo hazina mambo

ya ugatuzi sioni ni kwa nini Mawaziri wake waitwe Seneti kuzungumzia mambo ambayo ni ya kitaifa na si ya ugatuzi. Lazima tujue mipaka yetu ni ipi. Hapa hakuna cha Bunge kubwa wala Bunge ndogo. Hapa ni, Katiba inasema nini, imetupatia nguvu gani, imetupatia majukumu gani na mipaka yetu itakuwa gani?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Pukose, you have the Floor.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker for allowing me to contribute to this important Motion on the relationship between the Senate and the National Assembly. We have reached where we are because of failure of systems. That means that something is not happening well and somebody is not doing his duty well. When the Senators sit down to amend their Standing Orders to reduce their quorum from 15 Senators to one or two Senators it means things are failing. If you go to the counties, people will tell you that they do not know their Senator. They will tell you that they voted for their Senator and they have not seen him/her since they voted them in. What the Senate has done is to fail in its mandate. When you ask the common *mwananchi* what a Senator does, he will not tell you. He will tell you he sees Senators on television news and not on the ground. They have nothing to show for the time they have been in office. That is why many Senators were trying to come up with money for ...

Hon. David ole Sankok (Nominated, JP): On a point of Order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, what is out of order?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, Hon Simba Arati is not properly dressed. He is in slippers!

The Temporary Deputy Speaker (Hon. Christopher Omulele): Proceed, Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker. I thought I was out of order. If you go to counties, many people will not tell you exactly what Senators do. There is also frustration within Government agencies, parastatals and departments. When a Cabinet Secretary is summoned to appear before similar committees in the Senate and the National Assembly and respond to the same matters, it is frustrating and a waste of taxpayers' money. For example, we have a Committee on Energy in the Senate. What does it do?

The Constitution, in the Fourth Schedule, only provides for reticulation of power for the counties. If the Constitution provides that the county shall only be able to do reticulation and issue licenses and permits for businesses within counties like opening a petrol station and other businesses, what does the Senate have to do with summoning officers of the Ministry of Energy or the head of parastatals like Kenya pipeline, Kenya oil Refinery Services, the National Oil Corporation of Kenya (NOCK) and other agencies? That can be frustrating. It is high time this House and the Parliamentary Service Commission (PSC) looked into how many committees the Senate should have. If you appropriate money to various committees which duplicate functions of other committees, where are we going as a country? These are matters that we are hoping the House Business Committee (HBC) will look at together with the resolutions that the House will make today. The HBC should conduct public participation to get the input of the people. It should let them decide if we really need the Senate. In view of the desire that we want to reduce public expenditure, we can have the Senate abolished.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you, Hon. Pukose. Let us have Hon. Atandi.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity to put my word on this Motion. From the word go, I support this Motion. If you want to know that the Senate is a mischievous organ of Parliament, you need to go through their website. They have profiled themselves as the upper house of Parliament. We know that is not the reality.

As somebody who participated in the clamour for the new Constitution, in principle, I do not subscribe to the views that the Senate should be dissolved or disbanded. The Senate should play an important role as outlined under Article 96 of the Constitution on protecting devolution. Devolution is important and dear to some of us. It was meant to transfer resources from Nairobi to villages. The villages are the places where our people live. So, I would like to stand with any effort aimed at protecting devolution.

However, I disagree with the Senate on one account; their interpretation of Article 95(5) (b) of the Constitution. This Article of the Constitution provides for the oversight functions of the National Assembly. We know that the oversight mandate is principally restored in the National Assembly. But the Senate has gone ahead to create parallel committees that appear to be doing the same roles that this House is supposed to do. I disagree with them because this action has created what I call a “dysfunctional executive” Today, you will find that Ministers alternate between the Senate and the National Assembly. No wonder Kenyans are saying that the Executive is not delivering. That is purely the reason. The Senate has gone outside its mandate. It needs to be called to order.

To reiterate what my colleagues have said, there is no reason why the Senate should be summoning the Minister for Defense and Foreign Relations because in their functions, they have nothing to do with national Government. So, the Senate needs to be orderly in this respect. If you can remember, there was a matter to do with Ruaraka land where a committee of this House went through that Petition and made a decision. The Senate did the same and came up with their own parallel and different decision on the same matter.

This House was portrayed as a House which is not effective or a House which does not know what it is doing. The Senate took this action in bad faith to malign and make this House dishonourable. The Senate has been mischievous. I think the Motion we are discussing today is timely.

I want to say something about the Division of Revenue Bill. One of the functions of the National Assembly, according to Article 95(d), is to determine the allocation of national revenue between the levels of government as provided for in Part IV of Chapter 12 of the Constitution; appropriate funds for expenditure by the national Government and other State organs. This provision is very clear that the function of determining revenue between the levels of government is bestowed in the National Assembly. It goes further to say that the National Assembly shall make reference to Part IV of Chapter 12 of the Constitution. This is the part that creates the Commission on Revenue Allocation (CRA). I want to read for you what the part says. We know the CRA is overseen by the Departmental Committee on Finance and Planning of this House. The principal function of the Commission is to make recommendations concerning the

basis for equitable sharing of revenue raised by the national Government between the national Government and county governments and among county governments.

The Constitution says that the National Assembly, in their decision to determine what resources should go to the national Government and county governments, must refer to the function of the CRA. I want to disagree with the National Assembly on this particular matter. When we disagree with the Senate on the Division of Revenue Bill, we are not disagreeing with the Senate. We are disagreeing with the commoners, the people who elected us in the villages. When we say that we need to reduce the amount of resources that should go to counties, we are not fighting the Senate. We are fighting our voters.

This is a House of debate and I must debate. I must speak my mind. I want to understand the basis on which this House has refused to give counties more resources. I am one of the people who fought for the new Constitution. I took seven years in studying at university for a course that I should have done for four years because I wanted more resources to be taken to my people in the villages. So this House cannot be a House that is deducting resources that should go to commoners in the villages.

On this account, I want to understand if the National Assembly, in their process of sharing the resources equitably, is taking into consideration the contribution of the CRA, which is funded by this House. We have given CRA about Kshs600 million this financial year so that they are able to advise this Parliament on how to share equitably Government resources. We cannot have this Commission sit, and when they give us their views we ignore simply because our mandate is to share the resources out.

On this one, I want to tell this House to shape up. We need to have more resources going to our people. We fought for devolution. The party I represent in this House is a party that has fought for devolution. We are even saying that in the upcoming referendum, we want more money to be given to counties. We want counties to receive 40 per cent of national resources. We cannot sit here as a House and ignore these facts and reduce allocations to counties and still believe that we are fighting the Senate. I support this Motion but this House must address itself to this matter of the Division of Revenue Bill.

Thank you, Hon. Temporary Deputy Speaker. I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now hear Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Motion. I cannot overstate that the role of the Senate is representation and protection of the interests of counties. Their functions are extremely clear. Indeed, it is set out in the Fourth Schedule of the Constitution.

However, we begin to see and I have heard various bodies and institutions more so those that report to the Departmental Committee on Justice and Legal Affairs complaining of these rogue summons that come from the Senate. If the Senate really wanted to contribute, and we do

not feel their impact at the county level, they could deal with issues of animal husbandry or noise pollution. These are not fickle things.

If you look at the County of Nairobi, you will find that Kenyans are not able to sleep at night because there is a bar at every corner, a bar next to every school and, booming music up to three or four in the morning. We have never heard the Senate addressing these issues. What happened to the regulations and legislation that said you cannot have a bar within a given number of kilometres from a school? We have never seen them addressing issues like that. More shockingly, recently while driving in a residential area where there are apartment blocks, jutting out of a wall of an apartment block, I saw a mortuary in the Kilimani area. How is it that where people are living you have morgues and the Senate is quiet on this, and yet they are supposed to oversee issues with regard to county governments?

I also wish to address the issue of legislative oversight. Indeed, it has been mentioned by one of the Members this morning that now the Senate wants to get involved in delegated legislation. This committee is in the National Assembly and it is the only committee that has authority as provided for in law to deal with issues regarding subsidiary legislation. I personally think that the Senate has to ask some very serious questions, do some soul searching and ask themselves: Do they want to just be governors who are just transiting through the Senate?

With those few remarks, I support this very important Motion.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you for being very brief, Hon. Shamalla. We shall have Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on this important Motion. A lot has been said and the law has already been pleaded in this House. I want to correct some notions which may not have followed the law. For example, on the issue of revenue allocation, this is majorly a matter of the two Houses and it originates in the National Assembly.

I have had an opportunity to sit in a mediation committee before, between the National Assembly and the Senate. One time Sen. Wako was chairing and matters were polished out very clearly. There were no differences between the National Assembly and the Senate as such. Both of them form Parliament, and there are distinct roles which are clearly outlined in the Constitution by the people of Kenya.

Therefore, when it is an issue of additional money in the Budget, like there is an issue right now, what the Senate should simply do is to approach the CS in charge of the National Treasury and the matter would be sorted out at the Treasury level, since we have passed it here. In the mediation, they must invite technocrats of the Budget to clear the matter. It is a matter of the National Treasury and it will be cleared there. In the event there is a deficit, as I have heard the governors ask for more billions of shillings—which are not clearly being overseen at the counties—that should come under a Supplementary Budget so that the counties can do the very important job of devolution, which Kenyans have found very useful.

Hon. Temporary Deputy Speaker, devolution is very important in this country. Without devolution there would be no counties. Since we have established devolution by creating counties, we must ensure that it works. One of the organs that are supposed to make sure that

devolution is effective is the Senate. If you move across the country, you will find that there is no proper oversight of county governments. For example, the defunct county councils across the country used to do better in terms of garbage collection. If you move around today, you will find garbage burning in a number of important towns in almost every county in the country. I believe that is one of the things that matter. Issues of cleanliness, health, devolution, water and many other issues are critical. Many of the counties have not used their budgets sufficiently.

Therefore, if the Senate were to call itself back to order, it would realise that it has more work than it imagines. It has a lot to do. That work has not been done year in, year out. So, I believe the Senate is important. Devolution is important. The Senate has to just follow the law because the law is very clear. There is nothing to seek interpretation in court. Even if they were to go to court, the courts follow the law. The courts do not invent the law; they only interpret the law, which is very clear. I believe the courts will tell them clearly: “Devolution is important, do your work of overseeing county governments so that we have effective management of our resources.” So far, the Senate has failed in this regard.

We have passed a number of laws as required by the law. We have to ensure that Bills that originates in the Senate are quickly processed through this Assembly so that devolution can be effective. We had the County Government (Amendment) Bill, and all the legislations they brought here given priority. We made sure that they were given priority. We have debated and approved them, and released them for presidential assent so that the country can be served better.

On our part, we have done our duty intelligently and passed all the necessary laws. In the event that there are mistakes – mistakes can occur – there are proper channels of rectifying mistakes so that we can serve Kenyans effectively. Therefore, I challenge the Senate to rein in on counties, as it is supposed to do by law. The Senate should oversee county governments properly.

On the matter of the Statutory Instruments Act, to which the Senate wants to be part of, we have the National Assembly and the County Assemblies. The County Assemblies oversee the county executives. The County Assemblies have a similar structure that enables them to ensure that laws that are passed at that level are properly executed. So, there is absolutely no role for the Senate when it comes to implementation of the Statutory Instruments Act. In fact, if the Act were to be amended, it would still come back to this House because we are the ones who are supposed to deal with it. The law is very clear that the Senate has no role in this Act. There is a lot for them to do. The best thing is for every person who has been elected by Kenyans, who expect service, to rethink or soul-search and check the counties without fear or favour or even without wanting to save a governor in anticipation that one day a senator can also become a governor. Senators must thoroughly deal with governors who do not follow the law – especially those who misuse public funds – or if an Assembly is misguided in one way or another. It is the role of the Senate to ensure that each and every County Assembly follows the law, is effective and serves Kenyans as required by the Constitution.

With those remarks, I beg to support.

The Hon. Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Limo, you have the Floor.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this very important Motion. This Motion has come at the right time and is long overdue because we have had this confusion for a long time, starting with the 11th Parliament. The genesis of this confusion was a ruling that was made by one of the

courts in this country. The Constitution is very clear on the roles of the two Houses of Parliament when it comes to decisions regarding sharing of revenue between the two levels of Government.

Under Article 95, the National Assembly determines how national revenue is shared between the two levels of Government. Article 95 of the Constitution is very specific that the Senate will determine the allocation among county governments. That means after we determine the share for county governments, the Senate divides that share among the 47 counties. The National Assembly is on record as having been the only House which respects the Constitution. We have never had a situation where we summoned governors to this House. We have never had a situation where we discussed issues touching on counties because the Constitution is clear that that is the role of the Senate. When you see senators talking about the national Government and summoning Cabinet Secretaries (CSs) and other heads of national Government institutions over issues which are purely of national Government nature, including matters of Kenya Airways and Kenya Ports Authority (KPA), which has nothing to do with devolution, you clearly see a House which is confused, and which does not know its roles.

Hon. Temporary Deputy Speaker, appointments by the President are specifically provided for under Article 132 of the Constitution. Under this Article, certain appointments made by the President shall be confirmed by the National Assembly. Article 132 of the Constitution states that the President shall nominate and, with the approval of the National Assembly appoint, and may dismiss, any state or public officer whom this Constitution requires or empowers the President to appoint or dismiss.

Therefore, when the issue of the Inspector General of Police came here, we should not have agreed to the formation of a Joint Committee because the Constitution is clear. We should have followed Article 132 on the roles of the President. The business of approval of presidential nominees should be transacted in this House. In fact, the Inspector-General of Police should have refused to appear before the Joint Committee on the ground that he is a law-abiding citizen.

When you see an institution abandon its role and pursue roles of another institution, it clearly shows that it is an idle institution. If the Chief Executive Officer (CEO) and the Chair of a Board of parastatal are entangled in confusion, that institution will not move. If you appoint a Chair of a Board that is idle and you allow them to hover around the corridors of the parastatal, the CEO will not work. What does that tell you? The Constitution does not provide enough work for the Senate. Senators are idling and hovering around looking for work to do. Why? It is because the drafters of the Constitution did not provide them with enough work. Hon. Jeremiah Kioni will attest to the fact that he participated in the drafting of the Constitution. The drafters of the Constitution had in mind that the Senate would be a part-time House. If you go to jurisdictions like Vietnam, you will find that the Senate operates very well because their Constitution is very clear that they meet quarterly. This also applies to Singapore and other countries. If we want to make the Senate relevant, we must change the Constitution and have them meet quarterly. This is only to review certain issues including allocation of revenue among counties. Once they finish they should go back home and wait for some work.

If there is any participation, as you know, the Constitution does not talk about the Senate legislating but participating in legislation. Participating seems like what the Late Michuki said that consultation does not mean concurrence. After we legislate the Senate should only give their view and go back home. This House should only be advisory. Indeed, the Senate plays a role when it comes to issues of impeachment of the President and Deputy President. The Constitution is very specific that those are the only two roles they do. They do not participate in impeachment of other state officers because they are under the armpit of the National Assembly.

Therefore, the HBC should consider and bring a Report to this House specifying that the Senate should only summon the CS responsible for Devolution. This is the only CS who will then link them to the national Government since there is no need of confusion. I want to conclude by saying that the Constitution is clear on the roles of this House. I also want to ask a question but I do not need an answer. We must ask ourselves who approves the appointments of CSs, the Attorney-General, the Secretary to the Cabinet, the Principal Secretaries (PSs), High Commissioners, Director of Public Prosecutions, Controller of Budget and all Commissioners of Constitutional Commissions. It is this House.

This tells you that any other important role is done by this House and, therefore, there is no need of debating around. In fact, there is debate of changing the Constitution and reducing the number of MPs. I am a finance person, and I understand very well that, the Budget of the National Assembly combined with that of Judiciary is only a maximum of two per cent of the total budget. So, we will not be saving anything by reducing the number of Members. But we will save the country if we restructure and make the roles of the Senate very clear. So, that they become a part-time House.

Therefore, if the Senators are salivating on the roles of the National Assembly let them wait for 2022, vie and come to this House. They should look for constituencies and be man enough, fight for and come to the National Assembly. Let us allow those who are able and willing to serve as Senators to serve. I urge the HBC to move with speed and come up with a Report on how our CSs and the national Government should co-operate. We can ring fence their roles and ensure we protect them against the confusion being created by the Senate.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Limo, one of the questions you probably might have forgotten is who can punish the officers you have listed in the event they err. We shall hear contribution from Hon. Milemba Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker for this chance to make a contribution. I think the situation we are operating in is simply as a result of the Senate being a baby that has been unable to move as earlier speakers have referred to it.

Article 93 establishes Parliament of Kenya. Where the challenge is coming is that the Senate has misunderstood their role and wordings in the Constitution. In Kenya we have a Parliament which is bicameral, so there are two Houses. We have the National Assembly and the Senate. The word "Parliament" in the Kenyan situation can be equated to the term Congress in the United States of America (USA) which has two Houses, the House of Representatives and the Senate. If you tried another jurisdiction like Britain, you will still get Parliament which has two Houses, the House of Lords and House of Commons.

Unfortunately, what the Senate is trying to do which has made these issues to come up is to take the original big title in Kenya and Britain being Parliament or in USA the Congress. They want to usurp all the powers, for instance, in the jurisdiction of the USA the Congress. This is the case and yet, Articles 95 and 96 clearly define the roles of these two Houses that form the original big name. I am talking about this because I am an authority teacher in History and Government and this is the work I have done for a long time. Therefore, the Senate is usurping the functions of the National Assembly in Kenya and trying to replace anywhere they see Senate with Parliament which should not be the case because they must stick to their functions as the Senate.

(Hon. Joseph Limo and Hon. Jeremiah Kioni consulted loudly)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Order Members! Hon. Limo and Hon. Jeremiah Kioni you were heard in silence. Kindly, allow the Member for Emuhaya to also be heard.

Hon. Limo and Hon. Kioni are we in the same House?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker. Looking at the origin of the history of the two Houses because that is the only area I will try to punch since many parliamentarians have punched many other areas, which relate to us... In the USA for instance, they only adopted the Upper House and Lower House; the Senate was having challenges. One is the historical perspective; they were getting independence from Britain and they really wished to have structures similar to those of Britain.

Two, at the Philadelphian Conference where they were taking too long to make a decision on whether to move forward or not, this was the so-called Great Compromise. The small states felt they needed to be protected. That is why in the Great Compromise they said whether you are small or big you will have two Members in the Senate. But in the House of Representatives, they shall be given Members depending on the population. Political scientists and historians have since questioned the Great Compromise.

If you look at the case study in Kenya, you will find that we equally went the same direction. We needed to protect the regional governments we had which Hon. Mbadi talked about it. We need to also assure the minority in Kenya that they will be protected. So, when the new Constitution was being created, the roles given to the Senate were mainly derived from the protective role of the minority and the county government as it is. A little bit was usurped from the former functions of the regional and municipal governments. That is why you have seen their roles like refuse collection which some people have used here derogatively and this should not be the case.

Unfortunately, the Senate has misinterpreted the law and wants to usurp all the powers that should be taken by Parliament. But remember the National Assembly and the Senate have their own separate powers. Moving forward, it means we need to bring the Senate to some kind of check. Otherwise, we shall have to do what happened in 1966 when it had to be removed.

Currently, Kenyans are complaining that there is too much money going to Parliament. It is because we have duplication of roles. The issues of oversight and committees have been talked about. They have created many committees. In the Senate, everybody is a chairman or vice chairman because they are few. We have to remove those roles which they have taken from the National Assembly and they stick to their roles as the Senate, and it will be harmonious bicameral system operating in Kenya.

I, therefore, greatly support this Motion and ask the leader to move very quickly and have the HBC bring a report so that we streamline the Senate. This time round, we do not need to remove it because we have the power, reason and we might actually streamline the system so that they stick to their role and do not start overstepping.

With those very few remarks, I wish to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): We shall have Hon. Jeremiah Kioni, the Member for Ndaragwa.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker, for that opportunity. I will use very few minutes so that I can allow other Members to say something.

What was delivered at the Supreme Court during the 11th Parliament was not a judgement. It was an advisory opinion. I think it is important that we get it right. Secondly, if we allowed the appointment of the Attorney-General to be done through a joint committee, it can easily be challenged in the constitutional court and the Attorney-General can easily be declared as being unconstitutionally appointed into office. We have been doing some of these things to massage the egos of others, but they are not constitutional. We need to be clear in our minds.

The immediate speaker has alluded to what I wanted to say. One of the things that informed us at Naivasha for us to create this Senate was the justified fears by some quarters that devolution would be killed the way it was killed back in 1963. It is for that reason that we said we should create the Senate so that we also deal with those fears. They were genuine fears because none of us could cushion the other or assure the other that it is not going to die. The Senate was then created, and there was nothing much it was doing.

If I was the Speaker of the Senate, I assure you that I can create so much work for the Senate that is not contradictory to the roles that have been given to this National Assembly. However, there is lack of imagination of the amount of work that they can do. Members have alluded to it.

Let me also say that devolution as it is in this country today is not being protected by the Senate, the Executive or by this National Assembly. The people who are protecting devolution are the people of this country. That is why we said, if you want to do anything on devolution, you must have a referendum so that Kenyans agree it being altered, increased or removed. As Members of the National Assembly, we are only a conveyor belt. The Senate is also just a conveyor belt. Kenyans have a final say on the nature and the form of devolution that we have in this country.

It is also important that we note another very fundamental issue. In the Senate, none of those people who have been nominated have a vote. Any person nominated to the Senate will never vote for five years. You only walk around in these corridors, have a cup of tea and go and listen to what people say. You may be given an opportunity to persuade and debate, but you do not have a vote because you do not represent any person. You do not represent people because the Senate represents the institution of devolution. The House that represents people is the National Assembly. That is why the issue of budget-making has been left with the people's representatives. You cannot take the budget-making process to an institution that represents other institutions. Saying that the Senate has a role in Budget-making is completely misplaced. It has no role! There is a saying that goes: "there is no taxation without representation". How can you take issues of taxation to a House that does not represent the people? That is why matters of money, taxation, Budget-making and even allocation of resources will be done in the National Assembly.

As the Chairman of the Constitutional Implementation Oversight Committee (CIOC), I recently walked to the office of the Chairman of the Council of Governors (COG), Governor Oparanya. We had a debate on this issue. I told him that the reason why governors seem to be lost and even losing money, perhaps because of the debate on inadequate allocation of resources, is because they have also not understood the law clearly. If I was a governor and was the Chairman of COG, I would engage the National Assembly directly. They are the ones who deal with allocation of resources. They are the ones who give ministries money. What do you go to tell the Senate? You are crying to people who are also crying. You are telling people to do things they have no mandate to do. They cannot influence the Budget-making process. Once we have agreed on the vertical sharing, they have the role to agree on the allocation to the different county

governments but not how much the national Government and devolution get. That is not their role. That is the role of the people's representatives. These issues are very clear, but there are people who have decided to confuse others on that.

I agree with what was suggested. This whole debate happened in Naivasha. It is true that at one point, we agreed that the Senate will be meeting four times in a year. Because we wanted to pass this Constitution without too much opposition, we decided to keep quiet to avoid a debate on that aspect of how often should they meet. I reiterate that the Speaker and the leadership of the Senate can easily create a lot of work for themselves if they just choose to look at the areas that are available. They have a lot of work they can do throughout the period as opposed to what is happening today.

It is also absurd when you call a whole Ministry to come and make a presentation to a Committee of two senators. The quorum is one. It is very difficult to get quorum in the Senate. They do not even have the numbers that can take on the work that they want to do. It is not fair for this country. We respect the Senators. Previously, I held the position that we needed to scrap the Senate. I have changed that view. We need the Senate, but they need to be imaginative in terms of the work they can do because sooner or later, they will get themselves in trouble, if they continue trying to encroach on roles that are clearly left to the people's representatives.

Finally, if the Senator for Kakamega represents about 11 or 12 constituencies and the Senator for Lamu represents two constituencies, how can you equate that vote? How can a senator representing 11 constituencies be on equal footing with a senator representing two constituencies? That is why you cannot give them the mandate to decide on people's issues.

I support this approach by the House Business Committee. It is important that this issue be put to rest. As my colleagues have said, we expect the courts to look at the Constitution and not be persuaded by anything else, but what is provided for in our Constitution for the good of this country.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Baya Yaa.

Hon. Owen Baya (Kilifi North, ODM): Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity. In my mother tongue, when two people want to do the same thing at the same time, they say that one is unnecessary. We have a Senate that tries as much as possible to do what the National Assembly does. When you have a situation like that, then you end up with what we have...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Baya, I will have to interrupt you. It is now 1.00 p.m. You will have nine minutes when this matter is set down for consideration.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 1.00 p.m, this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.