



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – (THIRD SESSION)**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**THURSDAY, SEPTEMBER 19, 2019 AT 2.30 P.M.**

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.

3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

**a) Visiting residents of Migwani Ward, Mwingi West Constituency in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, of visiting residents of Migwani Ward, Mwingi West Constituency, Kitui County.

I request each one of them to stand when called out so that they may be acknowledged in the Senate tradition. They are:-

- 1) Joseph Maluki Mwendwa – Snr. Chief, Mumbuni Location;
- 2) Erastus Mwendwa Maluki – Snr. Chief, Nzatani Location;
- 3) David K. Mbusyo – Snr. Chief, Migwani Location;
- 4) David Musili – Chief, Kisovo Location;
- 5) Freconah N. Kithikii – Chief, Itoloni Location;
- 6) Grace Musanza – Snr. Chief, Nzeluni Location;
- 7) Cllr. Henry Musili Munyoki; and
- 8) John Musili Mwinzi.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**b) Visiting Students and Teachers from St. Angela’s High School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Angela’s High School, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**c) Visiting Pupils and Teachers from Kitui School for the Deaf in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Kitui School for the Deaf, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**d) Visiting Students and Teachers from St. Charles Lwanga Boys’ School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Charles Lwanga Boys School, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**e) Visiting Students and Lecturers from Mulango Bible College in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and lecturers from Mulango Bible College, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**f) Visiting Pupils and Teachers from Central Primary School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Central Primary School, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

**g) Visiting Students and Teachers from Kyondoni Mixed School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kyondoni Mixed School, Kitui County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

4. **PAPER LAID**

The following Paper was laid on the Table of the Senate: -

Statement on the business of the Senate for the week commencing Tuesday, 24<sup>th</sup> September, 2019.

*(The Deputy Senate Majority Leader)*

5. **STATEMENTS**

**a) Statement pursuant to Standing Order 47(1)**

- (i) Nominated Senator (Sen. Abshiro Halake, MP) made a statement on an issue of general topical concern, namely, *the International Day of Democracy*.

Thereupon, the Senator informed the Senate that the United Nations’ (UN) International Day of Democracy is held annually, on 15<sup>th</sup> of September, to raise public awareness about democracy. She further informed the Senate that this year’s theme was *“Participation: an opportunity to recall that Democracy is about people”*. The Senator observed that democracy was built on inclusion, equal treatment and participation; and it was a fundamental building block for peace, sustainable development and human rights.

The Senator also noted that the Constitution had created organs that govern the nation and ensure citizens are able to participate in decision-making processes and that Kenyans elect their representatives through different political parties. She informed the House that it was these parties that form government and their manifestos dictated the policies of the government in their execution of constitutional power.

The Senator stated that although Kenya was a constitutional, democratic state, the country’s democratic terrain had undergone periods of constraint characterized by democratic regression, polarizing politics and decline of democratic freedoms. She blamed this on the skewed economics, where the elite control our economy, leading to an ever expanding gap between the wealthy and the poor; tightly enmeshed economic and political elites; limited spaces for citizens to participate and express dissent and clamping down of

civil society's ability to act. She further stated that it was against such realities that profound national problems such as corruption, unemployment, inequality and conflict had been largely left unaddressed.

The Senator further emphasized on the need for strong and issue-based political parties as institutions for governance that would guide Kenya to political and economic stability.

- (ii) Nominated Senator (Sen. (Dr.) Getrude Musuruve, MP) made a statement on an issue of general topical concern regarding Special Needs Education.

Thereupon, the Senator stated that education was an ideal equalizer for children who come from disadvantaged families as it allowed them to be at par with other children who have an edge over them. She noted, however, that, education was seemingly difficult for children with disabilities due to the fact that they lacked a level playing field, occasioned by the challenges they experienced right from their home background.

The Senator also drew the attention of the Senate to the fact that deaf children suffered a greater disadvantage in that their journey to school begun without the dominant languages of instruction – English and Kiswahili. This, the Senator observed, had a great impact on their performance in subjects taught and examined in the said languages. This situation had a negative impact on their lives as it makes it difficult for them to secure gainful employment.

The Senator further underscored the need to put in place legislation that would address issues surrounding the special needs sector in order to fill the apparent lacuna, especially with regards to provision of instruction materials for the deaf. She commended the Standing Committee on Education for visiting the Kitui School for the Deaf on Tuesday, 17<sup>th</sup> September, 2019 and helping in the distribution of instructional materials.

**b) Statements pursuant to Standing Order 48(1)**

- (i) The Senator for Wajir County (Sen. (Dr.) Abdullahi Ali, MP) sought a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the provision of Immigration Services to Kenyans in the Northern Kenya region.
- (ii) The Senator for Makueni (Sen. Mutula Kilonzo Junior, MP) sought a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the status of prisons in Kitui.
- (iii) The Senator for Kitui County (Sen. Enoch Kiio Wambua, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the terrorist attack at the African Inland Church (AIC) Garissa on 1<sup>st</sup> July, 2012, where 13 persons died and over 60 persons were injured, most of whom were from Kitui County.

**c) Statements pursuant to Standing Order 51(1)(a)**

- (i) The Chairperson of the Standing Committee on Finance and Budget issued a statement relating to a matter for which the Committee was responsible, namely the budget process at the county level of government.
- (ii) The Chairperson of the Sessional Committee on County Public Accounts and Investment issued a statement relating to a matter for which the Committee was responsible, namely the activities of the Committee during the Sitting of the Senate in Kitui.

**d) Statement pursuant to Standing Order 52(1)**

The Deputy Senate Majority Leader issued a Statement on the business of the Senate for the week beginning Tuesday, 24<sup>th</sup> September, 2019.

**6. MOTION – ESTABLISHMENT OF AN AD HOC COMMITTEE TO INVESTIGATE MANAGED MEDICAL EQUIPMENT SERVICES (MES).**

Order read;

Motion made and Question proposed-

THAT, AWARE THAT while Health is a devolved function, Article 4(3) of the Constitution states that ‘the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’;

FURTHER AWARE THAT, there is no existing comprehensive legal framework to guide the consultative and collaborative process between the Ministry of Health (MoH) and County Governments;

COGNIZANT THAT, when the Managed Equipment Services (MES) project was launched on 6<sup>th</sup> February, 2015, the Ministry of Health entered into arrangements with five foreign firms for the provision of specialized medical equipment worth Kshs. 38 Billion;

NOTING THAT, according to the Ministry of Health, the project is aimed at improving health infrastructure and enhancing the capacity of counties to provide specialized health care targeting non-communicable conditions such as cancer and renal conditions, as well as to promote diagnostic, radiological and critical care

CONCERNED THAT, the Council of Governors (COG) has voiced opposition to the project on the grounds that County governments were not involved in the tender-procurement process, the monies are debited annually from the accounts of the Counties directly by the Treasury, there was lack of proper consultation between the Ministry of Health and County governments, and, that leasing the medical equipment was ultimately more expensive than direct purchase;

CONCERNED FURTHER THAT, the extent to which county government structures or institutions were involved in the project has remained unclear,

and the opposition raised by the COG reveals serious gaps in the consultative process between the MoH and county governments, including the terms of the contracts which end in 2022;

NOW THEREFORE in exercise of its oversight function, the Senate resolves to establish an adhoc committee to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide, including-

- i. whether county governments were involved in prioritizing the medical equipment in accordance with their needs;
- ii. the details of the company from which the equipment was leased;
- iii. the viability and benefit of leasing versus outright purchase;
- iv. the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- v. the operation, training and maintenance facilities in place for the equipment;
- vi. the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;
- vii. the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilised for the intended purpose; and,
- viii. the results of the exercise, considering the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilisation of the same since 2015;

and submit a report to the House within 90 days;

**AND FURTHER THAT**, the following Senators be appointed to serve in the committee –

- |                                      |                |
|--------------------------------------|----------------|
| 1. Sen. Mbito Michael, MP            | – Member;      |
| 2. Sen. Abdullahi Ali, MP            | – Member;      |
| 3. Sen. Seneta Mary, MP              | – Member;      |
| 4. Sen. Kinyua John Nderitu, MP      | – Member;      |
| 5. Sen. Ali Farhiya, MP              | - Member;      |
| 6. Sen. Wetangula, Moses Masika MP   | - Member;      |
| 7. Sen. Lokorio, Petronilla Were, MP | - Member;      |
| 8. Sen. Masitsa, Naomi Shiyonga, MP  | - Member; and, |
| 9. Sen. Outa, Frederick Otieno, MP   | - Member       |

*(The Senate Minority Leader – 18.9.2019)*

Debate interrupted on Wednesday, 18<sup>th</sup> September, 2019 resumed;

**Amendment proposed**

Motion made and Question proposed:-

THAT, the Motion be amended by-

1. deleting the ‘words 90 days’ and replacing therefor with the words “45 days”; and
2. deleting the proposed membership of the committee and replacing thereof with the following Senators-
  - i) Sen. Dullo Fatuma Adan, CBS, MP
  - ii) Sen. Mary Seneta, MP
  - iii) Sen. Millicent Omanga, MP
  - iv) Sen. Paul Githiomi Mwangi, MP
  - v) Sen. (Dr.) Christopher Langat, MP
  - vi) Sen. Moses Wetang’ula, EGH, MP
  - vii) Sen. Stewart Madzayo, MP
  - viii) Sen. Judith Pareno, MP
  - ix) Sen. Enock Wambua, MP

*(The Deputy Senate Majority Leader)*

And there being no Senator wishing to contribute;

Before the Question of the amendment was put, and pursuant to Standing order 81 (3), the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) determined that the Motion did not affect counties.

Question of the amendment put and agreed to;

Debate on the Motion as amended resumed;

Rising on a point of order pursuant to Standing Order 104, the Senator for Makueni County (Sen. Mutula Kilonzo Jr, MP) claimed to move THAT the mover be now called upon to reply.

Question that the mover be now called to reply put and agreed to.

Thereupon the Mover replied;

Before the Question was put and pursuant to Standing order 81 (3) the Temporary Speaker (Sen. (Prof.) Margaret Kamar) determined that the Motion did not affect counties.

Question on the Motion (as amended) put, and agreed to.

**RESOLVED ACCORDINGLY**

THAT, AWARE THAT while Health is a devolved function, Article 4(3) of the Constitution states that ‘the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’;

FURTHER AWARE THAT, there is no existing comprehensive legal framework to guide the consultative and collaborative process between the Ministry of Health (MoH) and County Governments;

COGNIZANT THAT, when the Managed Equipment Services (MES) project was launched on 6th February, 2015, the Ministry of Health entered into arrangements with five foreign firms for the provision of specialized medical equipment worth Kshs. 38 Billion;

NOTING THAT, according to the Ministry of Health, the project is aimed at improving health infrastructure and enhancing the capacity of counties to provide specialized health care targeting non-communicable conditions such as cancer and renal conditions, as well as to promote diagnostic, radiological and critical care

CONCERNED THAT, the Council of Governors (COG) has voiced opposition to the project on the grounds that County governments were not involved in the tender-procurement process, the monies are debited annually from the accounts of the Counties directly by the Treasury, there was lack of proper consultation between the Ministry of Health and County governments, and, that leasing the medical equipment was ultimately more expensive than direct purchase;

CONCERNED FURTHER THAT, the extent to which county government structures or institutions were involved in the project has remained unclear, and the opposition raised by the COG reveals serious gaps in the consultative process between the MoH and county governments, including the terms of the contracts which end in 2022;

NOW THEREFORE in exercise of its oversight function, the Senate resolves to establish an adhoc committee to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide, including-

- i. whether county governments were involved in prioritizing the medical equipment in accordance with their needs;
- ii. the details of the company from which the equipment was leased;
- iii. the viability and benefit of leasing versus outright purchase;
- iv. the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- v. the operation, training and maintenance facilities in place for the equipment;
- vi. the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;
- vii. the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilised for the intended purpose; and,
- viii. the results of the exercise, considering the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilisation of the same since 2015;

and submit a report to the House within 45 days;

AND FURTHER THAT, the following Senators be appointed to serve in the committee-

- i) Sen. Dullo Fatuma Adan, CBS, MP
- ii) Sen. Mary Seneta, MP
- iii) Sen. Millicent Omanga, MP



- iv) Sen. Paul Githiomi Mwangi, MP
- v) Sen. (Dr.) Christopher Langat, MP
- vi) Sen. Moses Wetang'ula, EGH, MP
- vii) Sen. Stewart Madzayo, MP
- viii) Sen. Judith Pareno, MP
- ix) Sen. Enock Wambua, MP

7. **THE ELECTIONS (AMENDMENT) BILL (SENATE BILLS NO. 18 OF 2019)**

Order for First Reading read;

Bill read a First time and committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

8. **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO. 19 OF 2019)**

Order for First Reading read;

Bill read a First time and committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

9. **THE COUNTY TOURISM BILL (SENATE BILLS NO. 5 OF 2019)**

Order for Second reading read-

THAT, the County Tourism Bill (Senate Bills No. 5 of 2019) be now read a Second time.

*(Sen. (Dr.) Agnes Zani, MP – 18. 9. 2019)*

Debate interrupted on Wednesday 18<sup>th</sup> September, 2019 resumed;

There being no other Senator wishing to contribute;

Mover replied;

Rising on a point of order pursuant to Standing Order 61(3), the Nominated Senator (Sen. (Dr.) Agnes Zani, MP) requested that the putting of the Question be deferred to a later date.

And the Temporary Speaker (Sen. (Dr.) Lelegwe Ltumbesi, MP) acceding to the request, nominated Wednesday 25<sup>th</sup> September, 2019 as the date when the Question shall be put.

10. **THE COUNTY HALL OF FAME BILL (SENATE BILLS NO. 39 OF 2018)**  
**(The Senate Majority Leader)**

*(Second Reading)*

Resumption of debate interrupted on 6<sup>th</sup> August, 2019

Order deferred.

11. **MOTION - ENGAGEMENT OF COMMUNITY HEALTH WORKERS BY COUNTY GOVERNMENTS**

(Sen. Rose Nyamunga)

Order read;

THAT, AWARE THAT county health facilities, and the promotion of primary health care are devolved functions, and each county government is striving to offer the best healthcare to the people of Kenya;

COGNIZANT THAT, the provision of healthcare services is continuously riddled with numerous challenges ranging from understaffing of personnel to inadequate facilities and equipment resulting in congestion in hospitals further restricting effective service delivery;

NOTING THAT every Kenyan has a right to affordable and accessible healthcare, and the President has launched a pilot universal health care program called “Afya Care” that will see many Kenyans access improved healthcare;

CONCERNED THAT, the diverse nature of counties and wanting infrastructural development is compromising the quality and accessibility of health centres especially during emergency situations, resulting in the loss of many lives occasioned by the failure by patients to reach health facilities in time;

FURTHER CONCERNED THAT, in each county there are numerous unemployed community health workers who are adept at working with communities in emergency situations, and have the requisite experience to support the medical practitioners in our country where, according to the World Health Organization 2014 report, there are two (2) doctors for every ten thousand (10,000) people;

NOW THEREFORE, the Senate resolves that the Council of Governors in partnership with the Ministry of Health –

- (i) Develop a policy for the training, certification and employment of community health workers to enhance the emergency health service delivery in the Counties, and
- (ii) Facilitate the said community health workers with the necessary basic equipment for use during emergency cases.

Order deferred.

12. **MOTION - LEGAL AND POLICY INTERVENTIONS FOR CAREGIVERS OF PERSONS WITH PERMANENT MOTOR AND NEUROLOGICAL DISORDERS**

Order read;

Motion made-

THAT, AWARE that Cerebral palsy, Down syndrome, Autism and other permanent motor and neurological disorders are birth defects characterised by, among others, disturbances of sensation, perception, cognition, hearing loss,

congenital heart defects, lower than average IQ, impairment in social interaction, and rigid, repetitive behaviors.

COGNIZANT that persons born with these and other permanent motor and neurological disorders face considerable difficulties in the social and behavioral aspects of their lives, including discrimination, physical challenges, mental and emotional health issues, and problems with inclusion and social isolation.

ACKNOWLEDGING the critical role that parents and caregivers of persons with permanent motor and neurological disorders play in ensuring that they realize their potential to the fullest extent possible and that they have long, healthy, and satisfying lives.

RECOGNIZING that, in taking care of these persons, caregivers make considerable sacrifices in the pursuit of education, employment, investment, and other opportunities for their own advancement and, in some cases, spend the most productive years of their lives taking care of persons with these disorders;

NOTING that most caregivers lack the training, tools and psychosocial support required in taking care of persons with these permanent disorders, are often subjected to the same stigma as the persons they take care of, and are exposed to stresses and pressure that have an adverse impact on their mental and physical well being;

CONCERNED that, while a lot of progress has been made in taking care of other vulnerable and disadvantaged members of the society, equivalent efforts have not been made to recognize the important role that caregivers play, to create, through policy and legislation, a conducive environment for the provision of adequate, safe and informed care to persons with these disorders;

NOW THEREFORE, the Senate resolves that the Ministry of Labour, Social Security and Services, together with the County Governments, formulate a policy framework for the recognition, training, empowerment and protection for caregivers of persons with permanent motor and neurological disorders, including: -

- a) provision of financial assistance and incentives to caregivers, including inclusion in the list of beneficiaries under the *Inua Jamii* Cash Transfer Programmes;
- b) provision of appropriate tax reliefs and exemptions to caregivers, equivalent to those advanced to other Persons with Disabilities (PWDs);
- c) exemption from taxes on goods and services required for the care and protection of persons with the disorders; and
- d) provision of the specialized training, psychosocial and other support necessary to engage in income-generating activities for caregivers of persons with permanent motor and neurological disorders, including accessing the quota set aside in law for vulnerable groups for the supply of goods and services to government entities.

(Sen. Millicent Omanga, MP)

And the time being thirty minutes past six o'clock, the Deputy Speaker adjourned the Senate without Question put, pursuant to the Standing Orders.

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

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Tuesday, September 24, 2019 at 2.30 p.m.*

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