

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 15<sup>th</sup> October, 2019**

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

### PRAYER

### COMMUNICATION FROM THE CHAIR

#### SUPPLEMENTARY ORDER PAPER

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Members. You will see, from your screens, that a Supplementary Order Paper has been posted just now. Hard copies will be circulated shortly. I will also be making another Communication a little later, once it is ready.

We can move to the next order for the time being.

### NOTICE OF MOTION

#### COMMENDATION OF ELIUD KIPCHOGE AND OTHER KENYAN ATHLETES FOR THEIR OUTSTANDING PERFORMANCE

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Cheruiyot, the Senator for Kericho County.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I wish to give Notice of the following Motion-

AWARE THAT, marathon world record holder Eliud Kipchoge wrote his name into history books by becoming the first man to run a marathon in under two hours on Saturday, 12<sup>th</sup> October, 2019, in Vienna, Austria;

FURTHER AWARE THAT, Brigid Kosgei broke the sixteen-year marathon world record for women, to become the new women's marathon world record holder during the Chicago Marathon held on Sunday, 13<sup>th</sup> October, 2019;

RECALLING the stellar performance by the Kenyan Athletics Team that participated in the IAAF World Athletics Championships held in Doha, Qatar, from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019, where the team won five Gold, two Silver and four Bronze medals, and emerged in the second position out of 206 participating countries;

COGNIZANT THAT Kenya has earned international respect in athletics over the years, courtesy of the hard work and stellar performance by our athletes in both on and off field events, which has brought us together as a country and encouraged cohesion in line with our National Anthem;

NOW THEREFORE, the Senate commends:

- a) Mr. Eliud Kipchoge, for his history-defining fete of achieving the 1:59 target to run a full marathon;
- b) Ms. Brigid Kosgei for her excellent performance in the Chicago Marathon, and specifically for breaking the womens' marathon world record; and,
- c) The Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar, from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019, for their stellar performance.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well.

Senate Majority Leader, I think you have a Notice of Motion. I can indulge you when it is ready.

Next Order.

## STATEMENTS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. For the convenience of the House, I will reorganise the Business under Statements today and, therefore, for the time being, we will grant the opportunity to some of the items under Statements and others a little later.

For now, I will give the Floor to Sen. (Dr.) Milgo. Are you ready to proceed under Standing Order 47 (1)?

*(Sen. (Dr.) Milgo remained seated in her place)*

You are making a Statement under Standing Order 47(1) on the dangers posed by disused excavated pits. Is that so?

**Sen. (Dr.) Milgo:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed.

## ADOPTION OF CONSERVATION AGRICULTURE IN THE COUNTRY

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning adoption of conservation agriculture in the country.

In the Statement, the Committee should–

(1) State the measures put by the Government to come up with a policy on conservation agriculture.

(2) State whether the policy will be ready for implementation.

(3) Explain how conservation agriculture can be mainstreamed into the existing policies on agriculture ahead of policy formulation.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. The next one is by Sen. Hargura.

## COMPLETION OF BADASSA DAM IN MARSABIT COUNTY

**Sen. (Eng.) Hargura:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the completion of Badassa Dam in Marsabit County. In the Statement, the Committee should–

(1) Give a status report on Badassa Dam, explaining the amount of money allocated to the project, the amount used so far, the date when the project started, and further explain the status of completion.

(2) Explain why the construction of the dam has stalled and the measures that the Government has put in place to address the causes of the delay in implementation of the project.

(3) State the financial year in which the Government plans to allocate money for the completion of the project.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well; the Committee to take note of that.

Let us have the next Statement.

## UTILIZATION OF THE EQUALIZATION FUND

**Sen. (Eng.) Hargura:** Mr. Deputy Speaker Sir, pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Finance and Budget regarding the utilization of the Equalization Fund, established under Article 204 of the Constitution of Kenya.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. M. Kajwang, please approach the Chair after the salutations.

*(Sen. M. Kajwang' approached the Chair)*

**Sen. (Eng.) Hargura:** In the Statement, the Committee should-

(1) Indicate the amount of money that has been allocated to the Fund since its inception, giving an annual breakdown *vis-a-vis* the amount approved by the Appropriations Bills enacted by Parliament.

(2) Explain the mechanisms that the national Government has put in place to enable the utilization of the Fund, either directly or indirectly in counties with marginalised communities.

(3) Provide a report on how the Fund has been utilized to date, indicating the approved projects per county, the amount of monies allocated to each project, the status of implementation of each project and the expected date of completion.

(4) Explain the measures that the national Government has put in place to ensure that the Fund is utilized for its intended purpose, taking into account that it has a timeline of 20 years from the date of the promulgation of the Constitution.

INHUMANE EVICTIONS OF FAMILIES IN  
CHEPTURO VILLAGE, NANDI COUNTY

**Sen. Khaniri:** Thank you, Mr. Deputy Speaker, Sir, for your indulgence. I rise pursuant to Standing Order 47(1) to make a Statement on a general topical issue concerning the inhumane evictions of families in Chepturo Village, Kiptuiya Ward, and Chesumei Sub-county in Nandi County.

The incident which happened in Nandi County from the night of Wednesday 9<sup>th</sup> October, 2019, to the morning of Thursday 10<sup>th</sup> October, 2019, was very unfortunate and inhuman, to say the least. More than 2,000 people, both young and old, were treated to the greatest terror of their lives. People's homes, Churches and schools were brought down by bulldozers under the watchful eyes of the Kenya Police Service. Properties and livelihoods were destroyed in the name of enforcing a court order. I condemn this inhuman act in the strongest terms and demand that the perpetrators should at least apologize to the affected families.

Mr. Deputy Speaker, Sir, most of those evicted have known only this place as their homes from birth; some are the third and fourth generations on the land. These people have buried their dead on this land. Some have used their life savings to buy land and build homes in this place. Others sold their land in different areas to buy this land, and then in the split of a second, all that is gone. Where will they start from? These are Kenyans and the Government is obligated to protect them and their rights.

Mr. Deputy Speaker, Sir, it is an open secret that this particular contentious piece of land has been a matter before the courts for a very long time. The contested land case – registered as Sammy Kiprotich and Clement Langat against Pius Kiaga and 57 others – has dragged in the courts for over 40 years, given the complexity and the large number of people involved. Even though the court made its verdict on numerous times before, the number of people involved and the magnitude of disfranchisement of implementing the orders necessitated an amicable and consultative solution, involving both the national Government and the County Government.

Through a statement, the Governor of Nandi County confirmed that his administration and the national Government were aware of the matter. He also confirmed that they were working towards a permanent solution that would have served justice for both the original and current owners of the land. The available options were to either find an alternative piece of land to resettle the current occupants of the land, or compensate the original owners who had filed the case in court.

However, in actual sense, the only viable option was to compensate the original claimants of the land, since the intrigues could not be solved any other way. It is, therefore, very unfortunate that the same Government that was solving the issue by one arm, used the other arm to visit terror on these helpless families. These families have school-going children, some of whom are expected to sit for their national examinations in less than two weeks. The families have now been left homeless and destitute. More than 2,000 people have been forced to live by the roadside in tents, in this cold, rainy season, which is extremely disturbing. This is wrong.

Mr. Deputy Speaker, Sir, it is unfortunate that some political leaders have taken up the plight of the poor suffering people to do politics. This very serious matter has been turned into a topic for name calling, incitement and abuse, with no clear solution being pursued. The most obvious thing that the affected families need the most at this time is encouragement from a united leadership, regardless of political affiliation. They need leaders who honestly and urgently pursue solutions for them. However, with all the talk, the families are still out in the cold.

We should avoid the temptation of trivializing this issue as a case of ethnic concern, and polarizing communities that co-exist interdependently and peacefully. The Government should immediately provide the necessary humanitarian aid and healthcare to the evicted families to prevent more suffering and outbreak of diseases.

Mr. Deputy Speaker, Sir, since Independence, the issue surrounding the ownership of land has been a very sensitive matter in Kenya. Our forefathers fought for Independence mainly because of land grievances. It is, therefore, unfortunate that, as a country, we have not handled the land issues conclusively more than 50 years after Independence.

Mr. Deputy Speaker, Sir, the Constitution of Kenya 2010 envisaged solving the land issues by defining it in Chapter Five, on Land and Environment, and the creation of the National Lands Commission (NLC) as one of the constitutional Commissions. However, have Kenyans lived to enjoy these gains? Certainly not. Up to now, the NLC and the Ministry of Lands has not made attempts to visit the affected community. This House needs to call these institutions to action.

The second group of Commissioners to the NLC should be reminded that Kenyans are watching, and are expectant of their service. While the first Commission concentrated on land compensation and alleged corruption – which are subjects in court now because that is where the money is – the new Commission should hold true to their mandate. The Government has been digitizing land records and issuing title deeds. The Ministry needs to provide a report on the success of this exercise. To date, land buying cooperatives and companies swindle and deny their members land, and these perpetrators go unpunished.

Mr. Deputy Speaker, Sir, the land question is very sensitive, and a ticking time bomb. Over the years, Kenya has experienced violent intercommunity clashes because of unresolved land issues. Most communities that share a boundary are always fighting; although in the disguise of politics, but it is because of land. It does not need any special knowledge to connect every other post-election violence in Kenya with evictions of one community by the other. It is a fact that a majority of Kenyans occupy land on the strength of allotment letters and sale agreements.

Most families have not done succession of land, and this confusion needs to be corrected. The NLC, the Ministry of Lands and the Department of Physical Planning should streamline the process of acquiring title deeds and remove corrupt officials from their offices. We need to agree that the leadership that came before us never conclusively solved the land dilemma since Independence, and we need a solution urgently. We are moving closer to the General Elections of 2022, and if we are not careful, the current small fires on land will develop to an inferno that will consume all of us.

I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Khaniri; what are you moving?

**Sen. Khaniri:** Thank you, Mr. Deputy Speaker, Sir, for the correction.

I beg to submit.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Khaniri. I know that you are very particular with processes and procedures.

Hon. Senators, we have a very busy afternoon. All of us will not have time to talk on everything. I will allow a few Senators to make comments and observations before we go to the next Statement.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I commend Sen. Khaniri for bringing this Statement. What happened in Chepturo Village, in Nandi County last week is a matter of national shame. The Governor of Nandi County, who is our former colleague in this House in the last Senate, has issued a disclaimer that they had nothing to do with the brutality that was meted out on the people in that village.

This matter was dealt with by the current Cabinet Secretary (CS) in the Ministry of Lands, Madam Farida Karoney. She visited the farm and gave two very clear legal options. First, she said that the national Government was going to resolve this issue by giving the claimants of the original land an alternative land. The second option was to compensate the families living on that land by allocating them double the land they hold, because they are holders of small pieces of land. That is if that land was to be left to the family that had sold the land to those people.

Mr. Deputy Speaker, Sir, what we saw last week is an abuse of State resources and a crude display of raw authority. We saw tractors, shovels and bulldozers being used to pull down people's homes. We are not talking about the kind of homes that you will find in Muthaiga or in Karen; the evictees are people with very humble livings. They had grass-thatched houses while some were covered with split tins of iron for people to live in. I wonder whether you saw one man who exhumed his father's grave and took out the skull. He said that he would not leave that place without carrying the remains of his

father with him. That is what those people have been visited with, and somebody must take responsibility.

The Jubilee Government cannot be telling Kenyans that they want to provide decent housing to people, when they are demolishing the little that people have in inexplicable circumstances. You and the Senior Counsel, Sen. Orenge, are lawyers like me. How do you explain a case staying in court from 1979 to date? This is a terrible indictment to the Judiciary. The Judge or the Registrar who certified the eviction order must have looked at the history of the land in question. The case has been on-going from 1979; that is 40 years of people living in court to fight over land ownership. I know that the doctrine of adverse possession states that somebody must have occupied a piece of land for 12 uninterrupted years, and it could apply here.

Mr. Deputy Speaker, Sir, I am sure that even the people who are fighting to recover the land are not the people who sold the land to the evicted families. I agree with Gov. Sang that this is not the moment to inflame ethnic passions. This is not the moment to go to the scene of crime to start asking where so and so is. We can solve these problems without going to the scene.

I urge the Senate Majority Leader, who is seated here, and appears to be agreeing with what I am saying, that he should take up this matter. We have witnessed brutal evictions in the Mau, and many other parts of the country. Evictions are now being visited on an area that is not even a gazetted forest or a water catchment area that is being protected. Somebody, sitting in an office in Nairobi, is exercising raw power and authority by unleashing terror on innocent ordinary people in this country.

Mr. Deputy Speaker, Sir, we must condemn the eviction in the strongest terms possible, and urge Kenyans that we have lost enough lives through ethnic passion in the past. For example, violence was witnessed in Chepsonoi in 1998, and in Kapkangani in 1993. Ethnic violence has also been witnessed in Mt. Elgon, Trans Nzoia, Eldoret and many other places in the past. This is the time to heal this country. Anybody in the public office who is running contrary to the spirit of healing this country of the ethnic fault lines that we have created through bad politics, must be condemned and driven out of office, if found culpable.

Mr. Deputy Speaker, Sir, I sympathize with the families that were affected by the evictions. The Senate Majority Leader must take it upon himself, on behalf of this House, to urge the national Government to compensate the affected families adequately, provide immediate housing, make sure that the children sit for the national examinations, and that they are given protection from the marauding State agencies that have got no feelings about how Kenyans should live.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula.

Hon. Members, we are constrained for time. I allowed a little more time for the maker of the Statement and Sen. Wetangula for geographical reasons, considering that they are elected leaders in the areas where some of the people who were affected come from.

Sen. Cheruiyot and any other Member who might be lucky to get an opportunity to speak, kindly do not take more than three minutes.

Give Sen. Cheruiyot the microphone.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I am guided by your ruling. Since Kericho is closer to Nandi than Bungoma, maybe you would give slightly more time to me than to Sen. Wetangula.

Mr. Deputy Speaker, Sir, this is a very sad issue. Watching the cries, over the weekend, of these very innocent Kenyans – whom State agencies decided to visit misery and a lot of pain on, on that particular cold Saturday morning – was not only heart wrenching, but disappointing to me as a leader. In fact, the most disappointing bit was when I watched the OCPD or the OCS of the immediate police station next to that particular place saying, “We came here at 3.00 a.m. to enforce a court order.” Which Government enforces court orders at 3.00 a.m. in the morning?

Mr. Deputy Speaker, Sir, I have said several times in this Senate that we have vetted many officers. We have given approval, as Parliament, to many civil servants, but there is none that I regret giving my thumb of approval to like the current Inspector-General (IG) of police. What the IG has allowed our Police Service to become is not in line with the promises that he made before this House, when he was being vetted. We now have officers running amok across the entire country, beating up people, engaging in acts of criminal activities and doing the kinds of destruction that we saw being visited upon these innocent Kenyans. Without any shame, the IG courageously stood in front of a camera, and narrated how they are evicting people, saying that all they are doing is enforcing a court order. That tells you that something is completely wrong with the people who are manning our State security agencies.

Therefore, Mr. Deputy Speaker, Sir, although it is not one of the requests that presenter of this Statement has made before you, given the sensitivity of its nature, and also the fact that forceful evictions seem to have become the order of the day with this current administration, I urge and request you to perhaps delegate or ask the Committee on Justice, Legal Affairs and Human Rights to look into this particular issue. They should also look into any other forceful eviction, whereby the police are using the power of the gun to visit all manner of pain and agony on innocent Kenyans.

Mr. Deputy Speaker, Sir, I was speaking to my colleagues on Thursday, last week. Two of them are here, but because of debate, I do not want to mention who they are. I reminded them not to celebrate when any innocent Kenyan is being forcefully evicted by the police, because you never know when the same will be visited upon you. It was so ironic that no less than 24 hours later, I saw one of them in a press conference. It serves to remind us that, as a people, let us always stand up for what is right. It does not matter how much it suits our political narrative for the moment.

Mr. Deputy Speaker, Sir, I urge you, with all utmost humility, that you should not allow this issue to rest at the level of a Statement. Please, charge the Committee on Justice, Legal Affairs and Human Rights – fortunately, it is chaired by the Senator of that particular region where this incident took place – to look into that issue and summon the IG to Parliament. Let him come and explain to this House who gave him the powers to go and visit pain and agony upon these residents. The same is happening in Mau Forest. As we sit here, in a well air conditioned Senate like this, Kenyan women are being raped, and their property destroyed.



Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Olekina. Make your observations very brief.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Statement by Sen. Khaniri. The issue of land is very emotive. This House ought to come up with a better way of ensuring that Kenyans, whenever they live, do not suffer.

Mr. Deputy Speaker, Sir, the challenge of title deeds is something which we know very well within the Maasai community. We live in very big chunks of land, which we later on come to realize that it is registered to other people.

Mr. Deputy Speaker, Sir, the Ministry of Lands and the NLC should move away from this business of compensation, and look at the issue of true ownership of land. Buying land through co-operatives, where you are just assigned a number, is very dangerous. I hope that this Statement can be tasked to the Committee on Lands, Environment and Natural Resources to investigate the circumstances that led to Government machinery being used to evict people through a private court order.

Mr. Deputy Speaker, Sir, this is a country where when you have money, you can buy the entire Government. As I sit here and listen to Sen. Khaniri talking about Government bulldozers being used, if I go to court and seek orders, I do not think the Government will give me their own bulldozers for me to evict people who have encroached into my land. This is a matter which the NLC, the Ministry of Lands and also the Judiciary have got to investigate. From what I hear, this matter had been dealt with by a different court. The matter was lost in that court, and it was then taken to another court. I do not know how the facts changed in the next court and, all of a sudden, new orders were given.

Mr. Deputy Speaker, Sir, this issue of forum shopping will destroy this country completely. Therefore, in the interest of the people of Kenya in general, this House should now rise to the occasion and address this issue of land properly. This should be in such a way that Kenyans who buy land can be taken through the entire due process of the law before they are actually allowed to occupy that parcel of land. In an issue where grandchildren come in and the title deeds were never transferred to the people who supposedly bought those pieces of land, it becomes very challenging.

Mr. Deputy Speaker, Sir, I am finalizing. I see a situation whereby we have people who have encroached into our land. They say that they bought the land, but they never got the title deeds. Then, all of a sudden, a court grants them ownership of the land, and yet these people have lived there for 40 years.

Mr. Deputy Speaker, Sir, I would plead that you assign this matter to the Committee on Lands, Environment and Natural Resources. When they will be looking at it, this House should think about either pronouncing itself through a Motion, or coming up with legislation that can look into these matters. Otherwise, Kenyans will continue suffering.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Sen. Malalah, I will give you two minutes, because I want to conclude on this matter.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I stand to support this Statement, first because I managed to go to the ground and I witnessed what was going on. I want to report here that it is a very sad situation, because poor people are suffering. Children are shivering in the cold, there is no food or shelter; and there are a lot of diseases which are now coming in. Therefore, it is important that we, as a leadership, look into this matter more seriously.

What surprises me, Mr. Deputy Speaker, Sir, is that the Government, through the CS of Lands, visited this place and made a commitment that it will sort out this matter amicably. Paradoxically, the same Government, through the IG, sent police officers to supervise the evictions, and it is sad. We need to put the Government to task to explain to us what its position on this matter is.

Mr. Deputy Speaker, Sir, I agree with my leader and father in politics, Sen. Wetangula, on the many issues he has raised. However, I do not agree with him on one issue, where he has alluded that leaders are not supposed to go there physically; and that the matter can only be sorted out in Nairobi.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, my distinguished colleague and son from Kakamega did not get me right. I said that some leaders went there, but others do not have to go there to be part of the solution. I never said that it was wrong for anybody to go there. In fact, he walked in when I was speaking, and he may have missed what I said.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I am well guided. I challenge and urge my father in politics, Sen. Wetangula, to visit the place because he is the leader of that region.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can advise him later. Your time is up.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I have not even started.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have 30 seconds.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, this is not fair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Malalah. Please wind up your comments.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I have just started; how do I wind up?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Malalah! Resume your seat.

Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): First of all, Mr. Deputy Speaker, Sir, I congratulate Sen. Khaniri for demonstrating a high level of maturity in the manner in which he has addressed himself to this matter.

*(Sen. Khaniri consulted with Sen. Outa)*

Mr. Deputy Speaker, Sir, I wish that Sen. Khaniri would listen to me, and not get distracted by the Senator for Kisumu County. Although he does not wish to hear our

comments, he needs to know that we appreciate him for demonstrating a high level of leadership in the manner in which he has addressed himself to this matter.

Mr. Deputy Speaker, Sir, I am a person who has tremendous respect for all squatters in this Republic, because I have been a squatter before. It, therefore, pains me to see what happened to those people in Chesumei Constituency, Nandi County. There is no justification for this, whether it was private land that was held by somebody before, or that the court made some decisions. The Government exists to take care of its own people, especially the vulnerable. Therefore, the route that the CS had taken was correct, because it is a way to find a solution.

Mr. Deputy Speaker, Sir, we have been in the same position so many times in Embombut, in Mau, and now this has happened in Nandi. Therefore, this House is the right place to find solutions to this problem. I hope that the Committee that you will commit this Statement to will not just come up with an answer, but visit the area to get solutions.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Malalah?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, is it in order that some Members in this House are treated differently from others? You have given me 30 seconds to contribute, and you are giving other leaders more than 30 seconds, yet this matter affects my people. It is unfair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Murkomen.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. As leaders, we must demonstrate maturity, just like Sen. Wetangula has said. Some comments were made by some people who called themselves leaders; for example, they said that some of the leaders should not visit a particular corner, or do something about the issue, and that they will do something to those who will visit those particular places. We must behave and demonstrate that we are above 18 years.

As Sen. Wetangula has said, this country has a bad history. What we are trying to ensure is that we live as a united country. It does not matter whether someone is from Western, Nyanza or Coast regions. When one part of this country is in pain, all of it is in pain. Therefore, the law will catch up with the CS for Interior and Coordination of National Government and somebody called Natembeya, the Regional Commissioner, who has been presiding over evictions from Mau, Nandi and every part of this country. They will someday answer for the atrocities they are committing. Not a few members of public---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Olekina?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, this is a House of records. Is it, therefore, in order for the Senate Majority Leader to refer to a provincial commissioner as 'somebody called Natembeya'?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the Standing Order which has been breached?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, we have Government officials who are given titles. Therefore, it is in order to refer to them with their titles, just like in the

Senate, when you refer to a Senator, you have to refer to him or her as “Senator so and so.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay. Members, let us not---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Kinyua?

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, the last time I checked, we do not have provincial commissioners but regional commissioners.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Let us not trivialize this important matter.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, with utmost and tremendous respect, Sen. Olekina must not trivialize this issue. If titles were important, they should not have trampled upon the rights of innocent citizens in Nandi. If those titles meant anything to this nation, children would not be sleeping outside or not living in their own abodes. Sen. Olekina should not cry more than Jubilee legislators; he does not know what it means to run the Government. We, on the Government side, are more pained because we promised to protect the rights of the people. If there are people holding public offices so as to misuse them, we will not turn and watch that kind of behavior happening.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Summarise, Senate Majority Leader.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Olekina? After that, Sen. Murkomen, you will wind up.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I am lost for words. Does this matter have to do with Sen. Olekina or the people who have been evicted, and are suffering? There is no point for us to digress.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I urge the distinguished Senator to deal with the matter, and not turn it into a personal attack on my character.

**The Senate Majority Leader** (Sen. Murkomen): Sen. Olekina, if you invite yourself to a contest, you must be ready for the consequences. There are people who, by virtue of the handshake, are falling over themselves to worship Government officials. We must---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Wind up, Sen. Murkomen.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have not mentioned anybody's name.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Murkomen! Whoever has a chance to speak, must speak through the Chair. Do not speak to each other. From where I sit, this Statement by Sen. Khaniri is so grave, that we have no room for side issues and maneuvers.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I believe that the relevant Committee will visit the ground and come back with a report that will address this issue conclusively. I also believe that the directions that are given by any Committee of this House, in summoning public officers who presided over that eviction, would include halting its continuation to ensure that our people get the necessary

protection that they deserve. It does not matter if it was a village in Embobut, Nandi or Kisumu; we must stand as a House of reason.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, Sen. Malalah can inform me in three seconds.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Please wind up, Senate Majority Leader. You have taken a lot of time.

What is it, Sen. Malalah?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I want to inform the Senate Majority Leader that the lawyer who is representing the evictees went to court today, and was denied a stay order. The police are threatening to fence off that place tomorrow. I would, therefore, like this House to move in with speed and save the people who have been evicted.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is useful information, and I accept it. To add on to that information, there were 10 orders sought to protect children in the Mau Forest. The courts in Kitale, Nakuru, Narok, Mombasa and Nairobi refused to give any orders to protect innocent children who are preparing for their examinations. There has been something peculiar about the courts in the past few months. I hope it is not intimidation on the judges, because even orders seeking to protect innocent people – like in the case of what happened in Nandi County – cannot be issued.

Mr. Deputy Speaker, Sir, less than a month ago, Sen. Orengo said something that we must remember. He said that small issues are the ones that break a country, step by step. We might soon find ourselves in the worst dictatorship we have ever seen, if we are not careful to protect the interest of the poor and young people.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I can see that the level of interest is high, but we do not have the time for more comments. I agree with those who have spoken, that this is an important matter touching on the livelihoods and lives of Kenyan citizens; families that are homeless, who have been evicted and do not seem to have a future.

I will, therefore, direct two committees to be seized of this matter, and with a deadline of 10 days from today to bring a report. We will have the Committee on Justice, Legal Affairs and Human Rights because this is about evictions and human rights; and the Committee on Lands, Environment and Natural Resources, because the Ministry of Lands was seized of this matter and made some positive pronouncements. As the two committees deal with this matter, they should bring us a joint report with concrete recommendations, because you have heard the sentiments of the Senators.

I urge Sen. Malalah, Sen. Wetangula, and Sen. Khaniri, who come from that region, to join in as friends of the Committees so that we have a wholesome recommendation of this matter. The two Committees should endeavour to speak to the CS for Lands, the Attorney-General who is the custodian of human rights and legal processes, and also the Ministry of Interior and Coordination of National Government, because the police were used during the evictions. It is so ordered.

Hon. Senators, we have taken a lot of time on that particular item. Therefore I defer the other Statements on the Order Paper to tomorrow.

DANGERS POSED BY ABANDONED AND DISUSED  
PITS IN ROAD CONSTRUCTION SITES

STATUS OF BADASSA DAM IN MARSABIT COUNTY

UTILIZATION OF THE EQUALIZATION FUND

CURRENT STATE OF AFFAIRS AT THE MAASAI MARA  
UNIVERSITY, NAROK COUNTY

ADOPTION OF CONSERVATION AGRICULTURE  
IN THE COUNTRY

IMPENDING EVICTION OF MAVOKO RESIDENTS

CHALLENGES EXPERIENCED IN THE  
IMPLEMENTATION OF UHC PROGRAMME

JOBLESSNESS AMONG NYS GRADUATES

*(Statements deferred)*

In application of Standing Order 40, I would like us to move to the Motion on the Report of the County Public Accounts and Investments Committee (CPAIC), which is Order No.9 in the Supplementary Order Paper. Meanwhile, because of the topical nature of the Notice of Motion by Sen. Cheruiyot, I direct that that Motion be debated from 4.30 p.m. today.

You may proceed Sen. M. Kajwang’.

## MOTION

ADOPTION OF THE CPAIC REPORT ON ACCOUNTS OF  
COUNTY GOVERNMENTS FOR FY 2013/2014

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I beg to move-

THAT, the Senate adopts the report of sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Nandi, Elgeyo-Marakwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka-Nithi, Siaya, Embu, and Nairobi City County Executives for Financial Year 2013/2014 (1<sup>st</sup> July, 2013, to 30<sup>th</sup> June, 2014), laid on the Table of the Senate on Wednesday, 9<sup>th</sup> October, 2019.

As I move this Motion, it is important to bring to the attention of Members of this august House that the County Public Accounts and Investments Committee (CPAIC) has been working round the clock to ensure that reports are brought to the House. The interesting departure from other parliaments within the Westminster is that, for example, in the House of Commons, once the Public Accounts Committee makes recommendations and pronounces itself, those recommendations are binding. They are actionable and what remains is implementation.

In our scenario, the CPAIC, being an agent of this House, is required to report back to this House. The House is required to debate on the report of the CPAIC and pronounce itself before implementation is undertaken. That increases the time taken, from the point when the inquiries are held to the point when this House pronounces itself.

In the previous Senate whose life lapsed in 2017, the CPAIC did a lot of hard work of ensuring governors came to the Senate to account for funds that are sent to them. Unfortunately, in the previous Parliament, this House did not adopt even a single report, despite the fact that on several occasions, reports were laid on the Table of this House and Notices of Motions were moved. The House never got an opportunity to adopt them. It is only in this Parliament that this House has adopted a few reports of the CPAIC.

Mr. Deputy Speaker, Sir, I would like to report to the House that so far, this House has adopted seven reports of the CPAIC. In June, 2018, the House adopted the reports for Kisii, Homa Bay, Kilifi, Nakuru, Kajiado, Turkana and Narok counties. I have been informed by my clerks that the 26 reports which the Committee tabled are lying at the Table Office. A Notice of Motion should be generated and brought to this House so that those 26 reports can be scheduled for debate. Today, we have 10 reports to adopt.

It is important that we bring closure to FY 2013/2014, because the key interest of Members of this House and members of the public is not on postmortem or investigations spanning six or seven years backwards. Members are more interested in what the current governors are doing. Indeed, Members have pronounced themselves in the past that, for instance, in the case of Nairobi City County, it might not be value adding to talk about what the previous governor did. It is more important to talk about what the current governor is doing, because in that manner, we will be proactive. We will be more of physicians than morticians, and that is what has been there in the past.

Mr. Deputy Speaker, Sir, the Motion I am moving contains 10 counties. I urge Senators from those respective counties to be keen on the findings and recommendations of the CPAIC. I recall when we adopted the seven reports that I have mentioned earlier, this House was nearly empty. Sometimes when we do not bring reports, there is pressure that we should bring reports; but when we bring them, there is little enthusiasm. That is why I thank the Chair for giving the Committee primetime for us to deal with the issue of oversight, which is one of the core businesses of the Senate.

Mr. Deputy Speaker, Sir, hon. Members can access the Report before us on the iPads. The particular report I am talking about is about 210 pages, and there is another one that is 600 pages, but it will be moved in the next Motion.

The first report is on Nandi County. Some of the observations are that Nandi County spent Kshs7.7 million to hire graders without following due process. We have recommended that the Chief Executive Officer (CEO) and the accounting officers be held

responsible. We have resolved, as Members of the CPAIC, that where there is violation of law and financial impropriety. The governor, being the CEO of a county, must be held jointly liable with the other accounting officers. Our understanding, as Members of the CPAIC, is that the governor is not just the CEO, but also the chief accounting officer.

There are governors who argue that because they do not do the day-to-day approvals and they do not have the authority to incur expenditure, they should, therefore, not be held liable. That, in our view, is not an accurate interpretation of the law. It is only a governor who is described in the Constitution as the CEO, out of those all those who are elected.

In fact, even the President is not described as the CEO, but the Governor is described as the CEO. If you go by the conventional managerial definition of that term, it means that, that is where the buck stops. It is not enough for a Governor to say that his procurement people did something wrong and that they should be dealt with, whereas he becomes an exception.

Mr. Deputy Speaker, Sir, Nandi County spent another Kshs5.6 million to plant trees. When the Auditor-General went to Nandi, there were no records of the Kshs5.6 million spent on tree planting to show that procurement procedures were complied with. Indeed, there were no trees to be seen. The governors have been coming to us, and blaming God for some of these things. Therefore, when they spent Kshs5.6 million to plant trees and there is no tree as evidence that the money was properly spent, they blame it on God. They say that God did not send rain, and they say that he did not create the right environmental conditions for that particular year, and that is why the project failed.

Mr. Deputy Speaker, Sir, another Kshs10.9 million was spent on a trip by Members of County Assemblies (MCAs) to Uganda, and imprest procedures were not followed. Another Kshs8.13 million was spent on bursaries without procedures being followed. To make matters worse, revenue was collected from hospitals and spent at source.

Mr. Deputy Speaker, Sir, these findings and observations in Nandi County tend to cut across most of the counties. This is why the CPAIC opted to bring to this House a Fiduciary Risks Report. In our view, some of the risks identified in counties cut across each and every county. We felt that it would be important for the Senate to frame the findings and make recommendations which would then be applied uniformly across all counties, whenever these issues arise from the counties. The issue of imprest management and flouting of procurement regulations is a common finding in each and every county. I want to ask---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order, Sen. Omanga?

**Sen. Omanga:** Thank you, Mr. Deputy Speaker, Sir. I am sorry to interrupt my Chairman. I would like to draw your attention to the fact that there is no one listening to what the Chairman of CPAIC is moving in this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How do you know, Sen. Omanga?

**Sen. Omanga:** Mr. Deputy Speaker, Sir, no one is listening; they are talking to each other in pairs.



**The Deputy Speaker** (Sen. Kindiki): Order! Order!

**Sen. Omanga:** Mr. Deputy Speaker, Sir, if you ask them which reports of counties the Chairman has tabled, they are not aware, yet they are the same people who were complaining that the Committee was not doing anything. We are talking about their counties.

**The Deputy Speaker** (Sen. Kindiki): Order, hon. Members! Point noted; let us pay attention.

**Sen. Omanga:** Mr. Deputy Speaker, Sir, if you look at the amount of money that the Chairman is talking about, it is millions of Kenya Shillings.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Omanga. The point has been noted. Let the matter lie there.

Chairperson, I request you and the Seconder to try and summarize. We are constrained by time, because we have a lot of competing agenda today which are equally important and urgent. Some of them are time-bound, as I will communicate shortly.

**Sen. M. Kajwang’:** Thank you, Mr. Deputy Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I would have preferred if Sen. Omanga would have said that the reports that they have ably done are not here for us to read, because we are struggling to write notes. We are not supposed to write notes. The last statement was Kshs9.7 million lost in Nandi County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The reports should be circulated; I hope they are available.

What is your point of order Sen. Wambua? Give Sen. Wambua the microphone.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, you had already ruled on the issue that I wanted to raise a point of order on. However, just because I am on the Floor, let me say it. There was a level of dishonesty on the part of Sen. Omanga, because she was accusing Senators of consulting in pairs. She was actually walking away after consulting with Sen. Wamatangi, and she rushed there to make that statement.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Senators, let this matter lie there. Thank you.

Proceed, Sen. M. Kajwang’.

**Sen. M. Kajwang’:** Thank you, Mr. Deputy Speaker, Sir. Allow me to proceed and mention that the public listens to the proceedings of the Senate. Sometimes we are not only talking to each other, but also to Kenyans. It would be important for us to bear that in mind. When we have a report having 10 counties, for example, if we will talk about Nandi County in this House, I am sure that the people of Nandi will be very keen to hear what Senate has to say about some of the things that have happened in that county in the past.

Mr. Deputy Speaker, Sir, the reports are on the iPads, but this particular one is quite bulky; it is about 210 pages. I invite hon. Members to skim through it and see the issues we have captured in there.

Mr. Deputy Speaker, Sir, the second county we have covered is Elgeyo-Marakwet. Some of the issues that are sticking out include the fact that the county Government did a tender for construction of an office block valued for Kshs19.9 million. In their wisdom, they split it into five. We can only deduce that splitting it into five was meant to beat procurement regulations, which makes that kind of practice illegal.

Not to be outdone, they went ahead and varied the contract by 42.6 per cent. The Public Procurement and Disposal Act allows variation up to 25 per cent. However, on this project, the cost was varied from Kshs19.9 million to Kshs28.4 million, which is a 42.6 per cent variation. The project was at 90 per cent completion. If you are at 90 per cent and you have already varied by 42 per cent, there is another 10 per cent remaining. Chances are that this project would have gone beyond 50 per cent in terms of variation.

Mr. Deputy Speaker, Sir, there are various items where the Elgeyo-Marakwet County spent without supplying supporting documents. There has been a habit where the governors would refuse to cooperate with auditors when they go to their counties, only for them to come with voluminous documents and records to present before the Senate. We have said it in the past that the Senate does not have investigators or skills in forensics. This is a people's court; a court of pragmatists. We have held – we have put that in the Fiduciary Risk Report – that in cases where the counties could not justify expenditure when the auditors were on the ground, we propose that Section 62 of the Public Audit Act be applied. It states:-

“(1) A person shall not—

(a) Without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General or professional acting under this Act;

(b) Without justification, fail to provide information required under this Act;

(c) without justification, fail to provide information within reasonable time that is required under this Act;

(d) submit false or misleading information;

(e) misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General or professional acting under this Act; or

(f) interfere with or exert undue influence on any staff of the Office of the Auditor-General or on any person authorized by the Auditor-General to perform functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Kshs5 million or to imprisonment for a term not exceeding three years, or to both.”

Mr. Deputy Speaker, Sir, the next county there is Baringo County, and it is the same story of outstanding imprest. We have been sitting down and asking ourselves why counties will have huge outstanding imprest. In this Parliament, if you are given imprest, it will not take more than three or four days before a Member is required to account for it. Unless we have a perfect system here, but counties have been holding imprest for periods exceeding six months, and they feel nothing about it. That is a clear violation of the Public Finance Management Act. We have seen budget weaknesses in Baringo County,

where there was a budget but no evidence provided that public participation, indeed, took place.

We have also seen cases where the county government did not provide documents to the office of the Auditor-General, only for them to present them before the Senate. There was also a case where more than Kshs1 million was spent on single-sourced services, particularly, legal and hotel services. Legal fees is becoming a problem in most of our counties. We have situations where governors would refuse to come to the Senate, only for them to spend public funds to get lawyers to defend them in court, explaining why they should not be coming to the Senate. The easiest thing would be for them to come to Senate, and they will spend much less.

We have seen cases where county government officials refuse to pay legitimate legal fees. Sometimes it is a game, and what happens is that the lawyers will go to court to seek punitive orders, and they will be charged interest on the legal fees. There is one county where a legal fee of Kshs16 million grew into Kshs100 million because of what appeared to be complicity by county officials and those advocates.

Mr. Deputy Speaker, Sir, moving forward to Laikipia County, we had an interesting case where the county was not deducting withholding taxes, which is a clear violation of the law. This has happened in many other counties, where counties deduct taxes and statutory dues – like the National Hospital Insurance Fund (NHIF), the National Social Security Fund (NSSF) and income tax – but that money does not go to the recipients. This business of tax evasion and the crackdown we are seeing the Kenya Revenue Authority (KRA) carrying out very aggressively on private citizens, I want to invite them to start with the Government, particularly Government entities.

In county governments, if you look from 2013 all the way to 2018, there will be cases where tens of millions of shillings have been deducted from poor employees and those monies have not been sent to the respective destinations. Just this past weekend when I was in Homa Bay County, I was told that counties are not remitting things like the NHIF to the respective insurance firms. This has caused many employees serious pain when they go to seek medical services, only for them to be told that their counties have not paid. Indeed, some employees have even been blacklisted in the Credit Reference Bureaus (CRBs) because of non-remission of statutory deductions by Government entities.

In Laikipia County, the county government decided to appoint an auctioneer. Every Thursday in Rumuruti, the auctioneer would go and sell goats, sheep and cows on behalf of the county government. This auctioneer was paid Kshs2.195 million without a contract or justification. In mitigation, the county said that this was an arrangement with the defunct local authority, which they felt they needed to continue with. This is some kind of crazy application of public funds that should not be allowed in an era of modern financial management.

Mr. Deputy Speaker, Sir, we also saw several irregularities in road projects. We have duly recommended that the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) should carry out investigations with a view to holding to account those who are responsible for some of these interesting expenditures. For example, paying auctioneers millions of Shillings to go and sell goats,

sheep and cows on their behalf at the Rumuruti Market. As I said earlier, the CEO and the accounting officers should both be held liable, if it is established that public funds were lost in those adventures.

Mr. Deputy Speaker, Sir, Moving on to Machakos County, we realized that there were serious weaknesses in the maintenance of cashbooks and bank reconciliations. This means that you cannot use the cashbooks as a basis to describe all transactions carried out by the county. It simply means that you cannot tell how cash was utilized in that county. There was also un-surrendered imprest of Kshs46.9 million.

Going forward, you will find reports of the adventure that the county got into, as far as purchase of assets was concerned. Machakos County bought 91 Nissan Tiida model vehicles, which were supposed to be used by the police, yet there was no Memorandum of Understanding (MoU) with the Ministry concerned. A total of Kshs219.4 million was spent on this venture. Within the context of the Intergovernmental Relations Act, it is possible for a county government to undertake a function that has been reserved for the national Government, but there needs to be a MoU in place. In this case, the county government did not provide the MoU. The country will recall the issue of the Subaru Outback vehicles and the ambulances that were bought by Machakos County totaling to Kshs145.3 million. We have made recommendations that the DCI and the EACC should undertake investigations into those procurements and confirm whether they were done within the law.

Mr. Deputy Speaker, Sir, there are five other counties that have been mentioned in that Report. I may not have time to go through each and every county, but I just want to call upon the Senators from the respective counties and Senators generally to take an interest in those findings, because at the end of the day, we will be pronouncing ourselves on them.

Mr. Deputy Speaker, Sir, there is one area that we will need to apply our minds to. We have made references to the DCI and the EACC, and the question is; should these two bodies be jointly involved in investigations? Where does the EACC start and where does the DCI stop? Since the DCI has made it a habit to use social media to do its work, it has become fashionable to refer issues to the DCI because they know how to sensationalize issues and arrests. They time those arrests very appropriately to cause maximum pain and suffering. We are not in this for causing pain and suffering, but for justice and to ensure that we put in place an effective public finance management system in counties that can close the loopholes that we saw in the first financial years.

Where we have made references to DCI and EACC, and it is upon this House to advise whether we should let both bodies be seized of these matters. Alternatively we, as the Senate, should say that some of these issues of integrity, theft and graft that we are seeing in counties should be dealt with exclusively by the EACC.

Mr. Deputy Speaker, Sir, let me also bring to the attention of the House that this being the first year of devolution, there were a lot of challenges. The controls were very weak. The Public Finance Management (PFM) Act was in place, but the regulations were still evolving. In terms of application of the PFM Regulations, there was a little bit of confusion. We saw some counties like West Pokot, Wajir, Marsabit and Samburu, having serious human resource gaps. When the governors came before us, they admitted and said

that they did not have the right people to put in place a proper financial management system.

In the first year, even the Public Procurement and Disposal Act (PPDA) had not been revamped to be in line with the new Constitution and devolution structures. Indeed, the PPDA that we are applying now came into force in 2015; one or two years after this financial year. Yes, there was an Act, but it had to be amended later on to take into account the county governments.

Therefore, Mr. Deputy Speaker, Sir, there were serious legal gaps and capacity issues, yet there are those governors who were clever enough to take advantage of those gaps to pilfer. There were county government officials who took advantage of those gaps to do the things that they were not supposed to do. It is upon this House to look at that Report. I would also want to tell the House that it is not too late to pass judgment or make a decision and determination on these issues.

In Nigeria, prosecution of governors over corruption took a very long time. In fact, it is not too long ago that the first governors were convicted for abuse of office. Therefore, six or seven years down the line is not too late. I want to assure this House that the CPAIC is working round the clock. As I speak, the Clerks assigned to this Committee are holed up in Naivasha to ensure that they write the reports. This is so that we can spend more time discussing the findings of the CPAIC in this House, rather than discussing in a closed room – in Committee Room No.5 – with governors. We have even agreed that in the month of October, we shall halt our public hearings to ensure that all the reports from the hearings that we have held are brought to this House. This is because there is no point in us having a conversation with ourselves for the entire year, and not bringing reports to this House.

Mr. Deputy Speaker, Sir, we have now started looking at issues from 2017/2018. One of my colleagues, Sen. Wamatangi, calls it “climbing the tree from the top.” Sometimes it might be important for us to do that, because we have seen cases where current governors come and blame former governors for all the bad things that could have happened in those counties. We want to hold the former and current governors to account.

Mr. Deputy Speaker, Sir, I want to allow time for Members of the Committee and the House to pronounce themselves and guide the Committee on these matters, but allow me to finalize with the issue of implementation. When I started making my presentation, I made it clear that seven reports have been adopted by this House; Kisii, Homa Bay, Kilifi, Nakuru, Kajiado, Turkana and Narok counties. These reports were adopted in the last Session in 2018. The expectation is that three months after the House adopts a report, the relevant accounting officers shall tell Parliament the measures that have been taken to implement the recommendations of Parliament.

However, Mr. Deputy Speaker, Sir, without a Committee on Implementation, we have no mechanism of tracking the implementation of these reports. We said that Committees would do their own implementation. I will be honest, having sat in that Committee for the last two Sessions; and this is a conversation we have had, around numbers and composition. We have said that it is sometimes difficult for a Committee to make recommendations, and find time to follow up on their implementation.

Mr. Deputy Speaker, Sir, we have seen seven reports that have been adopted. We have 10 reports today, and there are another 20 reports in the Order Paper. The Secretariat is holed up in Naivasha, working on another 30 reports. We need to rethink the framework for implementation of recommendations of the Senate. This is because in those seven counties, we made certain drastic suggestions on investigations, prosecution and public officers who are unfit to hold public office. If the Senate will pronounce itself and nothing happens thereafter, we will be seen to be a House that is acting in vain. I do not believe that the people set up the Senate to be a House that is working in vain. Now that we have these reports and we intend to make a determination on them, let us also reflect on how we can ensure that the recommendations of this House are implemented.

Mr. Deputy Speaker, Sir, I beg to move and I request a Member of my Committee, the Senator for Narok County, to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to second the Report tabled by my good Chairperson.

The issue of fiduciary responsibility is an important matter. Having spent a lot of time interrogating the Auditor-General's report, we find that there are so many challenges in terms of administration in county governments. Many county administrators in the county treasuries have no idea about the correlation between the law and how they spend money. They have three pieces of legislation, which I hope every county government can use as a Bible. One of them is the Public Finance Management (PFM) Act.

Mr. Deputy Speaker, Sir, we did not spend a lot of time looking at the reports for the 2013/2014 Financial Year, because these are reports which had been considered by the previous Committee, although we adopted them. When we looked at the violation of the PFM Act by most county governments, it really shocked us.

Mr. Deputy Speaker, Sir, the second piece of legislation which was being heavily violated is the Public Audit Act. During the audit process, you will find that most Governors have no clue on how to go through the audit process. The Chairperson mentioned here about Governors coming in and bringing a lot of documents to the Senate, while Section 31 of the Public Audit Act is very clear on the process of the audit.

Before the Auditor-General issues a management letter or the opinion, county governments are given 14 days to find out where they have gone wrong in order to mitigate. However, in the Financial Year 2013/2014, most county governments received a disclaimer of opinion, which clearly meant that there was limitation of scope. County governments were not keeping records well. Therefore, the issue of book keeping is something which the Senate, as the House which defends devolution and protects county governments, should really emphasize on, and say those county governments must improve on their record keeping.

Mr. Deputy Speaker, Sir, if you look at the issue of the Integrated Financial Management Information System (IFMIS), you will find that many transactions by these county governments were being carried out outside of the IFMIS. The other big problem is the accounting system being used by the county governments. Most county governments are using an accrued system, although they can only use a cash-based system legally.

This is why most county governments have got a lot of pending bills, which should not be there. Therefore, when we are thinking about this matter as a House, we have to figure out whether it will be proper for us to introduce a different IFMIS system or accounting system for county governments, which is different from the national Government system. We have seen a few improvements in the subsequent years, but the problem of doing postmortem is that there is really nothing we can do now.

Mr. Deputy Speaker, Sir, in the reports of the 2013/2014 Financial Year, you will find that in most cases, there are issues of the defunct county councils, records missing and different accounting systems being used. The book keeping system by county governments was based on the Local Authority Integrated Financial Operations Management System (LAIFOMS), and they are now looking at a different system on IFMIS. These were, therefore, the various challenges that these county governments were facing.

Needless to say, despite the fact that these county governments were facing these challenges, there was a clear misunderstanding of the roles of the governors. Some of them looked at themselves as mini-gods, where they could spend the money as they wished and did not have to account to anyone. In some counties, you will find that a county government will have about 20 or 30 accounts, yet, the law is very clear on those accounts. The law stipulates that all money collected must be put into the revenue account.

Mr. Deputy Speaker, Sir, as we progress, for us to improve on service delivery for county governments, this House must now come up with proper legislation and amend the PFM Act so that we can adopt an accrual system of finance to help these county governments. When we stand here and lament about mismanagement of funds in the counties, if we cannot give them solutions, we will not be doing anything.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Murkomen?

## PROCEDURAL MOTION

### ADJOURNMENT OF DEBATE ON MOTION

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move a Motion, pursuant to Standing Order 105(1), that the debate be now adjourned.

Mr. Deputy Speaker, Sir, we have the next Motion, which is time-bound, as per Statute. We are requesting, in a bipartisan manner, to adjourn debate to a time that will be determined by the Chair, to allow this important Motion to be moved.

I invite the Senate Minority Leader to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Minority Leader, do it the proper way.

*(Laughter)*

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

*(Debate on the Motion was adjourned)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We shall continue with debate on that particular item later.

I now direct that Order No.2 be called out.

### COMMUNICATION FROM THE CHAIR

#### APPROVAL OF MOTION TO REMOVE FROM OFFICE, BY IMPEACHMENT, THE GOVERNOR OF TAITA/TAVETA COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to make the following Communication.

By a letter dated 9<sup>th</sup> October, 2019, Reference TTCA/CS/7/Vol. 1(085) and received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita/Taveta informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Taita Taveta-

“THAT, pursuant to the provisions of the Constitution of Kenya, 2010, Article 181(1)(a) and (c) as read together with Section 33 of the County Governments Act, 2012, the County Assembly of Taita/Taveta resolves to remove H.E. Granton Graham Samboja as the County Governor of Taita/Taveta on grounds of Violation of the Law and Gross Misconduct in holding the State Office.”

The Speaker of the County Assembly also forwarded copies of the following documents:-

(a) The Order Papers for the morning and afternoon sittings of the County Assembly of Taita/Taveta held on 9<sup>th</sup> October, 2019;

(b) The HANSARD of the sitting of the County Assembly of Taita/Taveta held on 9<sup>th</sup> October, 2019;

(c) The Motion for Impeachment of the Governor of Taita/Taveta County, together with signatures of the Members of the County Assembly in support of the Motion;

(d) The minutes of the Taita/Taveta County Assembly House Business Committee meeting held on 9<sup>th</sup> October, 2019; and,

(e) The minutes of the Speaker’s *Kamukunji*, Taita/Taveta County Assembly, held on 9<sup>th</sup> October, 2019.



In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012, and Standing Order 75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required “*within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.*”

Hon. Senators, pursuant to Section 33(3)(a) of the County Governments Act and Standing Order 75(1)(a) of the Senate Standing Orders, I hereby proceed to read the charges against Hon. Granton Graham Samboja, the Governor of Taita/Taveta County:-

(1) Misappropriation of funds contrary to Section 196 of the Public Finance Management (PFM) Act, 2012. Particulars include:-

- (a) Expenditure on unbudgeted projects;
- (b) Unwarranted formation of taskforces;
- (c) Stalled projects; and
- (d) Failure to prudently implement the development budget;

(2) Failure to submit to the county assembly an annual report on the implementation status of the county policies and plans, as required by Section 30(2)(j) of the County Governments Act, 2012;

(3) Failure to deliver the annual state of the County Address, as required by section 30(2)(k) of the County Governments Act, 2012;

(4) Failure to remit statutory deductions to the relevant institutions, including the Kenya Revenue Authority (KRA), the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF), contrary to the Income Tax Act, Cap 470, the National Hospital Insurance Fund Act, Cap 255 and the National Social Security Fund Act, Cap 258, Laws of Kenya;

(5) Misleading the people of Taita/Taveta County, contrary to Section 19 of the Public Officer Ethics Act, Cap 183, Laws of Kenya as read together with Articles 73 and 260 of the Constitution of Kenya, 2010;

(6) Misleading the Members of the Taita/Taveta County Assembly, contrary to Section 19 of the Public Officer Ethics Act, Cap 183, as read with Article 260 of the Constitution of Kenya, 2010. The particulars include:-

(a) The allocation of Kshs274 million for casual workers; and,

(b) The use of Kshs.120 million being road maintenance from the Fuel Levy Equalization Funds;

(7) Gross Misconduct. The particulars include:-

(a) Failure to adhere to the County Assembly Resolution on the Ratification of Mr. Davis Mwangoma as the acting County Executive Committee (CEC) member for Finance and Economic Planning;

(b) Misrepresentation of facts to the public with the aim of inciting the public against the County Assembly;

(c) Collapse of County Government devolved structures; and

(d) Failure to provide leadership in the current budget stalemate.

Hon. Senators, Standing Order 75(1)(b) of the Senate Standing Orders gives the Senate two options on how to proceed with the matter. The Senate may:-

(a) By resolution, appoint a Special Committee comprising 11 of its Members to investigate the matter; or,

(b) Investigate the matter in Plenary.

Hon. Senators, the Senate Majority Leader shall shortly give a Notice of Motion for the establishment of a Special Committee. Should the Motion for the establishment of a Special Committee eventually pass, the Special Committee will be required, under Section 33(4) of the County Governments Act, 2012, and Standing Order 75(2) of the Senate Standing Orders, to investigate the matter and report to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated.

If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will, therefore, determine the manner in which this matter shall henceforth proceed, whether by way of Special Committee or by Plenary.

I wish to emphasise to all hon. Senators that debate on the Motion to establish a Special Committee shall be limited to the substance of the Motion. It shall not be debate about the issues, but limited to whether or not this House should establish a Select Committee in the order of the names which shall be provided in the Motion.

This is actually a procedural Motion. Since we have other items, including the Motion that I said should be debated from 4:30 p.m., but we have consulted with the Mover and agreed that it should start from 5:00 p.m. This is a procedural Motion for a decision and not on the substance of the allegations.

The debate should not be on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits.

Hon. Senators, I conclude by stating that the hearing of the charges of the proposed removal from office of a governor is one of the most important functions of the Senate under the Constitution.

I, therefore urge that the Senate to exercise the highest level of responsibility on this matter.

Thank you.

Hon. Members, I have consulted the Senate Majority Leader and the Senate Minority Leader and they are of the opinion that since this is a procedural process, notice is given and the Motion is also brought in the next few minutes so that we can dispose of it and move to the Motion on the fetes and accolades of Kenyan sportsmen and women in the last 72 hours; all the way from 1:59 to Doha and to the Chicago Women Marathon record which was broken after 16 years.

There is a lot to thank God for and thank our athletes for that. That should be around 5.00 p.m. Therefore, once we dispose of this matter and the Motion on sports, then we can entertain any other business time permitting before the close of business today.

I now direct that Order No. 6 be called out.

What is it, Sen. Mwaruma?

**Sen. Mwaruma:** On a point of order, Mr. Deputy Speaker, Sir. Thank you very much for this opportunity. I think most of us are well aware of the issues of Taita/Taveta County.

The issue of the impasse between the Governor and the MCAs has been a long standing one and it is unfortunate that the matter has escalated to this level. However, I would like to bring to your attention an issue of constitutionalism and procedure because there was a procedure that was not followed in the process of the impeachment.

Mr. Deputy Speaker, Sir, I know you will rule---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mwaruma, you know we respect that you are the Senator of Taita/Taveta County and you will definitely have a role because you have an interest. However, as I have communicated, we are not discussing any merits about the processes, legality, *et cetera*.

We are discussing possibly and you are even pre-empting it. We are discussing whether or not the Senate should form a select committee to investigate the matter. Just that. There will be an opportunity for substantive hearings and so on.

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, I am saying that because I am well informed that the matter is in court and you will rule again on the---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We are not told. We do not know.

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, I have some evidence here. You know, as a Senator, I am a defender of county governments. As a defender of county governments, I defend the people and talk for the people.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, what is your point of order?

**Sen. Mwaruma:** My point of order is that, I have been informed and I have evidence that the matter is in court and that the court has given a stay---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is the Parliament of the Republic of Kenya, Sen. Mwaruma. We operate in accordance with the Constitution and the Standing Orders. I would advise you to perhaps pursue that point differently but we have noted your sentiments.

As I said, this is a very serious matter touching on impeachment of a governor. It is not something that anyone of us in this institution takes lightly. At the same time, the pride, dignity and stature of this House must be respected and treated with the dignity it deserves. Therefore, we are not discussing processes now; we are not discussing form or substance. We are discussing one matter as per my communication which is whether or not a special committee should be established.

Proceed, Senate Majority Leader.

## NOTICE OF MOTION

ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE  
THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,  
OF THE GOVERNOR OF TAITA/TAVETA COUNTY

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:

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THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 9<sup>th</sup> October, 2019, the County Assembly of Taita/Taveta approved a Motion; “To remove from office, by impeachment,” the Governor of Taita/Taveta County;

AND FURTHER, WHEREAS by letter Ref. No.TTCA/CS/7/Vol.1 (085) dated 9<sup>th</sup> October, 2019, received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita/Taveta informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Government Act, 2012 and Standing Order No.75(1)(b) of the Senate, the Senate by resolution, may appoint a Special Committee comprising 11 of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators:

- (1) Sen. George Khaniri, MGH, MP;
- (2) Sen. Njeru Ndwiga, EGH, MP;
- (3) Sen. Ochillo Ayacko, EGH, MP;
- (4) Sen. (Dr.) Agnes Zani, CBS, MP;
- (5) Sen. Aaron Cheruiyot, MP;
- (6) Sen. Charles Kibiru MP;
- (7) Sen. Boniface Kabaka, MP
- (8) Sen. (Dr.) Lelegwe Ltumbesi Steven, MP;
- (9) Sen. Beatrice Kwamboka, MP;
- (10) Sen. Farhiya Ali, MP; and
- (11) Sen. (Canon) Naomi Waqo, MP;

to investigate the proposed removal from office of the Governor of Taita/Taveta County and to report to the Senate within ten (10) days, pursuant to Standing Order No.75 (2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Senators. We refer to the Second Supplementary Paper because we have had to make some adjustments and consultations with the House leadership. Therefore, in the second Supplementary Order Paper, Order No.11 is the Motion on this matter.

Therefore, I direct that the Order be called out.

Meanwhile, Senator for Taita /Taveta County, approach the Chair.

*(Sen. Mwaruma approached the Chair)*

**MOTION**

ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE  
THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,  
OF THE GOVERNOR OF TAITA/TAVETA COUNTY

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

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2013, on 9th October, 2019, the County Assembly of Taita/Taveta approved a Motion: “To remove from office, by impeachment,” the Governor of Taita/Taveta County;

AND FURTHER, WHEREAS by letter Ref. No.TTCA/CS/7/Vol.1 (085) dated 9th October, 2019, received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita/Taveta informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b) of the Senate, the Senate by resolution, may appoint a Special Committee comprising 11 of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Government Act, 2012 and Standing Order No.75(1)(b), the Senate resolves to establish a Special Committee comprising of the following Senators:

- (1) Sen. George Khaniri, MGH, MP;
- (2) Sen. Njeru Ndwiga, EGH, MP;
- (3) Sen. Ochillo Ayacko, EGH, MP;
- (4) Sen. (Dr.) Agnes Zani, CBS, MP;
- (5) Sen. Aaron Cheruiyot, MP;
- (6) Sen. Charles Kibiru MP;
- (7) Sen. Boniface Kabaka, MP
- (8) Sen. (Dr.) Lelegwe Ltumbesi, MP;
- (9) Sen. Beatrice Kwamboka, MP;
- (10) Sen. Farhiya Ali, MP; and
- (11) Sen. (Canon) Naomi Waqo, MP;

to investigate the proposed removal from office of the Governor of Taita Taveta County and to report to the Senate within ten (10) days, pursuant to Standing Order No.75 (2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

Mr. Deputy Speaker, Sir, based on your Communication, this is a very straightforward Motion of establishing a Special Committee to investigate the allegations contained in the communication from the County Assembly of Taita/Taveta.

This is a very sacred duty, and I am privileged, under your leadership, to have been the first Vice-Chairperson of the first impeachment in the Senate of the Republic of Kenya, which was led by Sen. (Dr.) Khalwale as he then was. Sen. Mutula Kilonzo Jnr and Sen. Orendo were part and parcel of that investigation. Was it Sen. Mutula Kilonzo Jnr. really? He was not here yet, but was in the second Committee. Sen. Orendo and I served in that Committee. I do not see the other Members who served in that first Committee.

We then discovered that because of the timelines involved in the investigation of such a very grave matter, it requires a lot of commitment. Should this House approve these names, the Members who will serve in this very important Committee will have a very onerous task to perform a very sacred responsibility within a very short period of time and come up with a proper report.

We find solace in the fact that we have some of the best and most qualified staff in the Senate who without their support--- The clock begins to run as soon as your Communication is given, such as today. Within seven days, we are required to convene here to make a decision. That is not very easy for a Committee of that nature.

Mr. Deputy Speaker, Sir, we also found that the procedures that are involved in the investigation are similar to the one of the President. We could have wanted to relax the timelines, but even for presidential impeachment, it is the same. This House has had a taste of formation of a Committee, which was in the case of Gov. Wambora I and II; Gov. (Prof.) Chepkwony, Machakos Deputy Governor, Mr. Kiala and the Deputy Governor of Embu County, Ms. Nditi, which was in the first one. In the case of the impeachment of the Deputy Governor of Machakos, Mr. Kiala, there was a recommendation by the Committee which the Plenary defeated. In the case of Ms. Nditi, the Committee never recommended impeachment.

We had the cases of Gov. Wambora I and II, and Gov. (Prof.) Chepkwony, where the Committee never recommended. The Committee chaired by Sen. Murungi found that the threshold was never achieved. We had the Committee on the impeachment for Gov. Mwangi wa iria, which was chaired by the Senator for Kitui then. The Committee came here with the report and upon all that experience, Members decided that in the subsequent one, which was unfortunately the one for the late Gov. Gachagua, it would be done at the Plenary.

Mr. Deputy Speaker, Sir, if you look at the difference between the ones that were done by the Committee and the one we did in the Plenary, there was more substance in the one done by the Committee. This is because the Committee consists of a few people who have time to listen and question the people and witnesses who are appearing before it.

In all those impeachment proceedings, when history will be written, this House largely will be acquitted to have been so fair. This is because in some circumstances, for example, in the case of Gov. (Prof.) Chepkwony of Kericho County, where they found culpability, the Committee was careful to say that the constitutional threshold was not

achieved. There was the case of Gov. Mwangi wa iria where the Committee decided there was no culpability. There was even a situation where the report came here with culpability, such as the one for Mr. Kiala. The House relooked at the matter, the politics around it and the substance, and defeated the Report. It was a bipartisan decision by this House. I contributed to the failure of Deputy Governor, Mr. Kiala's Report. I know there were people on the Minority side--- I was a backbencher and did not have any responsibility. We defeated that Report in a bipartisan manner.

Mr. Deputy Speaker, Sir, this House is always fair when looking at issues affecting governors and counties. We apply our mind when it comes to substance.

I strongly recommend that we approve a Committee to perform this task, so that it does not become a mob justice kind of process. This House can also benefit from the processes that will go through it.

Having served in two special committees, that is, Gov. Wambora I and II, the Senate Minority Leader and I chose our colleagues knowing that everybody in this House is committed. We also consulted them about their availability, so that they can dedicate their time to go through this process, which is very rigorous and extremely demanding.

Mr. Deputy Speaker, Sir, lastly, the Senate at this point in time is not seized of the details of what is being investigated. We do not know whether there is substance in the allegations that have been levelled from the county assembly. In fact, I am very happy that the Sen. Orengo and I, in our submissions in the case of Gov. Wambora I, took the House through the impeachment in the United States of America (USA). Even in the USA, an impeachment starts with the articles of impeachment and finding the threshold at the House of Representatives. However, the real trial takes place in the Senate of the United States. That trial is presided over by the Chief Justice. It is a very sacred and serious process that people go through.

I assure the country that we have no choice in this process, as the Senate. We must continue upholding the highest standards of integrity and focus on the facts and evidence that is before us. I am happy that the courts in this country have come to agree to that position, both at the High Court and even at the Supreme Court; that impeachment process starts at the county assembly, but the real trial takes place in this House. When we are doing so, we must remember that we are acting at a level of the highest court in the land; making the most serious determination on very serious matters of both the Constitution and the law.

Mr. Deputy Speaker, Sir, when these issues are brought to this House, we must conduct ourselves with the highest integrity because there is nothing that stops our report from being tested in a court of law. These issues can be tested in a court of law in terms of procedure and substance. Sen. Ochillo-Ayacko, who is a senior lawyer and Member of Parliament, we want to see that your report, if this House approves that, that is the direction we will go. The report should stand the test of time in terms of substance and integrity on the issues.

Mr. Deputy Speaker, Sir, I beg to move and invite Senior Counsel, the Senate Minority Leader, Sen. Orengo, to second.

*(Sen. Orengo walked to the Dispatch Box)*

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I beg to second---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senate Minority Leader! Just as a matter of procedure, let me call you out.

Senate Minority Leader, you have the Floor. I am sorry about that.

**The Senate Minority Leader** (Sen. Orengo): Thank you very much, Mr. Deputy Speaker, Sir. I stand to second this Motion.

As has rightly been pointed out, the power to impeach is with the county assembly. The Senate has no role at all in the power to impeach, but the power as an impeachment court lies with the Senate. The trial actually takes places in the Senate.

These two powers are divided between two constitutional bodies; the county assembly and the Senate. This is a demonstration that issues concerning impeachment are considered serious enough to the extent that constitutional bodies are the ones which are assigned to carry out this task.

Mr. Deputy Speaker, Sir, going by the record, I am happy to note that this power to impeach, particularly on the part of the Senate, has not been misused or abused. Where there has been a case to find fault and convict a subject before the Senate, be it a governor or otherwise, the Senate has acted very responsibly in all the cases which were cited. I therefore, hope that nobody will think that the county assembly having expressed itself in a certain direction, that the Senate willy-nilly will take a similar position.

Impeachment process is an accountability tool and it must be understood to be so and it must be exercised. This is because the Constitution has offered to Parliament and the county assemblies, tools for purposes of accountability. Accountability sometimes cannot just end in declarations. It should be effective in the sense that these tools can be used to achieve certain results.

Having said that, I want to point out that people out there may now think that this matter is before a different forum, which is not the Senate. They should rest at peace because until evidence is placed before the Senate or the Committee, we cannot make decisions on the basis of something we have read in the newspapers or social media. There must be a matter presented before the Senate, either constituted as a Committee or in the plenary to make that decision. Otherwise, some of these decisions could be made by the Speaker or the Clerk of the Senate without bringing them properly before the House or a Committee of the House.

I just wanted to allay those fears that some people may be having, that in setting up the Committee a decision has been made in one way or the other. Therefore, in forming this Committee, I hope that the House understands that all of us are qualified to be Members of this Committee. In this instance, we could only have a certain number; that number will perform the initial task of dealing with this matter. If there is anything to be dealt with preliminarily or substantively, all those issues can be put before the Committee which will eventually report to the Senate.

I just want to emphasize that these accountability measures are working in other countries very effectively. Sen. Mutula Kilonzo Jnr., myself and others were in Brazil for a number of days. These accountability processes seem to be working well at the



national level. The President knows that certain tools can be used and that they are effective because there are people in the highest offices who have been dealt with in accordance with the law. In the State of Rio De Janerio, we are told, that three successive governors are serving jail terms leave alone the issues of impeachment.

In Kenya, we must use these tools effectively to ensure that accountability is invoked whenever possible. However, at the end of the day, it should not be a matter of politics. That is why our history is good because we have tended to act in a bi-partisan manner when it comes to considering substantive issues or even plenary issues which will be brought, surrounding an impeachment process, be it that of a Governor or a deputy governor. We have just have had impeachments only with regards to Governors and deputy governors.

In the USA, this process ends up being a question being determined by the House of Representatives and the Senate. The decision as to whether one is guilty of high crimes or misdemeanors is made in accordance with what the Senate eventually says. It is really a political process. However, in our jurisdiction having heard what the courts have said and reading the Constitution, we have a duty to ensure that we meet those constitutional thresholds.

Has there been an actual violation of the Constitution? Has there been an actual violation of the law? The second pillar upon which an impeachment can be exercised is when there are reasons to believe that the governor has committed a national or international crime. However, that second threshold is a little bit lower in the sense that all that you have to establish is that there are reasons to believe that it is objective in the sense that we sit together to make that decision. Otherwise, it can be quite subjective because when we use the word “believe” as opposed to “determine”, then the threshold becomes a little bit lower.

There are also issues of gross misconduct under the third pillar. I believe that in exercising our powers and authority, especially from the onset in establishing this Committee, we will be doing our constitutional duty and come out within the timelines which are specified in the Constitution. We are not at the level of looking at the merits as we are rightly guided by the Speaker. We are also not at the level of receiving evidence at this particular point where we are merely forming the Committee.

I want to encourage Senators that it would have been odd for the Speaker or the House Business Committee to sit by itself and make a decision without it being brought before the House. This is because we could have, for many reasons, been persuaded that the matter should rest where it is. As the Speaker said, this issue is so serious that it can only be decided by the Senate sitting as a Committee of the Senate or by the Senate sitting in Plenary.

Mr. Deputy Speaker, Sir, with those few remarks, I second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Members.

*(Question proposed)*

Hon. Senators, as I said earlier, this is strictly a Procedural Motion on whether or not to form a Committee to investigate this matter. Kindly, do not take a lot of time

speaking about impeachment or what have you. Kindly give your view on whether or not we should form the Committee.

Debate on the Motion on Commendation of Eliud Kipchoge and other Kenyan Athletes for their outstanding Performance will begin at 5.00 p.m. I will therefore give a few Senators a chance to speak. For the convenience of the House, I urge each Senator who is lucky to get a chance not to take more than three minutes.

I will start with Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I rise to support the formation of the Committee of the first 11 as I call them, to determine the question of impeachment of Gov. Samboja. Although the Senate Majority Leader and the Senate Minority Leader have declared that everybody is equal and that all of us are the same, I think that they have exercised some element of extreme caution and prudence in having this Committee and the Members. I therefore support the proposed Committee to that extent.

I have sat in this House for the five impeachment proceedings that have taken place in this House. I sat in the Committee that handled the impeachment of Gov. (Prof.) Chepkwony. I would like the people of Taita/Taveta County, the Governor and the MCAs who are my neighbours, to sleep easy because this is a House of wisdom. This is the House that will determine this matter and possibly bring some order. I was beginning to miss impeachment proceedings because I am of the view that, as the Senate, we cannot abdicate our role of impeachment.

The question of whether to impeach or not is our jurisdiction. Therefore, at any given opportunity, we must exercise that jurisdiction without fear or favour even when an injunction is issued. I am of the view that we must proceed because that is our role given to us by the people of Kenya.

Mr. Deputy Speaker, Sir, I have been wondering what it means to protect counties. We should protect the counties from within and without. It is climate control to bringing governors and the MCAs to order. I believe that Makueni County was brought to order when Gov. (Prof.) Kivutha Kibwana was impeached the first time. That sent a message that no one is above the law and that the MCAs are not to be ignored. Even then, in cases where the MCAs have impeached governors and the impeachments have been overruled, they have been alerted that they must follow the process. There must be public participation, and the Supreme Court has had its view on this issue.

This is one opportunity for the 11 Senators to act like the Congress and ask questions. We must distinguish ourselves from the other House. We must ask the questions that must be asked of the Governor or the County Assembly of Taita/Taveta. That is the only way that we can bring order to the County Government of Taita/Taveta. Impeachment is a process to bring parties together to see reason like the Book of Isaiah says, 'Come, let us reason together'

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Pastor, Sen. Mutula Kilonzo Jnr., do you support this Motion or not?

In your fervent proclamation of faith, you forgot to say whether you support or not.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, in the first instance, I began by stating that I support this Motion. I am sure you have seen the court rulings that were in the past where a matter was dismissed and then the reasons were given later.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., our tradition is that support or lack thereof should be part of the opening and closing remarks.

Kindly, proceed, Sen. Wamatangi.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, so that I do not suffer the mistakes of the pastor of Makueni County, I would like to state that I support the Motion from the onset and express confidence in the names of all the Senators who have been proposed and nominated to this Committee.

I echo your sentiments that upon close perusal of the names that have been forwarded, the balance is right for those Members to live up to the expectations of members of the public in this country and more so the citizens of Taita/Taveta County in determining whether they have a Governor who should continue to serve in office.

Mr. Deputy Speaker, Sir, in complying with your ruling on time, I would like to state that when the Senate Majority Leader was speaking, he was facing the other side and said that he does not see anyone else who served in the first impeachment committee. I held my peace although I served with him in that Committee. It is safe to say that he forgot about me because he was facing the opposite side.

*(Laughter)*

I would like to list a few things that are of importance that I noted when I served in first impeachment Committee. One, there is the Impeachment Procedure Bill, 2018. I think that the sooner we have that Bill into a law and the agitation when the proposal for this legislation was made by the former Senator for Nyandarua, hon. (Eng.) Muriuki Karue, it was to raise the threshold of impeachment more so, the brevity of time that the Committee has got to look into the impeachment issue.

Mr. Deputy Speaker, Sir, in a nutshell, if and when a Committee like this one has better tools, using a better law that has been widened, it will be good. I was wondering whether the law on impeachment could be expanded to the extent that the Members of the Senate can impeach the Members of the National Assembly because they have been misbehaving lately.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wamatangi!

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, it suffices to say that we need a law.

Secondly, in the process of the first impeachment, there was ping pong that was almost endless between this House where an actual trial was going on. Lawyers appeared before the impeachment Committee to make submissions while there was another trial that was on-going in all the courts starting from the first impeachment of Gov. Wambora from the courts in Embu all the way to Kirinyaga and finally to the Supreme Court.

Those parallel processes eventually ended up with different results. What was of interest was that the orders kept on being given at the same time from both levels. I believe that we would have a better process if we had a law that would bring harmony

Mr. Deputy Speaker, Sir, lastly, I would like to urge the Senators who have been proposed to be part of this Committee that they should act bravely when they are making the conclusions.

In the Supreme Court decision in the case of Gov. Wambora's impeachment, the court was very explicit. They expressed the reluctance of the court in involving themselves in the process of impeachment when the Senate is there. I believe that the Senate will do a good job. Let us ensure that we uphold what is expected of the Senate.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wamatangi. Kindly proceed Sen. Omogeni.

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, I also rise to support that we should have a Select Committee to look into this matter. I have looked at the names that have been proposed, and I have no doubt that they are up to the task.

I would like to mention that that world over, issues of impeachment are taken very seriously. In the United States of America (USA), when the Senate sits to impeach the President, it is the Chief Justice who presides. This is an opportunity for us, as the Senate, to ensure that we do a process that can stand the test of time.

The previous impeachment procedures have had mixed fortunes. I remember the one of Hon. Wambora was overturned by the court. This time round, I have a lot of faith in Members that have been proposed and I know they will do a thorough process.

We need to have a delicate balance so that we do not create a situation where MCAs at their own personal whims impeach governors. On the other hand, we must ensure that we support MCAs on the issues of putting governors to account. So, it is a delicate balance but we need to demonstrate to the people of Kenya that this Senate is up to the task and we can balance these two issues in a manner that will deliver justice to the people of Kenya.

What the people of Taita/Taveta County expect us to do is that if we find that the Governor is culpable, then we should confirm the impeachment. However, if there are no good grounds that meet the constitutional threshold, then we should allow the Governor to continue serving.

I urge my colleagues to remain true to the oath of office that we took to protect the name and the integrity of the Senate and do a good job.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for being brief. You are trying to be as convenient as possible to the House and all of us.

Senator for Kericho County, you may now proceed.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I rise to support this Motion.

*(Sen. Murkomen consulted loudly with Sen. Kinyua)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators!

**Sen. Cheruiyot:** Please, protect me from the Senate Majority Leader and the Senator for Laikipia County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You had three minutes, now you have almost two minutes. Proceed.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, as a Member of this House, I had an opportunity to see how this House handled impeachment of governors both in Plenary and in a Select Committee. In my humble opinion, having a Select Committee is the best option because the Plenary provides a platform whereby the House can through the gathering of Members---

Members of a Select Committee go to the particular county and bring a report to the House that Members can further interrogate. It provides almost two-layered approach to this particular issue. At the first level of mention is the Select Committee and then Plenary. It therefore ensures that we have watertight processes and whatever is done is justice to the people of a particular county.

With those few remarks, Mr. Deputy Speaker, Sir, I support and thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Sen. M. Kajwang', take the queue.

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, I rise to oppose this Motion not because of the composition of the men and women who are there but because of the following reasons.

I have looked at Article 181 of the Constitution, Standing Order No.75 and the Fifth Schedule of our Standing Orders. It is clear that the indictment of a governor as far as impeachment is concerned happens at the county assembly, and this Senate is a trial Chamber.

Standing Order No.75 provides that impeachment of a governor is triggered when the Senate receives communication from the Speaker of a county assembly. I believe that when that starts, no other authority can stop the process. It has to be allowed to go to its finality.

The Senate Majority Leader, when moving the Motion, reported that the resolution of the County Assembly was formally conveyed to the Senate on 11<sup>th</sup> October, 2019. That was last Friday. Today is Tuesday, 15<sup>th</sup> October, 2019. Standing Orders gives us seven days to do what we are doing today.

The reason why I oppose this Motion is that it has been brought to my attention by the good Senator for Taita/Taveta County who probably did not have the opportunity to canvass it appropriately.

To say that the Senate received on 14<sup>th</sup> October, 2019, a letter indicating---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Is that a document that you have tabled or---

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, this letter was received by the Senate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We do not know what you are referring to.

**Sen. M. Kajwang':** I will table the letter if you allow me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please do but you should be conscious of time. Make it as brief as you can.

*(Sen. M. Kajwang' laid the document on the Table)*

You can proceed to refer to it.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I have tabled a letter that was received by the Senate on 14<sup>th</sup> October, 2019. The letter tells us that the High Court of Kenya in constitutional---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is the owner of the letter?

**Sen. M. Kajwang'**: The letter is authored by a law firm but they have also attached an order of the High Court.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What does it say?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I have just tabled it and I am just attempting to summarise what it says. The letter says that on 11<sup>th</sup> October, 2019, the High Court issued conservatory orders, staying the resolution of the County Assembly of Taita/Taveta and also issued conservatory orders in the nature of an injunction restraining the Assembly Speaker from presenting to the resolution to the Senate.

I have tabled it and maybe it would----

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Have those orders been served on the Senate? It is one thing for a lawyer to write because we get letters from lawyers all the time. Has the order been served on the Senate?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, this was received by the Senate on 14<sup>th</sup> October, 2019.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Has the court order been served on this House?

**Sen. M. Kajwang'**: Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you provide evidence of that service?

**Sen. M. Kajwang'**: The evidence is here. There is a stamp on this.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am talking about the court order and not the lawyer's letter. Has it been served by a process?

**Sen. M. Kajwang'**: I might not confirm that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang'! I am insisting on this because of the record. When I sit here, I must protect this House from the wrong impression. Is it your view that this Senate has been served in the proper meaning of service of a court order against what we are discussing today?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, this is a *quasi-judicial* institution. It will be improper to box me into the four corners of a purely judicial process.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should follow the law because we follow procedures. For the record, I will not allow you to mislead the public in the name of a court order that has been served on this House which is not the case. So, I humbly request you to make your case differently but make it clear that there is no order

which has been served on the Speaker of the Senate. Anyway, I am aware and I do not need to be informed. I am aware there is no service to this House.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I will maintain what I have said that a letter was received by the Senate. It is for the Chair and the House to interpret whether it is due service. However, allow me to finalise my argument and then you will guide.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): For purposes of the record, we are not talking about service of a letter but a court order. I can tell you from where I sit that there is no such service of any court order on this matter. It is important for the record so that you do not get away and inform the public things which do not exist.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, allow me to make my case then probably you will rule after that. May I proceed?

**Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, but you need to clarify whether there is a service of a court order on the House.

**Sen. M. Kajwang’:** I cannot confirm that.

**Deputy Speaker** (Sen. (Prof.) Kindiki): Then that is okay.

**Sen. M. Kajwang’:** All I can confirm is that I have tabled a letter here by M/S Havi and Company Advocates that was received by the Senate.

**Deputy Speaker** (Sen. (Prof.) Kindiki): That is not a court order.

**Sen. M. Kajwang’:** I am not arguing that it is a court order. In the same manner in which you requested me to table it, I am just describing what I have tabled.

**Deputy Speaker** (Sen. (Prof.) Kindiki): I have seen that letter from a lawyer that was served on us. We receive thousands of letters every day. That does not mean a court order has been served.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I have just tabled the letter and you have not scrutinized it, how then would you know what I have tabled?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. M. Kajwang, that letter is in my office. Do not trivialize debate. That letter from a lawyer is in my office. I know its contents. We have asked the relevant officers to consider it. There is no court order which has been served on the House.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, allow me then to conclude my submission.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please do.

**Sen. (Dr.) Langat:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. (Dr.) Langat?

**Sen. (Dr.) Langat:** Mr. Deputy Speaker, Sir, I wonder why the Chairperson of County Public Accounts and Investment Committee is trying to be so defensive when it comes to the affairs of the governors. He should leave this House---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Langat. That is not right. He has a right to defend anything and take any position. However, be careful, Sen. M. Kajwang, no service of any court order is before this House. If there was, this House, would, in accordance with the law and the Standing Orders, pronounce itself on that service.

**Sen. M. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I am glad that you have reaffirmed that I am entitled to my opinion just as everyone else is entitled to their various opinions whether we agree with them or not.

The point I am trying to make is looking at the dates when we received the communication from the county assembly to today, we have acknowledged that the Senate has received a letter of a certain nature. However, it might not be a court order or what satisfies your thinking. Prudence demands that once the Senate starts a process, which we have agreed in the past, the court of law cannot stop it from a process that has a kicked off.

Mr. Deputy Speaker, Sir, I was in the Gov. Wairia impeachment Committee and there were similar matters. It was said that the courts of law attempted to injunct the Senate from proceeding on a matter that it had already started. If that is the case, our Standing Orders require this Committee not to look at the procedure but at the content and confirm whether the allegations are substantiated or not. Of what harm is it for this Senate, while still within its timelines of ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you on a point of order or contributing to this Motion?

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I am contributing to the Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hear as if you are on a point of order trying to explain that this Motion should not be here and that is a different issue.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I started by saying that I oppose the Motion. I am giving reasons why I oppose it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the question before the House is not whether or not there will be investigation of the Governor of Taita Taveta County. We are past that. The question before the House is whether the investigation will be through the Committee of the Whole or a special select Committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Precisely. I said as much from the word go.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have heard the Senator for Homa Bay, Sen. M. Kajwang, create the impression that opposing the Motion would mean there would be no investigation on the governor. However, opposing the Motion means that we will all investigate in plenary. It has nothing to do with whether there will be investigation or not. That stage has been passed because the Deputy Speaker has made the necessary Communication.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is why I asked him whether he is on a point of order or debating the Motion which is, should this matter be taken to a special Committee or plenary.

Sen. M. Kajwang, with those remarks, I request you to organize your thoughts in the next one minute and wide up because time is up.



**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, my position remains that I oppose this Motion. Even if the Motion was to do this by plenary, I would have opposed it. This is because I believe that we have not gotten to the point of establishing a Committee to investigate this matter. I believe that we have ignored certain correspondences that would have added value to our decision on this matter.

Mr. Deputy Speaker, Sir, I oppose.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senators. It is now 5 O'clock time for the next Order. However, before we go there, I will allow Sen. Kinyua and one more Senator then we put the question.

**Sen. Kinyua:** Asante Bw. Naibu Spika kwa kunipa fursa hii. Kwanza kabisa, ninashuku kwa nini Mwenyekiti wa County Public Accounts and Investment Committee amekuwa akipokea barua ambazo zinapaswa kuwa zikichukuliwa na Seneti?

Ninasimama kuunga mkono Hoja hii ambayo inabuni Kamati ya kumtimua gavana. Ninakubaliana na Hoja hii kwa sababu Maseneta ambao---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Mwaruma?

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, Sen. Kinyua is proposing that the Senator for Homa Bay is fond of receiving letters on behalf of the Senate. However, as Sen. M. Kajwang correctly said, I am the one who handed him the letter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That point is noted for the records.

**Sen. Kinyua:** Asante, Bw. Spika. Ninaunga mkono Hoja hii kwa sababu Maseneta ambao wameteuliwa kwa Kamati hii wanauzoefu na ujuzi. Kwa hivyo, watafuatilia mambo haya kwa marefu na mapana.

Kamati ya Ugatuzi imekuwa ikifuatilia mambo ya Taita Taveta. Lakini hilo silo jambo ambalo linashughulikiwa hapa leo. Wakati utakapofika, tutaeleza kinagaubaga hili yale ambayo yamekuwa yakiendelea pale yaleweke vizuri.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Motion. It is well captured by Julius Kambarage Nyerere where he said that in Tanzania, more than 100 tribal units lost their freedom but one nation regained it. He further says "we spoke and acted as if given the opportunity to serve Government, we would quickly create utopias instead injustices and tyranny is rampant".

Mr. Deputy Speaker, Sir, when I look at the African States, we are having a serious problem. Before independence, as the former President of Tanzania said, only tribes existed as nations and then they created a nation state. Now devolution is deconstructing this nation state. We do not have a problem of one but several centres. We have the tensions around Members of County Assemblies (MCAs) and governors. This is not the first time to witness this. We have seen it in Makueni, Nyeri and other counties.

At the same time, these new centres of power have created new powerful people. It has now become a power play at the national executive with regards to the competition for that limelight. So, how do we look at projects done by the national Government *vis a vis* the success stories of county governments? Further down, there is a power play between the MCAs who are elected without a kitty yet they have promised a utopia to the people and a governor who has the kitty and thinks that he or she can do everything, including building dream castles and buying dream toy cars.

As this Committee embarks to investigate this matter, they need to be objective. We had the impeachment case of Makueni but now it is a showcase for success for devolution because devolution is the real revolution.

I think we want to ask the Committee Members to listen to both sides, because what is presented before this August House---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mwaura. What is it, Sen. Omogeni?

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, I rise on a point of order in view of what has been tabled before the House by my good friend, Sen. M. Kajwang'. What has been tabled makes reference to a court case, and I invite the ruling of the Deputy Speaker where an order issued by the High Court by Justice J. Makau, has given conservatory orders - If you permit me, I wish to read - whereby Order No.1 says that, 'pending the---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Omogeni. Note that you are on a point of order. Even as you do what you want to do, we are not discussing whether or not orders have been given. What we are saying is that this Senate is not aware of any court orders that have been served on it to stop doing what we are doing; which is to establish a committee or to discuss the matter in Plenary. Be advised accordingly. That is out of order, because Sen. Mwaura was on the Floor.

**Sen. Omogeni:** Mr. Deputy Speaker Sir, I have reason to seek your guidance, because---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is Sen. Mwaura who had the Floor. It has to be about Sen. Mwaura's contribution to interrupt his speech.

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, my point of order is whether it is appropriate and in order for us to continue debating whereby a court of law has already issued---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, it is in order. For the reasons I have advised before, it is in order. It is so ordered.

Sen. Mwaura, conclude your remarks.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. It has interfered with my train of thought, but what I was trying to say is that, when the Committee sits to debate and deliberate on these matters, they need to be objective.

This is because, what has been presented before this august House is the argument from the county assembly. I hope that the Governor shall be accorded due time and process, and to also learn from the experience.

The Senator of Kiambu, Sen. Wamatangi, and I were sharing the opinion that, a committee is a better option because if we come to Plenary, all of us would want to talk and time may not allow. This helps us to encapsulate the whole debate and also to flush out issues; the merits and demerits.

Mr. Deputy Speaker, Sir, I am very curious to see the position from the Chairman of CPAIC, because on a *prima facie* basis, he should be the one supporting this---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have the right to have a different view.

**Sen. M. Kajwang’:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kajwang’.

Senators, we have another agenda which is as important as this one. Any Senator has a right to take any position, and you should not impute any improper motives on any Senator. It is actually out of order to do so.

**Sen. Mwaura:** I stand guided, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): However, for you and the remaining speakers - I will give two more quick speakers - the issue before us is whether or not this House should establish the Committee or go to Plenary, not on the substances of impeachment and all the philosophy around it.

**Sen. Mwaura:** I stand guided, Mr. Deputy Speaker Sir.

I, therefore, support that this Committee be established and that philosophically, we should be able to flush out things and look at what is the root cause of the problem.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you very much.

Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. Earlier on, I was going to oppose this Motion, but after consulting with my colleague and senior, I think I am now in a position to contribute to this Motion and guide the Committee on which idea I think is best.

What I am hearing from my colleagues - particularly my colleague from Taita/Taveta - is that he is a little bit conflicted in the sense that his position here is to defend the interest of the county and its government. That is the first issue. Not the Governor, the county---

(Laughter)

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I would like to bring to the attention of the Committee and anybody out there - which I think is the best way to proceed – that our Standing Orders are very clear. Standing Order No.75 allows us to proceed with this Motion; the issue of seven days.

Standing Order No.98 (4) is very important on the issue of *sub judice* rule. I think that this matter can end there when we restrict our thinking or guidance in looking at the Standing Orders. If I read Standing Order No.98, where the matter is *sub judice*, and I thank Sen. Orendo for pointing this out to me, maybe this would help us out. It is very clear that:

“A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Paragraph 2 determines whether the matter is *sub judice*, but paragraph 3 (c) is very clear. It states that:

“Civil proceedings shall be deemed to be active when arrangements for hearings, such as setting down a case for trial have been made, until the proceedings are ended by judgment or discontinued”.

Mr. Deputy Speaker, Sir, the Committee which is being proposed to be established, should then be ready to receive evidence that this matter is active in court. I would suggest that if the Committee receives that evidence, that matter should cease there. There is no way we can stop Standing Order No.75. We are limited by time. For us to show that we are here to defend both the Assembly and the Executive, let us restrict our thinking to the Standing Orders and the Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. For the avoidance of doubt, Parliament is not run by the Judiciary, neither is the Judiciary run by Parliament. We have made a substantive ruling on *sub judice* rule before. We have to remember to respect other arms of Government. However, let it be known to all and sundry, big and small, that this arm of Government is independent and works within the law and Standing Orders.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, what you have said is so germane. I want to convince my colleagues that Senate is a very important institution. You cannot just bring papers and throw them around the Senate. Even in a court of law, you cannot do that. I cannot go to a court of law and say that I cannot produce Sen. Wetangula because he is in hospital. The court will expect me to do more than that.

More importantly, I remember when the issue of the powers of the Prime Minister and the President were in contention on the question of consultation and concurrence. The court arrived at a decision which was very different from the decision that was later on made by the former Speaker Kenneth Marende. In fact, as we speak, the Judiciary has adopted what was offered by the Speaker Kenneth Marende as the definition of what is consultation and concurrence, and found fault with the manner in which the High Court have defined those two words.

I know where Sen. M. Kajwang is going, but I think it will be an abuse of the process of the Senate that we are reluctant to exercise a matter which is within our powers because somebody is waving a piece of paper. It is also equally dangerous for a matter to be decided by the Speaker or the Senate Business Committee (SBC) before it is brought to the Committee or the Senate.

Therefore, anybody with evidence should take it to the Committee and it will be dealt with. Anybody with evidence can bring it even now, if that court order was there, if it complies with Standing Order No. 98.

Mark you, Standing Order No.98(4) says that we still have discretion.

We can still say that the matter is *Sub judice*, but in this circumstances--- For example, somebody can get a conservatory order and let the matter to stay there. He can have the matter heard in 10 years. In the meantime, the county will be suffering because we will not be making a decision. I think we need that balance fairly, but I would hate a situation where any piece of paper--- There are many orders that have been made by Speakers that you cannot bring a newspaper here and use it as proof. You cannot do that in the courts also.

So, I am with you, Sen. M. Kajwang', but we are not there yet. I think you are jumping the ship.

Thank you.

*(Sen. Orengo interjected)*

Very well, Senior Counsel, Sen. Orengo. You have said what I was trying to say in many words. I cannot be the one who sits here to preside over this House, trying to manufacture an injunction against itself, which is not there. In the first place, there is no injunction against the Senate. As we speak, there is no injunction served on us. I am a Lawyer, and I write so many letters. My letters are just letters. You cannot bring a letter here and say there is a court order. That is a lawyer's letter. I cannot be the one to preside over the Senate trying to look for ways of injuring itself. In any case, as Sen. Orengo has said, we are of the opinion; and have ruled before, that the *sub judice* rule is not absolute on the Senate.

The *Sub judice* matter has been used by people who have been fishing for alternative sources of comfort to actualize their agenda. There is no injunction against the House. Even if there was, we will still have to determine ourselves whether to proceed or not, in accordance with the law and the Standing Orders.

Finally, I will allow Sen. Wetangula then we close this matter. We need to go to the next Order.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I had not intended to speak until I listened to Sen. M. Kajwang'. You have said it so succinctly well, supported by Sen. Orengo. This House or any House like this will cease to exist if you sit there as a Speaker or any one of us is out there looking all over to see whether there is an injunction coming before we discuss any matter. We cannot do that.

The matter before us is whether we are going the Committee route or Plenary. I do not share the school of thought that the Committee route is better than plenary. It is just an option that we have taken. This is because when we sat here to try the late Governor of Nyeri, Gov. Gachagua, as Plenary, I think we dispensed tremendous justice and acquitted him. There are two options we have. The leadership has taken the route of the Committee, and it is a good process. If we took the Plenary, it would be equally good.

Mr. Deputy Speaker, Sir, the separation of powers in this jurisdiction and any other comparable jurisdictions is a matter each arm of Government must protect and must fight for it. When C.B. Madan was our Chief Justice he said: "When you sit in a position of authority, you must look for your jurisdiction even where it is limited to expand it." You do not shrink it by looking for what is coming your way when you are dealing with something. I want to urge that this House should never allow itself to be enjoined.

What is open to the courts out there is to strike out what we have passed and say that this law is contrary to public morals or is unconstitutional. They cannot and will never--- Woe unto us, as a House, if we ever sit here and ask: Before we do anything, is there any injunction at the door? We will cease being a House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, well put.

Sen. Ochillo-Ayacko, I give you two minutes to finish for us.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I wish to state clearly that I am in support of this Motion. This House is about fairness and justice. The fairness

we are talking about is procedural fairness, and this Motion kick-starts the process of procedural fairness.

I am sure at the appropriate sitting, there will be time for substantive justice, which all of us should be able to deliver. I am in support of the setting up of the Select Committee because it would be efficient, timely and able to meet the strict timeliness that is required, as opposed to a Plenary that would take more time, and perhaps, be difficult when it comes to processing evidence.

Lastly, you have stated clearly that there is no injunction against the Senate. I believe what our colleagues, the Senator for Homa bay and the Senator for Taita/Taveta, have said is a matter that is in court. It regards different parties; it is not about the Senate. You have rightly said that even if it was about the Senate, it will still have to exercise its own authority.

Thank you for being a champion and defender of the Senate. We appreciate that because when you defend the Senate, we feel defended.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you, Sen. Ochillo-Ayacko.

Sen. Mwaruma, what is your point of order?

**Sen. Mwaruma:** Asante, Bw. Naibu Spika. Shauku yangu ilikuwa inakuja kwa sababu ile inaitwa kwa kizungu *terms of reference* ya Kamati. Nimeelewa kwamba ile Kamati tunayounda sasa hivi itasikia maswala yote kuanzia hali ya *impeachment* ya *county assembly* na vile walifanya hadi mwisho.

La haula, wakisema kwamba wanaanzia maswala ambayo yamewekwa katika mjadala peke yake bila kuangalia huko nyuma, basi kuna wananchi ambao tunawaakilisha ambao hawatakuwa wamesikizwa. Ndio maana nafikiri rafiki yangu, Sen. Cheruiyot, amesema kwamba ninatetea upande fulani. Mimi sitetei upande wowote, lakini kuna wananchi waliomchagua yule gavana. Ni wale wale wananchi waliowachagua wale *Members of County Assembly (MCAs)*. Je, gavana na wale wananchi walisikizwa?

Kuna hali ya kuleta maoni yao katika sheria, ili kujua kwamba wananchi wenyewe wako na gavana au upande wa *MCAs*. Jambo hili halikufanyika. Kwa hivyo, ninatumai kwamba wakati Kamati hii itaanza kazi, watu hao wote watapewa nafasi ili walete maoni yao. Hilo ndilo lilikua shauku yangu.

Asante, Bw. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you. Sen. Mwaruma.

Mover, you have one minute, proceed.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I want to thank all the Senators for their wonderful contributions. There was a pending matter about the reports of the Committee, whether they can be debated even if they did not indict the governor.

The Chairman of the Committee on Devolution and Intergovernmental Relations is here, and there were other processes of finding a solution--- That report is very important and we can make it a Motion thereafter to debate the issue.

Secondly, there should be no struggle with our colleague, Sen. Mwaruma, whether he is representing the county assembly or county executive; he represents both them. The practice has been from our former colleagues who have had this situation come from their counties - and I want you to sit with some of them – that they have taken a passive role, including even abstaining from voting. This is just to ensure that both sides of the county find a solution in what they are dealing with.

I agree entirely with Sen. Orengo and Sen. Wetangula, among others, that we must not use the jurisdiction, integrity and mandate of this House; we cannot mortgage it to achieve short-term political interests of assisting this or that. When it comes to our mandate, jurisdiction and responsibility--- I am very grateful to the Members of the Senate Business Committee (SBC) because that was the discussion in the SBC. The most important issue is to take a route that safeguards the integrity of the Senate and Parliament itself. When history will be written, it will be said that we stuck to the fidelity of the law and also the integrity of the institution and its history. We are talking about ourselves here.

It looks like it is a small matter, but 10 years down the line, Senators who will be standing here will be going back to that history and ask themselves, when were court orders. That is why, respectfully, even if someone was to now go and get another order to come and injunct the Parliament process, I still respectfully submit that the Senate must go through all its processes and make a finding. Since we are not passionately interested in the removal of the Governor or safeguarding him to be there; ours is just to ensure that we have worked on the process and the truth. Then, if the courts out there say that the final product of the Senate is not acceptable under the Constitution and the law, so be it. There are many other orders that have been issued not just against us, but against products of this House and the National Assembly, which is the law and reports. Reports have been expunged, laws have been declared unconstitutional and so forth. What is important is for us to be faithful to the process and the mandate of this House.

Mr. Deputy Speaker, Sir, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Majority Leader. I want to commend both yourself and the Minority Leader for the great leadership in steering and helping to explain to the rest of the House some of the legal and institutional issues around this matter. I would also like to thank Sen. Wetangula for the legal input.

Those who are looking for justice, this is the place they will find it. I am very certain from where I sit that the Governor of Taita/Taveta County, the County Assembly and all the other parties will find justice here.

Finally, just to repeat, we have made a detailed ruling in the past on the issue of *sub-judice* rule. I am willing to expound even a little further if requested at some point because that is the rule that could help those who want to create institutional suicide; they can only hang on that rule.

This House is not answerable to any other arm of Government, period. It is as simple as that. The same way the other arms of Government are not subservient to us but

we respect the other arms of Government, especially, the Judiciary. We have tremendous respect for the Judiciary. We are officers of the court ourselves and we respect them; but they should reciprocate as well.

Thank you very much.

**The Deputy Speaker (Sen. (Prof.) Kindiki):** I now put the question and this is vote by acclamation:

*(Question put and agreed to)*

Hon. Senators, we will now go to the Motion appearing as Order No. 8.

### MOTION

#### COMMENDATION OF ELIUD KIPCHOGE AND OTHER KENYAN ATHLETES FOR THEIR OUTSTANDING PERFORMANCE

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I beg to move the following Motion-

AWARE THAT, marathon world record holder Eliud Kipchoge wrote his name into history books by becoming the first man to run a marathon in under two hours, on Saturday, the 12th October, 2019, in Vienna, Austria;

FURTHER AWARE THAT, Brigid Kosgei broke the sixteen-year marathon world record for women, to become the new women's world marathon record holder during the Chicago Marathon held on Sunday, 13th October, 2019;

RECALLING the stellar performance by the Kenyan athletics team that participated in the International Association of Athletics Federation (IAAF) World Athletics Championships held in Doha, Qatar, from 27th September to 6th October, 2019, where the team won five Gold, two Silver and four Bronze medals, and emerged in the second position out of 206 participating countries;

COGNIZANT THAT Kenya has earned international respect in athletics over the years courtesy of the hard work and stellar performance by our athletes in both on and off field events, which has brought us together as a country and encouraged cohesion in line with our National Anthem;

NOW THEREFORE, the Senate commends-

(a) Mr. Eliud Kipchoge, for his history-defining fete of achieving the 1:59 target to run a full marathon;

(b) Ms. Brigid Kosgei for her excellent performance in the Chicago Marathon and specifically for breaking the women's marathon world record; and



(c) the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27th September to 6th October, 2019, for their stellar performance.

Mr. Deputy Speaker, Sir, last weekend was an extremely proud moment for us, as a country, that for a whole weekend, Kenya as a nation dominated the world news and all over the globe. Everybody in perhaps almost every gathering of people that appreciate sports and what it is, at least had a thing or two to say about Kenya.

Mr. Deputy Speaker, Sir, it is estimated that on that beautiful Saturday morning in Vienna, when Eliud Kipchoge did something that no other human being has ever done in history before, close to two billion people across the globe sat down to watch him and cheered him on as he achieved this momentous fete.

We have seen further that across social media and other avenues, he has received commendation and praise from former Heads of State, Nobel Laureates, and celebrated sports people from across the globe and each time they do that, the name of Kenya is held in high honour.

The least we can do as a country, especially those of us in this Parliament, is to celebrate these three gallant groups of athletes. One of them is Eliud Kipchoge. The second one is Brigid Kosgei who broke a 16-year old record. For 16 years, various athletes have tried to bring down the record that was held by Paula Radcliffe, who is a Briton but they were unable to do it. Eventually, a Kenyan put a great performance just a day after another Kenyan dominated world news in terms of sports and broke the 16-year old record.

Mr. Temporary Speaker, Sir, the third lot that we are celebrating is the team that we sent to Doha to represent us in the International Association of Athletics Federations (IAAF) World Championships. We had a total of 206 countries and Kenya finished second. That is no mean achievement. The question that we should be asking ourselves is what we are doing as a country and leadership to ensure that the great performance continues to be celebrated.

There are many other Eliud Kipchoges who are unable to thrive perhaps because of the dilapidated nature of our sports arena across the country. It is not only in athletics. We are talking about the same in football, basketball, handball and all sorts of disciplines which, unfortunately, because of lack of investment--- If you look at the budgets of the past few years, the Ministry of Sports, Culture and Heritage gets the least allocation yet this is an industry that is capable of earning this country more revenue in terms of our athletes going out to concur the world.

Eliud Kipchoge will come back to this country with is a significant amount of money. That is investment to Kenya just by one simple athlete going and doing the unimaginable. If we have a thousand of Eliud Kipchoges, we will not need to borrow and expand our debt ceiling to fund the operations of the Government in this country. The Government will be able to at least get something and there will be significant investment into this country. Therefore, I urge this House that in the next few months when we will consider the Budget Policy Statement (BPS) and the Fiscal Strategy Paper, let us for once as a House, resoundingly say something about the misplaced priority in terms of sports management in this country.

In the past few years, if you watch football, the National Premier League had got some semblance of order. The same was because of what sports betting firms were putting in, in terms of investment in our national football team. We can argue for or against betting. I am a Christian and I never betted. I do not support the practice but as a leader, I have to appreciate that different choices go for different people. Therefore, I cannot sit in a public office and say that because I do not agree with the practice of betting and gambling, that particular industry should be banned and destroyed in its entirety.

What has happened to that industry is a shame. I cry for it not because I love betting but because I love sports. It pains me to read in the newspapers like it was being painted last weekend that various teams cannot even honour their league matches. It is because the big betting firms used to be their main sponsors. However, because they have pulled out of business in this country, they are unable to continue. Where will we get the next celebrated Eliud Kipchoge or Brigid Kosgei if we continue destroying sports?

Finally, Mr. Temporary Speaker, Sir, it is a shame that as I speak, there is only one stadium that is recognised by FIFA and IAAF where international sports can be done in this country. It is only Moi International Sports Centre Kasarani. Nyayo National Stadium has been in ruins. City Stadium which could have been used was closed down. The others in the other regions like what was supposed to be put up in Eldoret, which is the home of most of the champions for the region, is actually a bush. It is a shame!

We cannot continue to speak---

**An hon. Senator:** *Ongeza volume.*

*(Laughter)*

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, of late some of us have got the title that we have acquired the new role of being the young opposition boys in town. It is a role that we take up with great admiration if that is what it will take to salvage this country from what is happening.

Therefore, Mr. Temporary Speaker, Sir, cognizant of the fact that we are running short of time and many of my colleagues want to speak to this Motion, I will leave it at that. I beg to move and request the Senator for Elgeyo-Marakwet County to second. He is the Senator for one of the gallant athletes that we are celebrating. Probably there is more than one because I only thought about Brigid Kosgei who hails from Elgeyo-Marakwet County.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Murkomen you may proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I will also be brief because of time so that I also allow others to make their comments.

First, I congratulate Sen. Cheruiyot for coming up with this Motion. Last weekend, two Kenyans broke barriers. We have Eliud Kipchoge who is the first man ever to run a marathon under two minutes.

**Sen. Orengo:** Two hours!

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Sen. Orengo.

Eliud Kipchoge said that human being must not limit themselves. In fact, Eliud Kipchoge says: “Show me the limits and I will go there.” It should be us to define the limits and Kenyans are defining the limits. This is a feat that was quickly followed by Brigid Kosgei who is my neighbour back home and whom I represent in this House, being one of the voters in Elgeyo-Marakwet County. She broke a 16-year old record of Paula Radcliffe in the women’s marathon in Chicago. Chicago and Boston are among the hardest courses to run a marathon. She broke that record by 80 seconds which is more than a minute.

We say this because this is a home of world record holders. David Rudisha in 2012 made this country extremely proud by breaking the 800 metres record which he still holds up to now. We have many Kenyans who have world records that are rarely recognised. Moses Kiptanui held a world record for a long time until later when it was broken by Stephen Cherono. We have so many athletes in this country. We have athletes like Lawrence Cherono who won the Chicago Marathon.

In Doha, those who won gold medals were Beatrice Chepkoech in 3,000 metres steeplechase; Conseslus Kipruto in 3,000 metres steeplechase; Hellen Obiri in 5,000 metres; Timothy Cheruiyot in 1,500 metres; and, Ruth Chepngetich in the women’s marathon. Ruth Chepngetich ran that marathon under very difficult conditions and won. We have others like Margaret Jelimo and Faith Kipyegon who got silver medals. Agnes Tirop, Ferguson Rotich, Rhonex Kipruto and Amos Kipruto won bronze medals. These are some of the Kenyans who make this country proud every weekend.

I schooled with some of them. Some are my neighbours and I represent them. You just need to go and live in Eldoret or Iten to recognise who these world champions are. You will find a simple person jogging along the roads of Iten. They are humble and live simple lives.

Mr. Temporary Speaker, Sir, I do not know your office but I think the House should consider--- Since we came to this House, the only person who has addressed this House other than the Joint Address of the House by the President, is the former Chief Justice, Dr. Willy Mutunga. Is it too much for me to request this House, that Eliud Kipchoge, having achieved that rear feat, should be given the honour by this House and that the Senate Business Committee (SBC) should sit and decide that as soon as possible with the approval of this House, he be given the opportunity to come and address this House?

I want to note that Eliud Kipchoge has managed himself well and has been running for a long time. He started with 1,500 metres, 5,000 metres, 10,000 metres and ran over eight marathons and won all of them except one where he got silver. This is a man of great inspiration. In fact, he has built himself to the extent that he is now one of the most quoted athletes in the world because of the philosophical words that he speaks. We even saw that in Vienna. It will be great to give him an opportunity to address this House.

Lastly, Mr. Temporary Speaker, Sir, we must ensure that we continue improving sports facilities in the country. I know there is an accusation that the Government has not constructed the stadia it promised and so on and so forth but there are some counties that have done a good job. Kakamega County, for example---

**Sen. Wetangula:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is your point of order, Sen. Wetangula?

**Sen. Wetangula:** I am sorry for interrupting my distinguished colleague.

*(Interruption of debate on Motion)*

## PROCEDURAL MOTION

### EXTENSION OF SITTING

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, knowing the interest that we may have in discussing this matter and the time limit, allow me to move a procedural Motion:

THAT, pursuant to Standing Order Nos.31(3)(a) and 31(4), the Senate resolves to extend its sitting until the conclusion of business listed as No.8 in today's Order Paper.

I invite Sen. Mwaura to second.

*(Sen. Mwaura spoke off record)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Mwaura, you are not on record.

**Sen. Mwaura:** Mr. Temporary Speaker, Sir, I second. I endorse the Motion as moved by Sen. Wetangula.

*(Question proposed)*

*(Question put and agreed to)*

*(Resumption of debate on Motion)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, in conclusion, some counties are trying their best in improving sports facilities. Kakamega County, for example, has done a good job at Bukhungu Stadium. We must give them the credit. I have played football there and it is a very good stadium.

Narok County too has tried in improving Narok Stadium. Mombasa County has also tried with their sports facilities. In Kiambu County, there is Ruiru Stadium which was improved by the former Governor. Machakos County too has one of the best football stadium.

In terms of athletics, I agree with Sen. Cheruiyot that in some counties, tenders for improving stadium were awarded, but there is nothing to take home on the ground. For example, in Elgeyo-Marakwet County, tender to improve Kamariny Stadium was awarded, but the Government has not been able to release money. Its improvement stalled and the contractor is yet to be paid.

Mr. Temporary Speaker, Sir, Eldoret Stadium should have been one of the best stadia in this country. I am very happy to report here about Nandi County. Eliud Kipchoge is working with Governor Sang' who was the Senator here, on how to improve Kipchoge Stadium in Nandi County. It is a fantastic thing because I saw Governor Sang and spoke with him. He met with some of the sponsors, including the INEOS sponsor, Mr. Ratcliffe.

The reality is that even though the Government is expected to build these Stadia across the country, it is the private sector that owns many of the stadia all over the world. Why should we have big companies like Safaricom, Kenya Power, Kenya Electricity Generating Company (Kengen) and so forth, and none of them is willing to invest in sports facilities? We want sports facilities for playing tennis, basketball and all other sports, so that we can support all other disciplines of sports in this country. I believe that if the private sector will be part and parcel of this process, we will make this country a great place.

Lastly, there is a lot to learn from these athletes in terms of personal discipline, commitment and hard work. There is also a lot to learn from some of them who although have won gold medals, very few have been able to invest their resources prudently and better their lives when they get older.

Mr. Temporary Speaker, Sir, one of my friends, Moses Kiptanui who is also a friend of Sen. Wetangula, is a very good example. He is one of the few sports billionaires in this country. When you go to Eldoret Town, you will see his investments and his discipline. Mr. Eliud Kipchoge is also proving to be in that direction. We have another friend of mine called Lorna Kiplagat and a few others who are doing well.

If there is a way county governments can sit them down so that they are also given education on business, communication and other things, it will help them a lot. If you see what Kipchoge is doing, he is branding himself so well in terms of improved communication. If our athletes can take language and communication lessons, they will be able to brand themselves well globally and their names can be there for a long period of time. That is what Paul Tergat did. He is now in the National Olympic Committee of Kenya (NOCK) as a representative. He is holding a very important position.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, I wish to thank the Senator for Kericho for bringing this Motion to this House. I had thought of bringing one, but when I spoke to him, he had beaten me to the tape. Being from the place of great runners, he ran faster than me.

Mr. Temporary Speaker, Sir, when Eliud Kipchoge broke the World Marathon record, I was watching him from Ghana. I had gone for the burial of Kofi Annan. I was sitting with Ghanaians, including the former President John Kufuor, as we watched. Each and every one of them felt the pride that Kenyans feel. President Kufuor asked me why

this young man cannot be a Ghanaian. He did so well that anybody could never have helped being proud of him.

He is not the first to break a world record; we have the legendary Henry Rono who broke the world record of steeple chase four times in two months, but degenerated into something else due to lack of proper advice.

On Saturday, when Eliud Kipchoge was attempting the first ever sub two hour marathon, the commentators on Cable News Network (CNN), British Broadcasting Corporation (BBC) and all international media were comparing Eliud Kipchoge with Neil Armstrong when he stepped on the moon in 1969.

That history was about to be made. Neil Armstrong was the first man to land and step on the moon. Eliud Kipchoge was about to do something no human has ever done.

Mr. Temporary Speaker, Sir, you could see that at the end of the race, the young man was so energetic and full of power that he could have done even better if he wished to. We salute him. Hot on the heels of Eliud Kipchoge's feet, Brigid Kosgei smashed the 16-year-old world record that the legendary Paula Radcliffe had set. Those of us and I believe my distinguished learned Senior, James Orengo, who is also a keen follower of athletics, who saw Paula Radcliffe running, the lady was a powerhouse. She ran her marathons from the front to end and set a world record, at the time, beating Catherine Ndereba of Kenya 16 years ago.

She has held this record until last weekend when Brigid Kosgei broke it and said that she will break it even more. From the stamina I saw, I have no doubt she will break it even more.

On the same day, in Chicago, a Kenyan whose name I cannot quite remember, also won the men's marathon. Although it was breathtaking because he defeated the Ethiopian by one second, he still won.

Previously, we had seen in Doha a girl called Hellen Obiri. Whoever saw her finishing her race in 10,000 metres, will agree with me she has stamina. We were in a place in Bungoma County and the entire social place became a flame in the manner in which Hellen Obiri finished her race.

Mr. Temporary Speaker, Sir, what is lacking in this country is not athletes or great athletes. Successive governments, and this is not just an indictment to the current Government, have completely neglected the successes of our athletes. Eliud Kipchoge used to be just a pacesetter for people like Douglas Wakihuri and others. However, he metamorphosed into a legendary runner because of stamina, discipline, and above all, his moral and religious background that I have since been following.

Mr. Temporary Speaker, Sir, as Sen. Murkomen said, I have a friend called Moses Kiptanui. When he was breaking world records, he was a very close friend to a young person I had employed in my law firm called Donald Kipkorir. He used to visit my offices regularly and we became friends. We meet every other evening when I am in Eldoret. He has maintained such a high standard of discipline. He is a successful businessman, a coach and mentor to young athletes. He is always walking in the shadow of the legendary Kipchoge Keino, who is a success in his own right.

When I was the Minister for Foreign Affairs of this country, I started a policy of acknowledging and appreciating athletes. I gave a diplomatic passport to a girl called

Jepkosgei. I advised that when our athletes go out, like now Brigid Kosgei, Moses Kiptanui then and now Kipchoge, the Ministry of Foreign Affairs should give them protocol officers to help them in passing through immigration and even talking to the media.

Mr. Temporary Speaker, Sir, I remember - and it is laughable, but it is because of lack of training - when one Kenyan girl after winning a marathon in the USA was asked: "How did you manage to beat everybody?" She said: "I was just running, and I kept running and God came into me; and I kept running and then I won."

*(Laughter)*

That is just because she has not been trained to handle the media in such an international glare. The Ministry of Foreign Affairs has a duty to help these young Kenyans and train them. You can imagine when Kipchoge won and broke this record; Obama *tweeted* about him. The President of Kenya and many other dignitaries talked to him. These are the real ambassadors of Kenya; not those who eat caviar and drink wine, whiskey and champagne every evening in unknown places. They go out there, carrying our flag.

When Eliud Kipchoge broke the world record earlier on in Berlin, immediately he finished he was handed over a flag of BMW, a motor vehicle manufacturing company in Germany, to wear and run around it. I asked where the Kenyans were. We have an embassy and ambassador in Berlin. I am sure he has Kenyan flags in his office. He did not go there to receive Kipchoge. Kipchoge was looking embarrassed running around with the BMW flag on his back. However, in Vienna, it was different. I was impressed. For the first time, I saw a leading athlete being received at the finishing line by his family; his wife and children were there. Our Deputy President was there with a Kenyan flag. Kenyans were there cheering on.

Since I am sure my colleagues want to speak to this, I want to urge that we need to formulate a policy. Do not leave these things to the Kenya Athletics Association and whatever; they are run by criminal cartels. For them, these young athletes are an instrument of making money. You remember the scandal in Rio, where Kenyan athletes who were going to get medals for Kenya flew Economy Class. The officials of Kenya Athletics and their families were flying First Class. When they were in Rio, our athletes were being given a daily stipend of \$50, while the athletics managers were getting \$1,000 a day. One was even arrested with athletics uniforms meant for our athletes that should have been used in Rio, which he was keeping in his house in Nairobi.

We need to formulate a law. Sen. Cheruiyot, we need to sit down and formulate one. We will bring it to this House and let it go to the other House, to acknowledge and protect our athletes from both the local managers of athletics and the international agents that pry on them. This is because you will find that sometimes when an athlete earns Kshs50 million, more than half the amount goes to an agent. We need to protect them on that.

I do not know if you have been seeing cartoon strips in the newspapers. One has a taxman from Kenya Revenue Authority waiting with a hammer for Mr. Kipchoge to

arrive with his money, so that they can slice off what he has earned. When this kind of success is registered, we should even give these athletes tax breaks. This is money they have earned after running so hard. They should not come here and we start taxing them when all the rich people in this country are evading tax every day. We should not allow that to happen.

I salute Eliud Kipchoge, Brigid Kosgei, our team in Doha and all our other teams. However, I urge that whatever we formulate as policy and law, we should also look at those heroes who fell by the wayside, like my friend, Henry Rono, who broke a record four times in one or two months and ended up washing cars in the USA because there was nobody to mentor, guide or protect him.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Mwaura:** Thank you, Mr. Temporary Speaker, Sir. This is a very important Motion. I want to appreciate Sen. Cheruiyot for having thought through to come and honour these great Kenyans. As Nelson Mandela said, everyone can rise above the circumstances and achieve success if they are dedicated to and are passionate about what they do.

Eliud Kipchoge has really made us proud as a country. Now many Kenyans are saying despite all the problems they face, they are proud to be Kenyans. There is nobody who has put us in the world map in recent history from whatever extraction like Eliud Kipchoge has done. He provided us with very vital lessons about human excellence.

I want to congratulate the public relations team around Eliud Kipchoge because they were able to inform us and to turn our attention to him. We were updated minute by minute on what was going to happen. We were all waiting. I remember even seeing on social media, people saying all our eyes are in Vienna, waiting to see what is going to happen. I think it was also because of that feeling that maybe he was not going to make it. It was more about our own self-doubt that this could not be achievable. That is the problem with us human-beings, especially here in Africa.

I want to serenade and celebrate Eliud Kipchoge as an individual, but also as a team because we saw from his strategy of winning that he had pacesetters. These are 41 seasoned marathoners both men and women who formed a V-shape, so that he would not be affected and slowed down by the winds. They became very selfless about this win and made sure that it was Kipchoge's moment. That gives us a very good lesson about leadership.

There is a science around it; it is not just as Sen. Wetangula was saying "somebody just rushing and ending up at the finish line, not knowing how they found themselves there, but that they ran very fast." It is about the act. There was a target, it was very well-conceptualised. They had their strategy and they executed it very well.

Mr. Temporary Speaker, Sir, it tells us that even we, as leaders, even if we are the vision bearers, the ones carrying the mantle or the titular heads, we must have a team behind us. It should not just be a team; it should be a team of seasoned individuals if we are to deliver the vision that we carry. That is extremely important even applying it as leaders in any other field. That is a lesson that I learned.



In the same way, this team made sure that Eliud Kipchoge did not lose the tempo that he maintained it throughout. That means that if you have a team you have to ensure that they keep you on your toes. It is not just about leading. In fact, Nelson Mandela says-  
*"Lead from the back and let others believe they are in front."*

What he meant was that leading is putting people in front and making them feel that they are in charge, but actually you are the one calling the shots. When you maintain the tempo, the team helps you to move forward. That is a very important issue that comes out very well.

They never moved out of the 'V-shaped formation around him at any given point. They never got distracted and that talks about unity of purpose. Eliud Kipchoge provides us with a good opportunity to have very good lessons that can be applied for the benefit of the development of our society.

Mr. Temporary Speaker, Sir, Eliud Kipchoge is a Kenyan. However, he went to get his glory in Vienna, Austria. The late Julius Nyerere speaks about the inheritance of the African state. I say African state because that is what we are trying to govern now. The African state is inherited from the Western model that is coming from an individual contractual society and the nuances inherent in that very formation. An African is an individual within some kind of a fellowship. We are collegiate so that if, for example, Eliud Kipchoge runs, some Kenyans will interpret that a Kalenjin is running. That is how we are and it is not a mistake. It is the truth.

We may wonder why the marathon did not take place in Kenya. Why did it have to take place on the lawns of Vienna, Austria? Could we have made this within our communal society? Is Eliud a product of the success of the individual contractual society and the support of the INEOS and the other people around him? Those are some of the questions that we need to ask ourselves. Why is it that we do not have a national stadium for our athletes? We have the Nyayo National Stadium, City stadium and many others, but they are meant for football. We are not very good at football. At least not until we make it to the World Cup.

Mr. Temporary Speaker, Sir, athletics is our niche and I thank God for it. In the recent games we came second to the United States of America which is a super power. We are competing with the super powers in athletics even though countries like Qatar are poaching our people and giving them Islamic names which I wonder whether they are comfortable with. Athletics is what God has given us to leverage. However, we have not used it to market our country.

Other people see athletics in our country as a big thing. The former President of the USA, George W. Bush, when he was still in power, was asked who his hero was and he said, Paul Tergat. Can you imagine that Paul Tergat was the hero of the most powerful president of the world? You can now see the connection of the rise of the African man. When Eliud Kipchoge speaks, he speaks with a lot of inspiration and the first black President of the USA, Barack Obama, who is our son, resonates with him.

Mr. Temporary Speaker, Sir, some of these happenings are speaking to something. We still have a lot of untapped potential. For example, I was recently in New York and noted that they sell toys of the New York Police Department (NYPD), the Empire State Building and many other monuments. Do we have that kind of

paraphernalia to sell to tourists over and above the Maasai man, giraffes and other animal carvings? Can we market our athletics? Other city in the USA such as Los Angeles has built its economy around entertainment. Other jurisdiction such as Texas market and sell country music in the USA. I am sure that when some of us travel out of the country, people think that we can all run even for those of us with big potbellies. Have we taken advantage to ensure that we sell ourselves as a country of athletes yet we have been consistent?

Mr. Temporary Speaker, Sir, we have an opportunity to leverage on this win and market our country. Africa is rising. By the year 2050, we will be 2 billion people. By the year 2100, one in every four people in the world will be an African. I wonder if somebody is going to eat our lunch. All the people who travelled to Vienna to witness the marathon left all the money in Vienna. That is money that did not build our economy. We cannot be doing the same things and expect different results. If our structures are not working, we can change them.

When we will have the next National Honours Awards on Jamuhuri Day are the athletes going to be given the decorations? It is not about long-term success; it is about the fact that this individual has given us an opportunity to shine globally. Nelson Mandela said clearly that if you allow your light to shine, it encourages other people to shine their lights. So, today, we are proud as Senators because Eliud Kipchoge has given us the opportunity to shine.

Mr. Temporary Speaker, Sir, with those many remarks, I congratulate Eliud Kipchoge. I also congratulate others who won. This is a golden opportunity for us that give us time to retrospect.

I was proud to see President Uhuru Kenyatta make that call to him. I hope that does not become a buzz that we will forget. These are some of the opportunities that will help Africa reflag itself forward into the future even when it has been left in the past because of the many years of lack of organisation around the nation States.

Mr. Temporary Speaker, Sir, I support

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Temporary Speaker, Sir. I also wish to commend the Senator for Kericho for bringing this important Motion in which we are celebrating our own sons and daughters.

Mr. Eliud Kipchoge is no longer just a champion. He has become a phenomenon. He is rising to be a great statesman by his utterances whenever he speaks before or after winning races. He is a phenomenon because as I travelled last week, almost everywhere I went to people were talking about him even before the race. In fact, outside Kenya and East Africa, he is, probably, the best known Kenyan in the moment.

I was surprised that in Brazil, when a group of us introduced ourselves as Kenyans, the first thing they asked us is whether or not Mr. Kipchoge will break the two hour barrier. Not only that, the particular person seemed to know many Kenyan athletes. Therefore, I am happy about the feat and achievements of these great men and women from Kenya who wherever they went, for example, in Chicago, Vienna and Doha did us proud.

Mr. Temporary Speaker, Sir, some of us were a little disappointed when the International Association of Athletics Federation (IAAF) said that they will not recognize

the feat established by Mr. Eliud Kipchoge. However, he has become so good that he is not racing against fellow humans. He has done that many times and proven himself. He has proved that a person can race against time and win. He won that race against time.

I hope that some of us in fighting the various problems that we have in the country, will not just fight in order to resolve them. We should always have the issue of time at our back because it never waits. Mr. Eliud Kipchoge has proved that in instances where human excel, time can stop. This is because nobody believed that he could make it in less than two hours, but he did.

Mr. Temporary Speaker, Sir, the names of Kenyans who were in Doha, includes Emmanuel Kipkorir, Ng'eno Kipng'etich, Emmanuel Korir, Ferguson Rotich, Timothy Cheruiyot, Faith Kipng'etich, Winnie Chebet, Conseslus Kipruto, Leonard Bett, Benjamin Kigen, Abraham Kibiwott and Beatrice Chepkoech. I can go on and on.

I am simply saying when we allow competence to reign supreme, then we will do well. We did not ask for ethnic or regional balance in Vienna or Doha. We simply took the best Kenyans---

**Sen. Wetangula:** Or gender balance.

**The Senate Minority Leader** (Sen. Orenge): Yes. Thank you for reminding me. We simply took the best Kenyans for the races and they won.

There was a particular point in time when I thought that the Ethiopians would beat us because they are also good at marathons. We have people like Abebe Bikila, Haile Gebrselassie and many other men and women. It was always a contest between Kenyans and Ethiopians and Eritreans at times. We also had a famous Ugandan marathoner called Kiprotich.

I am simply saying that we should copy what is happening in the world of athletics by simply taking the best people for the races. They have shown that they can do it and they are doing it for Kenya. The only time we seem to be unanimous that we have great Kenyans out there is when these young men and women do us proud by simply winning the races.

In the world of politics and public service, we are disgrace because we never take the best. I think Kenyans can do better even in the world of public service just as we do very well in athletics. That is not to take away at all anything that these great Kenyans have done to make us celebrate across the country.

Sen. Wetangula talked about Brigid Kosgei breaking Radcliffe's marathon record. There was a time people thought that that record would never be beaten because it stood for a very long time. Hardly two days after she broke the record, Brigid said that she will break her own record. I am sure Eliud Kipchoge is going to break his record. These are people who aim for the sky. The sky is the limit for them. In this competitive world, they will continue to put Kenya's name high up amongst nations.

Mr. Temporary Speaker, Sir, as I conclude, there is something that needs to be done about our athletes and sports people. In fact, by winning many races, there is no reason why Kenya by now has not hosted one of the major world events because we have big names and they have been successful many times. If we were moving with them at the same pace, we should be having a world class stadium in Nairobi City, Eldoret Town,

Kisumu City or wherever we think it is right to have it. We seem to celebrate their successes. However, in terms of action, we seem to be doing very little.

I hope that in recognition of what our sports men and women are doing, the Government will wake up and have high class athletics stadia all over the country. Although that was promised during the 2017 General Elections, people do not talk much about them anymore. However, it is never too late. It is high time that was done in recognition of what our sports men and women are doing. They are not just doing it once, it is constantly and in every part of the world. It does not matter how high or low the place is. Whether it is in the south or the north, they continue to break records.

We should take the example of a country like Jamaica which decided to go for talent, particularly in the short races. The sprints used to be dominated by the United States of America (USA). Now a small country like Jamaica, year in, year out, competes with the country with the best resources in the world.

There was a time in Eastern Germany, although it is alleged, that they were using certain drugs and so on. By the State taking a direct interest and starting to train people early such as this young lady called Biles in the United States of America who started gymnastics I think at the age of 8 years. By age 23 years, she had broken so many records. She is going even beyond her age because she was properly prepared and trained while still very young and facilities continue to be there for her to best her record.

Imagine Eliud Kipchoge at this stage is still breaking records. I think he is self-made man. It is not the environment or the facilities that were there. Sen. Wetangula has explained how he was a pacesetter for other athletes. Imagine if these facilities were there and accessible, we would be winning many more races as a country.

Mr. Temporary Speaker, Sir, in conclusion, I thank Sen. Cheruiyot for bringing this Motion and making me feel like a Kenyan. Sometimes I do not quite feel it when things go wrong, for example, when leadership is corrupt, indecisive, lost for direction, has no passion and is not principled.

I like Sen. Mwaura a lot because he quotes that late Presidents Nyerere and Mandela because they had some kind of vision. These athletes are beating us at having a vision that the impossible is possible. This country can make the impossible possible. Athletics alone can bring this to us.

In the deserts of Abu Dhabi and Dubai, they are making first class facilities for people to compete. There is athletics tourism in the Middle East. There is horse racing and car racing. We saw what happened in Doha. The world is looking the other direction. Why is Kenya not the centre of gravity in so far as world athletics is concerned? It is because we are not putting our investment where we need to do it in order to be amongst the very best in the world.

I thank you.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Motion. I support and thank Sen. Cheruiyot for bringing it because it is a very important for us to debate it.

In a very long time when Eliud Kipchoge won that race, the whole country was united. I think for this country to develop and progress, we need such things that keep on

uniting us because this country has a lot of potential that can benefit and unite Kenyans as a whole. This is because everybody was united at that moment.

Mr. Temporary Speaker, Sir, Eliud said: “Beyond limit” and this has also been beyond imagination. This House, as we always like to say, is the House of wisdom.

As we know, our athletes, or any other athlete for that matter, have limited time. They can only compete up to a certain age. It is, therefore, unacceptable for them to be winning and, later on, they die in poverty. I urge Sen. Cheruiyot or anybody else, to work on that Bill as soon as possible. I hope that the other House will be wise enough to ensure that, that Bill passes very quickly.

The wins by these athletes, not only secures their future, but also boosts the economy of this country. This is because when they invest properly, revenue is generated. However, I agree with Sen. Wetangula that the money they are given after they win should be tax-free. Since these athletes are our ambassadors, anything they win should not be taxed. This is because if they invest properly, there will be enough profit generated and this will give good revenue to the Government. That is where we should focus and not the money they get after they win. Foreign investors like the Export Processing Zones (EPZ) are given tax breaks. Why do we not do the same to our athletes instead of taxing them and, in the end, discouraging them?

It breaks my heart to see great men and women who have done our country proud by winning, wallowing in poverty. Just as India has distinguished itself in terms of medical tourism, Kenya can become a country where the whole world looks up to for training. We have been producing the best athletes all the time. We can have athletics tourism in country if we invest enough.

Sen. Nyamunga, Sen. Cheruiyot and I, sit in the Committee on Finance and Budget and have seen the revenue of this country - both in the counties and the national level - dwindling as the years go by. That can be reversed only if we not only create proper regulation or laws that guide the investments, but also the number of people that can be employed.

The other day we were discussing the rate of unemployment in the country. If the value chain that is created by sports is well looked into, this country can be rich. We can have a win-win situation for all of us.

The win for all of us is the revenue generated. We are making the Kenya Breweries Limited a very rich institution because once the athletes stop active sports, they start drinking. We should encourage them to invest in the right places.

Mr. Temporary Speaker, Sir, this is motivation for upcoming athletes. If the athletes were supported to invest properly, Kenyans would know that athletics is a career and take it seriously just like the way we treat the national examinations seriously. We work hard in exams to attain ‘As’ to take us to medical or engineering courses. Young Kenyans can be encouraged to compete in athletics and make a future that is sustainable for them.

I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Kindly proceed, Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to join my colleagues in congratulating Eliud Kipchoge. I thank Sen. Cheruiyot for coming up with this Motion. It was such a wonderful moment for all of us in Kenya to watch Eliud Kipchoge run to the last point and win in a very colourful manner. I agree with fellow colleagues who have said that it brought the unity of purpose in this country. When we saw him holding the Kenyan flag, all of us had goose bumps because we felt good about it.

I congratulate him and Brigid Kosgei who put Kenya on the map within two days. As we congratulate our athletes, we need to question the role that has been played by the Government of Kenya in building our athletes. I come from Uasin Gishu County where the legend, Kipchoge, comes from. We had made proposal to recognise his contribution to this country with a wonderful international standard stadium, but that has not been realized. The journey of building the Kipchoge Stadium started when I was the Member of Parliament of Eldoret East. However, to date, we have not finished building it. We now have a younger Kipchoge who has done us more good than the senior Kipchoge.

Mr. Temporary Speaker, Sir, I thank this House for the County Hall of Fame Bill (Senate Bills No.39 of 2018). Many heroes and heroines of this country will be recognized, named, and written about for posterity. Many counties will make money as a result of the county halls of fame because people will want to walk in to learn about the people that have made Kenya proud in athletics, music, football and other sectors.

I sometimes feel that we, as a country, have a low sense of appreciation of human being. Not just athletes, but even the people who have made a mark in other sectors. The other day, there was a wild debate on whether we should have the founding father of this nation on the new notes. The question should be whether the founding father sacrificed for this country? We should not even debate about having him on the notes. We should have demanded to have him on the notes.

Mr. Temporary Speaker, Sir, we have to improve our sense of appreciation. I just came back from a prayer breakfast in Uganda. We were welcomed in a unique way. We felt really welcomed because we were taken care of as hon. Members in a very special way courtesy of the Speaker of the Ugandan Parliament. What struck me most is that a footballer by the name Otieno was given an opportunity to address the prayer breakfast; first, because he is a believer.

Secondly, this is because the Government of Uganda felt that he had done a great job by scoring. In fact, in his speech, he quickly said: "I had better inform the Kenyans in the room that I am Otieno of Uganda, and not of Kenya." We told him "please, pack your bags and go home because there are no Otienos' in Uganda." From the sense of appreciation that he was given, you would feel that there is no way he would want to exchange Uganda for any other country.

We have had athletes in this country who renounced their citizenship and quit the country. We have some who went to Bahrain and now they are called Hussein. We have some who went to Qatar, we even have Danish-Kenyans. We have Kenyans all over. What are they lacking to make them go? They are going because they feel as though they are not well-appreciated well taken care of.

There is no problem having Kenyan athletes move to other nations and have dual citizenship. We thank God that currently there is dual citizenship. However, we must really look at what we are doing to build our sports because Kenya has been respected for sports. You can imagine that it took an international fan of athletics to recognize that Kipchoge can stretch a little bit more. Since he was short of 10 seconds to win a two hour marathon, he was ready to put his money on the table and make him win. The most touching thing that happened is for a non-Kenyan to say “whether you win or not, I am going to give you this gift; but I want you to win so that the world will know that it is true you can stretch more.”

When he came out with his slogan that “no human is limited” all of us were holding our breath and saying, will he break this record that he really believes in or not? We all saw and watched him. It came to my realization that a human being who trains, stretches, and works hard is not limited because as you work hard, things change.

Mr. Temporary Speaker, Sir, I think that is what the international sponsor was trying to prove to the international community that actually a human being can stretch. If you reward a child, we know they can do everything for the sake of the father or the mother. We all learned a lot of lessons out of this. The fact that this young Kenyan was recognized and identified by somebody who is not a Kenyan, was even more amazing to me. He really believed that he can use him to make the world stretch. We should all be able to stretch.

Mr. Temporary speaker, Sir, in appreciating these two athletes who made a mark for us in the last week, I want to agree with those who have said that we must come up with a clear policy on how to support, not just athletics, but sports in this country.

We know that our footballers have tried on their own; they have struggled. Sometimes they have travelled without per diem. We have sat and assumed that they can be able to survive on their own. There are so many things that Kenyans have struggled on their own. Why should they struggle on their own and yet when they win, the flag they are carrying is ours? We should be able to sponsor them, train them and ensure that they are fully facilitated. Whatever facilities that are required for them to train well, we need to be able to fund them through our taxpayers’ money.

Mr. Temporary speaker, Sir, I really believe that this Kipchoge win has become an eye opener for us. In this very mood, I want to urge Sen. Cheruiyot that he moves further, gathers the ideas that we have given him right now so that we recognize these people. One item that must come out in the policies that he is coming up with is this tax waiver that we have discussed for a very long time.

If you look at the sportsmen and athletes that we have, these are people who have come from very poor backgrounds and yet we are hungrily waiting for them to come back home so that we tax them. Sometimes it is good to allow them to enjoy 100 per cent of their earnings. We can actually come up with a policy that you should only be taxed after your third or fourth win. However, taxing them on the first win seems to discourage some. That is why some of them decided to belong to other countries where there is no taxation.

Mr. Temporary Speaker, Sir, I know that Sen. Cheruiyot is writing all the points that we are giving him. I believe that he will come up with a policy that will change this

country completely because our future lies on our youth. We need to give them more avenues than just books and academic qualifications.

Mr. Temporary Speaker, Sir, I support.

**Sen. Nyamunga:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I rise to support this Motion by the Senator for Kericho, Sen. Cheruiyot. I take this opportunity to congratulate our athletes who performed in the recent games. We are proud of Eliud Kipchoge and Hellen Obiri.

On Saturday, everybody was wondering what time the race would start. I thought it was to be in the morning, but we were not quite sure of the time. However, I was happy when I realised that it was to be in the evening.

As Eliud competed, I looked at his pacesetters who were calculative. I wondered how he would surpass them so that he would become number one. My mind was not right. However, that is the way I was looking at it. I was proud. I sat in disbelief. I wished I could give him extra energy so that he completes the race in one 1hr 58 minutes. It was a wonderful experience for Kenyans.

Mr. Temporary Speaker, Sir, I realised that as a nation and as Kenyans, we should put our differences aside. This is because his win was not his own, but for all of us. It made many people proud.

One thing that we, as a nation, should do is to always go beyond personal issues and politics. I have seen us do it all the time. For example, when we had the tragedy in Mombasa, I saw the same thing.

I congratulate our leaders from the Rift Valley. If you see the development that is going on in Eldoret, I largely believe that it is as a result of these athletes. Young people from the Rift Valley are watching the athletes and are coming up to compete in races.

In sports, we should not look at the athletes alone. We, as a nation, should develop the Ministry of Sports, Culture and the Arts so that it can help shape young people's minds. Sports instills discipline into young people at an early age. It also helps them to have control. For example, it helps them to know when they will practice and the hours they will put into it. So, the exercise shapes them. Therefore, I urge the Government of Kenya and all of us to put more effort in developing sports, not only in athletes or football, but all sports.

I also know that there is football for women which is gaining a lot of popularity. We should also look into it.

Mr. Temporary Speaker, Sir, I would like to emphasize the fact that I have a Bill on this. The Bill talks about nurturing the natural resources within each county. We have athletes in Rift Valley. That is a natural resource. In other areas, we have people who are talented in football.

Talking about taxes, if they must be taxed, the taxes should go to their respective counties because the money is earned by the people from the counties. They do not work in Nairobi City County for the national Government to look for tax from the athletes. It is the counties that should ask for taxes from them.

Natural resources should be nurtured by the county governments because at least each county has a resource. So, we should not look at the national Government alone to produce money such that all the counties shut down if the national Government does not



produce money. I do not think that is the way forward and that is how we want to run this nation. Just as the national Government looks for money by taxing people, counties should do the same. In the Rift Valley, for example, athletics is one of the areas of interest and they can do that by developing stadia, nurturing talent and spending time on them.

This weekend I was in a rural area. There is a football tournament going on and it is good. However, football is left for the young people to run it on their own. Nobody supports them, not even the county government. However, they are expected to compete from the grassroots level up to the county level. It takes a lot of work for you to move from nowhere to the county level. Therefore, these are some of the areas that the county governments should concentrate on to nurture sports and talents of young people. If this is done, most of the ills that we see in our communities will not be there.

Sports are also a unifying factor. When you have inter-county competitions, you get to know each other and appreciate other cultures and counties. Sports bring the people of Kenya together. Much as we talk about sports, we should look at it as a way of engaging the young people. The issues we have of alcoholism and drug abuse are as a result of young people being very vulnerable and free. We all know that any free mind is occupied by somebody else. It makes the young people resort to other things that are not necessary for their development and their future.

Mr. Temporary Speaker Sir, as I support this Motion, it has been brought at the right time. If we had waited, it would have lost the salt, but this is the right time. We congratulate them and wish them well wherever they are.

Our athletes bring a lot of money to this nation. Somebody will get Kshs400 million. That is a lot of money from just one person. It is not him alone because other athletes won gold medals in Doha. That is something to be encouraged.

Parents should encourage their children to love sports. They are no longer for people who do not make it in classrooms so as to try their luck elsewhere. Football, athletics and other sports are now as gainful as any other employment. All you need is to concentrate and make sure that you excel the way a doctor, a lawyer or a teacher would excel. That is the same way sports people excel.

I encourage the Senator to push it forward and come up with a Bill to ensure that facilities are put in place.

**Sen. (Rev.) Waqo:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to add my voice to this important Motion. I also congratulate Sen. Cheruiyot for coming up with this important and relevant Motion.

We were all motivated during the weekend when Eliud Kipchoge united the entire nation in less than two hours. We have been crying and complaining about the poor economy, corruption in our country, ethnic clashes and disasters that have always been there. However, within those two hours, he helped Kenyans to forget all the problems and challenges we have as a nation.

Within those two hours he made us one, we were proud of ourselves. You could feel the togetherness, oneness, joy and the pride of being a Kenyan in what he did. He is the man who has been congratulated by the entire world. He was recognized and made his way to the Guinness World Book of Records.

Mr. Temporary Speaker, Sir, it is unfortunate that many Kenyans have only known him after this very outstanding performance. He has been performing and winning. However, many of us Kenyans have even not known, not even been talking about him or even recognized his efforts. Now that the entire world is talking about him, we have also joined the world.

We need to nurture the talents of all Kenyans. We have seen in the past, that there are many Kenyans who have made it to the Guinness World Book of Records. There is somebody called Joseph, the love of Kilifi who milked 531 litres of milk from 30 cows by hand in 24 hours. He made history.

We also have retired athletes, Tecla Lerupe who currently holds three world records. All these people have sacrificed themselves so that they can make a record and history and make our country proud. Another person is Paul Tergat whom we are all proud of who has also made his way to the Guinness World Book of Records.

Many athletes have broken world records. In fact, the outside world is more proud of our athletes than us Kenyans. It is high time for us to see how best we can recognize them, encourage them, motivate them and also see how they can be role models to others. How can they nurture the other young people who want to also make history in life?

Sports or other activities are not the only way people can make history. We have people who are gifted in various ways and their talents need to be nurtured. Formulation of policies that can acknowledge our athletes, protect and nurture them is something we need as early as yesterday.

When you see our young Kenyans performing, winning and also creating their own wealth, we need to see how their families can be protected. As we have seen, they are all young. Some of them may not be experienced and they may not know how to invest. In the Investment area, we need to nurture them to see how they can grow and see how they can invest their wealth and continue growing it.

Mr. Temporary Speaker, Sir, we need to also see how Eliud Kipchoge can become a peace ambassador. Through his action, he united Kenyans. We were able to overcome the issue of tribe that we have always been using in a negative manner. We need to nominate him as a peace ambassador, so that he continue uniting our nation and the entire world.

We also need to see how we can have in our calendar a day where we can celebrate all the athletes and other people who have made history. I know that we have *Mashujaa* Day when we celebrate many people. However, we need to specifically talk about the athletes who have made our country to be known and recognized worldwide.

I cannot not forget Ms. Brigid Kosgey, who also made us proud just hours after Kipchoge made history. The young lady broke the record after 16 years. We need to recognize and acknowledge our athletes because they made a lot of sacrifice and denied themselves so many things in order for us to enjoy their success as Kenyans.

Mr. Temporary Speaker, Sir, we also need to see how best we can recognize other Kenyans who have made history in their lives. I know of a young Kenyan from Marsabit County, who is well known to me, who was feted as the most outstanding teacher in Saudi Arabia just two days ago. Kenyans are not talking about him, but I am proud of

him because he comes from my village and county. He is one of the young people who have said no to anything that brings them down.

It is a high time for us to respect the people who have sacrificed their time, talents and made this country proud. We need to invest in sports, so that Kenya can even nurture other countries. We can come up with an international sports centre or athletes centre that will bring together all our great performers and request them to train other athletes from the entire world. They keep talking about us and many of them would want to enjoy our resources. Therefore, we can invest with an aim of bringing other athletes into this country for training and nurturing of their talents.

I support this Motion and say that we would want to see the young people who have made us proud being recognized, nurtured, supported and protected. As most of us celebrate their success and see how best we can support them, there are others also who are thinking of how they can exploit and get some few coins from them. We need to protect and be proud of them. We need to see how they can pass the skills and nurture those who are looking to be great men and women in future.

Mr. Temporary Speaker, Sir, in our country, one of the challenges we are faced with is that there are many young people who are not employed. We can encourage our young people that it is through nurturing that people like Eliud Kipchoge are who they are today. We need to start athletics training centres in every county, where young people can be trained and nurtured. I believe that we have people who are talented in sports and athletics. They can be nurtured and the entire country can enjoy.

We are proud of the young people who have made us proud and also thank person who came up with this Motion.

Mr. Temporary Speaker, Sir, I support the Motion.

## PROCEDURAL MOTION

### ADJOURNMENT OF DEBATE ON MOTION

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir. I have a plethora of requests from colleagues who would have wanted to contribute to this Motion, but given that we went late into the evening, for one reason or the other, they were not able to be here till late.

Under Standing Order 105, I do request that the debate be now adjourned.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, the matter does not affect counties.

*(Question proposed)*

*(Question put and agreed to)*

*(Debate on the Motion was adjourned)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 7.10 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday 16<sup>th</sup> October, 2019, at 2.30 p.m.

The Senate rose at 7.10 p.m.