

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 23<sup>rd</sup> October, 2019

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

*[The Speaker (Hon. Lusaka) in the Chair]*

### PRAYER

### STATEMENTS

#### DELAYED COMPENSATION OF FISHERMEN AFFECTED BY THE CONSTRUCTION OF LAMU PORT

**Sen. Loitipitip:** Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No. 48(1), to seek a Statement from the Standing Committee on Transport, Roads and Infrastructure regarding the delay of compensation of fishermen affected by the construction of Lamu Port, Lamu County.

In the Statement, the Committee should-

(1) State the Government policy concerning compensation when undertaking infrastructural developments of such magnitude indicating whether it should be done before embarking on the projects or afterwards.

(2) Clarify whether there are funds set aside for compensation in this project.

(3) State the criteria used to identify fishermen for compensation and explain why the Ministry of Agriculture, Livestock and Fisheries has not published the list of beneficiaries.

(4) Explain why the compensation has faced delays and state when it will be done.

**The Senate Majority Leader (Sen. Murkomen):** Mr. Speaker, Sir, first of all, I congratulate Sen. Loitipitip, who is one of the youngest elected Senators in this Republic, for coming up with this important Statement.

This House has dealt with many Statements that are related to compensation. We dealt with one about road issues in Kiambu and Uasin Gishu Counties where the Committee on Transport, Roads and Infrastructure visited. Delay in compensation is a problem across the country.

Sometimes, there are delays in compensation because of internal interests within the institutions that deal with compensation. They sometimes inflate prices to the benefit of speculators and so forth.

Mr. Speaker, Sir, Lamu Port is important for us as a country. It is one of the biggest flagship projects of the Jubilee Administration. It is also part of Vision 2030 which was established by the Leadership of President Mwai Kibaki.

Once the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor comes into effect, this country will change. However, we do not want Kenya to benefit while the people of Lamu suffer or are disenfranchised. Therefore, I hope that the Committee will not only call public officers to Nairobi but also have time to visit.

I congratulate Sen. Wamatangi's Committee for being proactive in visiting parts of the country. However, they should table the reports of the Committee on the Floor of this House.

Mr. Speaker, Sir, I once again congratulate Sen. Loitiptip. If he continues with this trajectory, he will leave his name in the annals of history as a young Senator, elected by the people of Lamu and one who fights for the interests of his own people. I know that he is a hardworking and committed young person.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I support this Statement about fishermen who depend on fishing as their livelihood. If they do not fish, there is little they can do, for example, a bit of trading. The fact that they have not been compensated means that they cannot make ends meet because this is their hope.

I suggest that, apart from inquiring about the delayed compensation, the Committee should find a way to get a promise, word or definiteness about when the people will be compensated, what the delay is about and the date of payment. This should be one of the deliverables that will be key and necessary for the people of Lamu. This Committee should push further and seek clear answers. It should ensure that compensation is done when the promise to pay is made.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I stand to support this Statement by our colleague, Sen. Loitiptip, because it brings to the fore an issue on which we, as a House, may soon want to make a serious determination.

It increasingly appears as if there is thinking in Government that Government infrastructure projects are more useful to this country than the livelihood of its citizens. It is not just this particular project, but almost on a weekly basis, we are informed of a court order of a particular project where citizens are being evicted because certain people in Government believe that some children of this country are children of a lesser God.

On many occasions, many of those affected are the poor and marginalized in this country. Perhaps by way of a Motion, or resolution of this House, we may need to consider summoning some of these Government agencies or officials who believe – and wrongly so – that for Government to thrive, ordinary citizens must suffer. I hold the view that both can thrive.

If one must wait before the other can be sorted out, then it is Government. It should not be ordinary citizens to wait before they are compensated. There should not be the kind of interruption to their basic lives as is being brought to fore by our colleague, Sen. Loitiptip.

I want to urge the Members of the Committee, Chaired by our good friend, Sen. Wamatangi, that they treat this matter with extreme urgency. They should table a report within 14 days so that we are able to conclusively handle these particular issues.

**Sen. Wambua:** Thank you, Mr. Speaker Sir, for this opportunity to add my voice in support of the Statement by Sen. Loitytip. I sit in the Committee on Roads and Transportation. I want to agree with the sentiments of Sen. Cheruiyot that we are living in a time that a wrong impression is being created; that capital projects by Government should take precedence to the right of ownership of property by individual citizens.

With regard to the issue of compensation - right from what has been raised by Sen. Loitytip – we know that there are complaints from the Eldoret bypass. Residents of Kapsaret are crying about delayed compensation. If you go to Mashuri in Kajiado County or on the land where Thwake Dam Project sits or the Kibwezi-Mutumwo-Kitui-Ligoni Road, people are crying about delayed compensation.

I think it should get to a point where on its own motion, the Senate, as representatives of people from counties, takes a position on what to do with compensation for private property taken by Government to undertake public projects. It cannot be that a few people are bearing the burden of capital projects for the sake of the entire nation.

Mr. Speaker, Sir, the matter will be brought to the Committee and we will discuss it because it is important for this Senate to give direction. Before one starts any capital project, if there will be any acquisition of private land or property, then prompt and full compensation be done before the projects are rolled out.

Currently, we are constructing roads, railways and dams leaving behind hundreds and thousands of impoverished Kenyans without other ways of earning a livelihood.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to support this Statement. From the onset, we do not object Government projects. However, the way they are being implemented in this country is like forcing them on the communities that are living on the ground.

Secondly, the constitutional provision of public participation on all the projects that are implemented at the county or whatever level is very clear. Unfortunately, the Government agencies that are dealing with these processes disregard the provision of the Constitution. Kenyans are really suffering because most of them are jobless. We know land is a sensitive matter because Kenyans are very poor.

The only source of livelihood that Kenyans have is to rely on the land that is available to earn their living. If this is taken away from them without compensation, they will suffer. That is why you will find most of the youth getting into radicalization and doing most of the illegal things in this country.

Mr. Speaker, Sir, a very good example is the land dispute between the County Government of Isiolo and the Kenya Defense Forces (KDF). In August, the Cabinet Secretary of the Ministry of Lands and Physical Planning gazetted land without involving the communities on the ground or compensating people living in that area and yet we say that we must follow the law. We are a country that abides by the rule of law.

I wish that the Committee would thoroughly investigate this matter and make sure that Kenyans can get compensation before the project is implemented.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I support Sen. Loitytip and welcome him back to the Senate after the incident that he had. I hope the people who attacked him have faced the law.

I have a Statement similar to this issue. Sen. Wambua and I, share this issue because the people of Kitui are suffering from it. There is somebody in national Government who has interpreted compulsory acquisition to mean taking by force.

I mentioned this to Sen. Mwangi; that people living along the Kibwezi-Kitui Road which is under construction are watching the remains of their relatives being exhumed. They do not know what to do with the remains of their departed because they have no alternative piece of land. They have not been compensated, neither have they been relocated. They are forced to carry bones of their deceased. We have suspended Article 40 of the Constitution, which gives the right to property as something that is sacrosanct. It is unacceptable and cannot work.

I hope the Chairperson can request for the immediate composition of the Land Disputes Tribunal that we formed under the Land Value Index (Amendment) Bill, now an Act of Parliament signed by the President, so that some of these issues can go to court.

However, what is more important is that somebody in national Government is avoiding the disputes on compensation. Once you have been evicted, you have no choice other than to take the award that you have been given, no matter how little it may be.

In the case of the Kibwezi-Kitui Road, I am aware of the National land Commission (NLC) officials changing the awards by hand. This is corruption. Just imagine an official record being changed and people being forced to take little compensation. This is not lawful because at the end of the day, we will continue mistreating Kenyans. I urge the Chairperson, Sen. Mwangi, to save this country from the impunity that is being perpetuated by the NLC.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I wish to support the Statement by the Senator for Lamu. These issues of compensation are very serious because there is always speculation of land. When the Government wants to do something, the land of the poor Kenyans is acquired from them at very low prices.

Sometimes the prices of these lands are exaggerated and a cartel somewhere gets 10 or 20 times more than what the poor Kenyans get, which is very sad. The reason why the people of Lamu are not being paid now is because they are fishermen who have lost their livelihood and therefore, nobody can go and buy that land from them. Therefore, because of that, they are not getting what is due to them.

Mr. Speaker, Sir, this House and the Committee concerned should make sure that those fishermen and poor Kenyans are adequately compensated.

The people of Lamu are already marginalized, like the ones living in Faza Island. With this problem of Somalia and its sea boundaries, their land has been encroached on and they might be in trouble. Therefore, the earlier they are paid their money, the better. I hope that the Committee will do that job properly.

Thank you.

**Sen. Madzayo:** Asante sana, Bw. Spika, kwa kunipa fursa hii ili pia mimi niongeze kuunga mkono hii Kauli ya ndugu yangu mdogo, Sen. Loitiptip, Seneta wa Lamu.

Bw. Spika, jambo la kusikitisha ni kwamba, kwa miaka mingi, tumeona watu wa Lamu wakiwa kana kwamba sio Wakenya. Jambo la kwanza ni kwamba, hata ardhi ya watu wa Lamu pia imekuwa sasa sio yao. Watu wa Lamu wenyewe wanajulikana kwamba wanao Uamu wao. Lakini hivi sasa, ukifika huko, ni jambo la kusikitisha kuona

kwamba ardhi yao imekua kama mbuga ya wanyama. Kila mtu ni mgawo; kila mtu ni kinyang'anyiro. Hivi sasa, watu wa Lamu hawana mahali popote pa kuishi.

Jambo la kusikitisha zaidi ni kwamba, vipande vikubwa sana vya ile ardhi ya Lamu vimechukuliwa na mabepari. Na hao ambao sio wengine, lakini ni Waafrika weusi, na ni Wakenya matajiri ndani ya Serikali ya Kenya.

Pia, kumekuwa na ugawanyaji wa mashamba. Hivi sasa, tunaona kwamba baada ya kuporwa yale mashamba, sasa kumeingia jambo la kutengenezwa kwa bandari ya Lamu.

Bw. Spika, ni jambo la kusikitisha pia kwamba, sisi kama watu wa eneo la pwani, tumetegemea sana uvuvi. Uvuvi, kama ulivyotajwa ndani ya Kauli ya Sen. Loiptip, ni jambo linalonishika mimi kwenye roho. Hii ni kwa sababu watu kama sisi tumesomeshwa na mambo ya uvuvi. Kwa hivyo, ni jambo la kusikitisha kuona kwamba hivi sasa mashimo yametobolewa ndani ya ile bandari, na samaki wote wametoroka.

Kwa hivyo, wavuvi hawana kazi ya kufanya, watoto wamebaki ndani ya majumba, bibi zetu wengine na mama zetu washakwenda kwa sababu mvuvi hawezi kupata haki yake.

Bw. Spika, naiunga hii Kauli ya Sen. Loiptip mkono, ya kwamba, yale malipo ya ridhaa kwa sababu ya kuharibiwa kwa biashara na ardhi yake, ni jambo ambalo Serikali lazima izingatie. Kumekua na upungufu Zaidi. Mara nyingi Serikali husema: 'Kesho, kesho kutwa.' Lakini hata ukiangalia zaidi, utaona kwamba hata yule mkubwa wa hiyo bandari---

Ijapokuwa vijana wetu wa Lamu wanajua mambo hayo ya kuogelea, mambo ya bandari na kila kitu; hata wako na degree katika usimamizi wa bandari, lakini hao pia hawako katika ile msururu ya kwamba wanaweza kujiongozea ile bandari iliyoko kwao.

Sheria na Katiba yetu inasema kwamba, ikiwa kutakuwa na mtu katika lile eneo, basi apewe nafasi hiyo. Hii ni kwa sababu kilio chake ndio sawa sawa na kile kilio cha Mu-Amu.

Kumalizia, Bw. Spika, ni kwamba, yale maeneo yaliyotengwa hivi sasa ili kutengezwa hii bandari, na ambayo yameharibu biashara, wale wavuvi lazima wahesabiwe. Hesabu hii lazima iwekwe kinaga ubaga ili tujue ni wangapi – na hao wenyewe wanajuana kule nyumbani – ili waweze kufikiriwa ili wapate hayo mapato yao kwa sababu ya kuharibiwa hizi biashara.

Asante.

**Sen. Boy:** Asante sana, Bw. Spika, kwa kunipa fursa hii kuchangia Kauli hii iliyoletwa na Seneta mwenzetu wa Lamu, Sen. Loiptip.

Kusema ukweli, hili ni jambo la kusikitisha sana, kwa sababu, mpaka sasa, kuna watu wengine wa Lamu ambao hawajalipwa ridhaa yao. Miradi imefanywa, na ukiangalia kabisa, shida iko katika National Land Commission (NLC), kwa sababu hakuna uwazi wala ukweli.

Kwa hivyo, naiunga mkono Kauli iliyoletwa hapa na Mhe. Loiptip, kwa sababu mimi, kama Seneta wa Kwale, nina shida kama hiyo. Hivi sasa huko Kwale, kuna lile Bwawa la Mwache na pia kuna hiyo barabara itakayojengwa ya Dongo Kundu, na wananchi wengi pia bado hawajalipwa hadi sasa, ingawaje kuna baadhi yao ambao wamelipwa.

Bw. Spika, kwa hivyo pia mimi nimepata fursa hii ili nimuunge mkono Mhe. Loitiptip kwa sababu hiyo shida anayopata na watu wa Lamu, watu wa Kwale pia tuko na shida kama hiyo.

Hivi leo, watu wa Bwawa la Mwache na sehemu nyingine kule Dongo Kundu hawajalipwa. Hiyo yote ni kwa sababu kuna watu waliozembea kulipa malipo haya.

Bw. Spika, kwa hivyo ile kamati itakayohusika kuchunguza mambo hayo – ambapo pia mimi ni mmoja wao katika Kamati ya Ardhi – iende ichunguze mambo ya malipo ya hawa watu.

Ninaunga mkono. Asante sana.

**The Speaker** (Hon. Lusaka): Hon. Senators, because of time, we will have to go to the other Statements, because we have already overshot the time allocated.

Proceed, Sen. Mwaura.

#### DELAYED DISBURSEMENT OF CAPITATION FUNDS FOR LEARNERS WITH SPECIAL NEEDS

**Sen. Mwaura:** Mr. Speaker, Sir, I rise pursuant to Standing Order 48(1) to seek a Statement from the Standing Committee on Education concerning the delay in disbursement of capitation funds for learners with special needs.

In the Statement, the Committee should:

- (1) Explain the reason why the Government has delayed in disbursing capitation to learners with special needs, including the learners at Thika School for the Blind, which is currently owed Kshs13 million.
- (2) State when the funds will be disbursed.
- (3) Explain what measures are in place to ensure that the funds are disbursed punctually in the future.

Mr. Speaker, Sir, many schools that are special schools in nature usually receive capitation from the Government, because it is supposed to subsidize the money that parents are supposed to pay. This is particularly because most of the children with disabilities go to boarding schools, even at the primary level.

Unfortunately, the Government has not been disbursing these funds. Therefore, most of these schools are actually grinding to a halt, and they are owed a lot of money by the Government. Of course, they are Government institutions and, therefore, they cannot complain, hence most of the children are suffering.

In fact, some of these schools do not even have food. This Statement is, therefore, very important.

Thank you.

**Sen. (Dr.) Musuruve:** Thank you very much, Mr. Speaker, Sir, for giving me an opportunity to add my voice to this Statement. I want to commend Sen. Mwaura for coming up with this Statement.

Mr. Speaker, Sir, we have severally, in this House, talked about the issues of special needs schools, and the fact that money sent there delays. This is an issue that is not only affecting Thika School for the Blind, but all special schools in this country.

At one point, Sen. (Prof.) Kamar pointed out issues about Kabarnet School for the Deaf, which was facing delays in capitation. At another time, I also pointed out issues about Mumias School for the Deaf. Therefore, this is an issue that needs to be addressed.

Mr. Speaker, Sir, we once commented on the Floor of this House that when disbursement of capitation to special schools is delayed, it affects all schools. In fact, in some Schools, the heads of these schools are even forced to use their own money to run them. This should not happen in a situation where we seek to say that we are including children with disabilities.

Mr. Speaker, Sir, I know heads of special schools who are terribly frustrated concerning how to manage those schools. When children with disabilities are taken to schools, some parents even neglect and abandon them. They assume that those children belong to the Government.

Therefore, there is need for Government to ensure that it is factoring in the issue of children with disabilities. They should do this by ensuring that they not only send capitation in good time, but that they are sending ample capitation that will help even furnish the schools.

Mr. Speaker, Sir, I want to say that the capitation that goes to special need schools is very minimal. You find that when the capitation is not received in good time, the workers who are employed there refuse to render services. When this happens, it is the children with disabilities who end up suffering.

There is need for the Committee that is delegated with this issue to handle this matter with speed and to ensure there is intervention for the purpose of ensuring that there is parity for children with disabilities.

Thank you.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I will be brief. I want to support the Statement. As stated this issue affects the whole country.

There are two schools for the deaf in Wajir. One is a primary school and the other one a secondary school and both of them are in a dilapidated condition. Things are so bad that when you go there you sympathize with the children who are there.

I ask the Committee to look into the plight of these schools.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. I rise to support that Statement. It is a pity as Sen. Mwaura has stated, that special needs children are being ignored in the form of capitation; things that should go to every child.

I remember when I was the Minister for Education, one of the things that we developed was the Special Needs Policy. In the policy, it was envisaged that, in fact, apart from the normal capitation that normal regular primary and secondary schools get, the children in special needs schools and those who have been integrated into the regular schools will get increased capitation to be able to take care of their special needs.

It is a pity that the Ministry has not seen the need to be able to expeditiously discharge their responsibilities by giving out this capitation on time. I think if there is one group of students who need immediate attention and action, it is the children with special needs.

This is because, more often, they rely on others to help them with their daily chores. I think it is a pity that we are leaving out these children. We should make the loudest noise as this Senate to be able to ensure that this capitation is remitted on time.

I support the Statement.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. As the Chairperson of Committee on Education, I want to say that this Statement is very important and we are looking forward to this.

When we were in Kitui, we visited one of the schools for children who could hardly hear, whereas, some were completely deaf. We were surprised to realize that they had not received this particular capitation for one year.

The effect of that particular delay on that school was that these children did not have a personal helper. Each child with disability is supposed to be attended to by a personal helper to assist in matters like eating since some of them are completely disabled. However, those people have left the job of taking care of these children and, therefore, they were suffering. They had been left under the care of about three teachers.

Mr. Speaker, Sir, these particular delays have affected most of the schools and I am wondering why a special needs school should be subjected to delays in receiving capitation as they end up experiencing such problems.

I want to say as the Chairperson of the Committee on Education, that we are going to make sure that we take this particular issue seriously. We will ask the Ministry concerned to explain and even visit some schools so that we can get a proper report.

I have realized that sometimes the report we get from the Ministry is not good enough.

Yesterday we visited Kiambu Institute of Technology and we realized that the Institute is suffering so much. Most of the land has been taken by cartels who subdivided it at night, yet we are taking the matter lightly. Those are the things that the Ministry had not given us.

I promise that on the strength of this Statement, we shall also make sure that we visit some institutions so that we may give to this House a proper report that will enable the Ministry to wake up and make sure that the capitation to those institutions is taken seriously.

Mr. Speaker, Sir, I am also aware that somebody had given us the same Petition on capitation that is supposed to be given to students studying in Technical Training Institutes (TTIs). It had also been delayed for about nine months. Our Committee took action, we visited some institutions and the Government responded immediately.

I want to promise Sen. Mwaura, that we shall take action and make sure that we visit the institutions, including the ones you have mentioned.

Thank you very much.

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir. I would like to support the Statement by Sen. Mwaura.

In the arid parts of this country, there are no schools specifically set for disabled children. However, you find that within regular schools, there are special units for disabled children. I know one in a place called Logo Logo.

Children with special needs require more personalized attention than normal children. However, the situation under which they are learning is such that there is no special attention given to them. The funds set aside to cater for these children should be provided because they are learning without any other support other than what the schools

get. In fact, it is the teachers who go out of their way to go seeking for more funds from other organizations like NGOs to assist them.

Mr. Speaker, Sir, I support the Statement and I expect that the Government plays its role in improving the lives and facilitating these children with special needs.

Thank you.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. When we were in Kitui, the Committee on Education had a chance to visit various schools with special needs and what we saw there will never leave our minds. This is because we actually saw a state of dire need. When we spoke to the various principals, this issue of capitation kept coming up.

In fact, there seems to be an issue about which funds should go where as far as county governments are concerned and as far as the National Government is concerned. I think that the Committee on Education, when interrogating this Statement, needs to look at that, and go back to those schools and ensure that the implementation takes place.

The new issue that has come up about capitation that should have been required for a particular institute, of Kshs158 million which is missing, is something that really disappoints. This is because there is no country that is going to develop without putting education first.

Once efforts have been made towards capitation, then it is very important that people follow through to ensure that those funds are given, especially to students with special needs. They are already going through specific hardships and so, they do not need to be put through further hardship because of lack of capitation.

Thank you.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir, for giving me this chance to also add my voice to Sen. Mwaura's Statement on delayed disbursement of capitation funds for learners with special needs.

Capitation funds from the Ministry are given on need basis. In any case, that funding is meant for buying resources for learners. When capitation funds for learners with special needs are delayed for one year, a whole year is wasted. That means that no learning takes place.

Capitation funds are meant to buy resources for learners. In this case, we are talking about learners with special needs. It means that those learners spent a whole year without receiving resources.

I remember one time Members of the Committee on Information, Communication and Technology and the Committee on Education, visited special schools in Eldoret. We found out that learners with special needs needed some special books. Learning could not take place because of shortage of books.

The Committee on Education should look into this and ensure that funding is sent at the right time to ensure that learning takes place.

**The Speaker** (Hon. Lusaka): I had said that was the last one but let me give a chance to Sen. Madzayo.

**Sen. Madzayo:** Bw. Spika, Bunge la Seneti lazima lijitokeze wazi wazi na kuhakikisha kuwa walemavu katika taifa letu la Kenya hawateseki.

Shule kama vile Thika School for the Blind ilianzishwa hata kabla nchi hii kupata Uhuru. Shule hiyo inasaidia watoto wengi vipofu hapa Kenya. Mzazi yeyote aliye na

mtoto kipofu au kiwete humpeleka huko. Shule hiyo inasaidia kila Mkenya kwa sababu wanafunzi wa shule hiyo hutoka kila eneo la Kenya.

Ni aibu kuwa, pesa za kuwasaidia wanafunzi vipofu au wenye ulemavu fulani haziwafikii. Hayo ni mateso na huenda watoto hao wakafa. Ninavyoongea sasa, Thika School for the Blind haina pesa za chakula. Hiyo inamaanisha kuwa wanafunzi hao wanateseka.

Sen. Mwaura ameleta Kauli ya maana sana na ninaiunga mkono.

**The Speaker** (Hon. Lusaka): The next Statement is from Sen. Malalah, but Sen. Mutula Kilonzo Jnr., will make it on his behalf. You can also seek yours.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. With your indulgence, I have a point of order before the Senator makes the Statement. It is an indulgence that I would like you to make a ruling on.

**The Speaker** (Hon. Lusaka): It is okay.

INHUMANE EVICTION OF FAMILIES IN CHEPTURO  
VILLAGE, NANDI COUNTY

**Sen. Khaniri:** Mr. Speaker, Sir, last week on Tuesday, 15<sup>th</sup> October, 2019, I stood under the provision of Standing Order No.47 (1) and sought a Statement with regard to the people who were evicted in Chepturo Village in Nandi County. The Deputy Speaker was in the Chair.

In his wisdom, because the Statement was cross-cutting different departments, the Speaker nominated the Committee on Lands, Environment and Natural Resources and the Committee on Justice, Legal Affairs and Human Rights to handle the Statement.

This morning, we tried to have the first meeting so that we delve into this matter but we were unable to raise quorum because of the logistics of convening two Committees. I think it is Sen. Sakaja who stated that it is very difficult to put two Committees to work.

I consulted the Chairperson of the Committee on Lands, Environment and Natural Resources. Having looked at the matters that were raised in the Statement, he thought that the Statement should be given to the Committee on Lands, Environment and Natural Resources to handle. He also said that if we need any assistance from the other committees, then we can consult them.

Mr. Speaker, Sir, therefore, because of the urgency of this matter, I request you to redirect this Statement to be handled by one committee which is the Committee on Lands, Environment and Natural Resources.

**The Speaker** (Hon. Lusaka): I know we had given direction but because of the urgency and sensitivity of the matter, I redirect that the matter be handled by the Committee on Lands, Environment and Natural Resources.

If there will be need for any advice from the Committee on Justice, Legal Affairs and Human Rights, they will be there to give that advise so that we make progress. It is so directed.

Sen. Mutula Kilonzo Jnr., you have the Floor.

CONGRATULATIONS TO SEN. SHIYONGA ON RECEIVING  
THE 2019 GLOBAL EMPOWERMENT AWARD

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, on behalf of Sen. Malalah, this is a congratulatory message to Sen. Shiyonga.

I rise pursuant to Standing Order No.47 (1) to make a Statement of general topical concern to extend a congratulatory message to our colleague, Sen. Naomi Masitsa Shiyonga, for being awarded the 2019 Global Empowerment Award for Global Legislative Governance by the American Empowerment Institute in Houston, Texas.

Sen. Shiyonga is a seasoned contributor in this august House on different issues affecting our Republic and deserves this award. At the grassroots level, she has done tremendous work towards empowerment of women, children and the vulnerable in the society.

Some of her works in Kakamega County include:

- (1) Sponsorship of more than 20 students in secondary schools.
- (2) Supporting the vulnerable in society through building houses for widows and the elderly across the county.
- (3) Fundraising for schools, churches and youth groups.
- (4) Empowerment of the youth through sports by providing sporting equipment.
- (5) Supporting women across the county.

Mr. Speaker, Sir, I heartily congratulate Sen. Shiyonga on this award. This Statement is by Sen. Malalah.

I thank you.

**Sen. Halake:** Mr. Speaker, Sir, I rise to also add my voice and congratulate my friend, Sen. Shiyonga. I know Sen. Shiyonga has done a lot of work on the ground. As it is said, sometimes people are recognised outside and not where they come from.

I take this opportunity to congratulate her not only because of her legislative work that touches on the most vulnerable in society but also because of some of the work that she has done in Kakamega County and across the country with regards to what has been highlighted.

I do not want to go through each one of them since I do not want to make a mistake because it seems to be quite a long line. However, she deserves the award. I encourage her to continue doing that for her people and everywhere she goes. We have been told that she has built houses for people and fundraised for sports and other things.

We are proud of Sen. Shiyonga for this international acknowledgment. She has gone beyond being a local leader to being a global leader and we are proud as women of this country because of that. That shows that women leadership is starting to get traction not just in this country but across the world.

With those few remarks, once again, I congratulate Sen. Shiyonga. She should keep up the good work she is doing and God will bless her.

**The Speaker** (Hon. Lusaka): Sen. Kasanga proceed.

**Sen. Kasanga:** Thank you, Mr. Speaker, Sir. Let me also join in congratulating my friend, Sen. Shiyonga. I know we had congratulated you earlier on the side. However, this is a wonderful place also to extend the congratulations. God will continue blessing you.

Keep the bright light shining because you are the beacon of light for the people of Kakamega. They are very lucky to have you. Continue being an example for young women in the country. You have set the pace and the stage for them.

Please, continue that way.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for also giving me a chance to congratulate Sen. Shiyonga. She is also my Vice Chairperson of Kenya Women Senators Association (KEWOSA).

As KEWOSA, we wish to congratulate her for the recognition of the noble work that she is doing on the ground. We would also like to congratulate her for positively influencing the lives of the people of Kakamega; both women and the youth.

*(Sen. Pareno consulted with Sen. Shiyonga)*

I wish Sen. Pareno can give her a chance to listen to my congratulatory message. I wish her all the best as she grows both in making legislations and doing good programmes that will benefit both women and youth in Kakamega.

**The Speaker** (Hon. Lusaka): Let us have a man also in congratulating, Sen. Shiyonga. Yes, Sen. (Dr.) Kabaka.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir. It is good you have seen that all female Senators were congratulating our sister.

As a brother and as a good friend to Sen. Shiyonga, let me also take this opportunity to congratulate her for the big fete she has done to transform the community, especially in matters education, housing and shelter.

Whenever we celebrate *Mashujaa* Day, these are some of the persons who also need to be given awards even if it may not be the one similar to that of Mr. Kipchoge. It is good to celebrate some of our own during their lifetime and not after life.

This Senator is a great woman. She is moving towards the class of sainthood. Her actions mirror those of Mother Teresa of Calcutta. That is how she started.

I take this opportunity to congratulate my sister. I think all of us in one way or the other, should emulate her deeds.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, let me join the rest of us in congratulating Sen. Naomi Shiyonga. We can literally say that she has “scooped” an award.

*(Laughter)*

That is very good English.

She is the one and only who has in the current Session of the Senate received such an award. We have been congratulating many other people who are not Members of the Senate or the National Assembly, but the enumeration of what she has done as the basis of getting this award is very empowering.

As we know, support of students in secondary schools and widows across Kakamega County, fundraising for churches and schools, empowerment of youths and women groups, among others. This is the kind of leadership at the local level. Being a servant leader, she truly deserves the commendation of the House, particularly from part of the delegation from Kakamega County. This is because this Statement is by the Deputy Senate Minority Leader, Sen. Malalah.

I will just encourage my sister that she should make it an annual event of scooping awards every year.

*(Laughter)*

Do not just scoop once, but scoop many. Every time you will scoop we will come back and congratulate you.

We wish to tell everybody to try and follow in our footsteps in getting awards for little things. Sometimes people think that it is the big things in society that change life. Sen. Hillary Clinton wrote a book about the wellbeing in a little village. That is how you make a difference. Even nations start from families. What you do amongst families and communities means a lot. This is truly commendable and congratulations Sen. Shiyonga.

This is something that is now in your Curriculum Vitae. Next time you will not just be part of the delegation, but I hope you are occupying a seat as a head of delegation.

**The Speaker** (Hon. Lusaka): Hon. Members, please, note that after this, there will be voting so let us remain in the Chamber, Sen. (Dr.) Milgo the Floor is yours.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. I wish to also take this opportunity to congratulate my sister Sen. Naomi Shiyonga for scooping such a prestigious award. I was there when she was being awarded. Once she was awarded, I really sang and got excited.

Sen. Hillary Clinton said that women are the largest and dubbed reservoirs in the world. Therefore, given a chance, we can be shakers and movers of business, education, leadership and even in terms of touching the many people like Sen. Shiyonga has done in Kakamega County.

I was willing to go through a slide, showing what she has done and lifting up the very needy people in Kakamega. She has been constructing houses for them, providing uniform, shoes and even food for the needy. Kakamega is such a lucky County to have such a great lady. In this case, if discriminatory issues can be dealt with and stop being an obstacle, I am sure women can fly higher.

Once again, congratulations Sen. Shiyonga for such a great achievement.

**The Speaker** (Hon. Lusaka): I thought you were going to say women are the best scoopers. Let us hear, Sen. Were.

**Sen. Were:** Thank you, Mr. Speaker, Sir. I also would like to join my colleagues in congratulating Sen. Shiyonga for winning this Global Empowerment Award. She is doing small things to the people of Kakamega, but very effective. For that alone, she has won a nickname in Kakamega. She is known as *Mama Signal*. Once they see her, then there is going to be light at the end of the tunnel.

I wish her well, continue scooping more awards and spread the message so that more of your colleagues can also scoop those awards with you.

The people of Kakamega are lucky to have you and continue being *Mama Signal*.

**The Speaker** (Hon. Lusaka): Those I will give an opportunity keep it short because we will have to vote, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir. Let me also extend my congratulatory message to my sister, Sen. Shiyonga, for scooping the prestigious award as recognition of her efforts to serve humanity, particularly those with special needs and children with needs in Kakamega region.

My only appeal to her is that if she can extend her tentacles beyond Kakamega so that she can overreach the wider part of Kenya, it may be possible that she might scoop more international awards.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir, for giving me the opportunity. I wish to heartily congratulate my sister, Sen. Shiyonga for the wonderful achievement she received.

I have known Sen. Shiyonga for the period we have been here only; but I have only known her for the wonderful approaches to development. I am very much aware and I am hoping to accompany her to go and open a house that she built for a widowed woman and mother who does not have anywhere to stay.

Therefore, when I heard about this achievement, I said that, surely, somebody has seen her. In my own county, when I was having a *harambee* for women, she actually told me, "It does not matter where I am; I will start from wherever and I will come there."

I thank you, as I congratulate you. Sen. Shiyonga, I am sure that Kakamega and the world have seen what you have done. More than that, God is going to bless you because of the way you have placed the needy in your heart.

God bless you. Thank you.

**Sen. Kinyua:** Asante, Bw. Spika. Ninaungana na wenzangu kumpongeza Sen. Shiyonga kwa kutunukiwa.

Sen. Shiyonga ni mtu tunayemjua kwa kujitolea vizuri. Kwa hivyo, hii shahada ama kikombe alichopewa ni kwa sababu ya mambo aliyoyafanya, kwanza kabisa kwa kuwaangalia wajane na vijana. Hii ni kwa sababu hao ndio watu wanaonekana kama watu waliotengwa katika jamii zetu; wameachwa na hawaangaliwi kwa njia ifaayo.

Kwa hivyo, ninataka kumpongeza na kumwambia kwamba, ni vizuri wakati akiangalia Kakamega, pia aangalie Bungoma na Kenya nzima, ndiposa anapopewa zawadi tofauti, ionekane---

*(Loud consultations)*

Nikisema Bungoma, ninamaanisha Kenya nzima. Nimesema hivyo kwa sababu Bungoma ni jirani yake, na ni vizuri mtu aanze kuhubiri Yerusalemu kabla hajaenda Judea na sehemu zile zingine.

Kwa hivyo, sisi tunakupongeza na tunasema uendelee Kenya mzima, jumuiya ya Afrika Mashariki na hata Afrika ndio uweze kupokea shahada tofauti. Sisi tunakufurahia na tunasema asante.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I join my fellow Senators in congratulating Sen. Shiyonga for the award. Sen. Shiyonga is just an example of the true fact that if women are empowered, they empower the community, the society and the world at large.

Women empowerment is a good platform for women to go a notch higher and have a positive impact on their society. I also commend her for community involvement, and thank the body that acknowledged her. This is because many times, women do a number of things but they go unnoticed, and they are not acknowledged.

Mr. Speaker, Sir, when it comes to community involvement, it also helps in the community, seeing that we are transformative leaders. Sen. Shiyonga has demonstrated

that she is a transformative leader by getting to impact widows, children and the poor in the society.

Therefore, this is something commendable, and we should borrow a leaf from her so that we can continue working. Other organisations should also borrow a leaf from the organisation that awarded her, so that many women are awarded for their good efforts.

Thank you.

**The Speaker** (Hon. Lusaka): Let us have Sen. Sakaja and, finally, Sen. Pareno.

**Sen. Sakaja:** Thank you very much, Mr. Speaker, Sir. We have always known Sen. Shiyonga to be serious about scooping, but not to this extent; all the way to the USA. Congratulations!

Mr. Speaker, Sir, the aspect I want to bring out is that it is, indeed, a trend that many great Kenyans get recognised out there before they are recognised in Kenya. I am not sure whether Sen. Shiyonga has got such an award locally.

The late Wangari Maathai was never feted in Kenya before she got a Nobel Peace Prize. Recently, a Kenyan; Tabichi, became the best teacher in the world. Even today, I hear that there is another Kenyan who has got an international award. However, we have never been able to get a proper framework locally, through which we can be celebrating and honouring Kenyans who have distinguished themselves in different fields.

I am glad that, as the Senate, we have passed The County Hall of Fame Bill 2018. Through this Bill, we can make sure that people, even at the county level, are given their roses when they can still smell them and not after they have gone.

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

**The Speaker** (Hon. Lusaka): What is your intervention, Sen. Pareno?

**Sen. Pareno:** Mr. Speaker, Sir, I was just informing Sen. Sakaja that today, the mathematics teacher from Asumbi Girls Secondary School, Erick Ademba, won the African Union Continental Award for the best teacher, beating other 50 competitors. Kenya is, therefore, trending in these awards.

**Sen. Sakaja:** Thank you for that very useful piece of information. It makes it clear that Kenyans are excelling all over the world, and we are being recognised out there. However, we have not found a way to actually encourage good performance locally. These awards are not to make people's egos go up or make us feel proud, but just to encourage others that the small things you do in the society can go a long way and be recognised; and for others to also start doing those things.

Therefore, congratulations "*mama signal.*" Well done for that award. We now want to see you scooping more awards locally, apart from just abroad. Scoop in Nairobi, Kakamega and all over.

Thank you.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I would not have wanted the day or contributions to the Statement to end without my voice. I thank Sen. Shiyonga for being outgoing. We all know how she enlightens a lot of us, giving a lot of laughter in this House.

Mr. Speaker, Sir, knowing the Sen. Shiyonga that we know in this House, she is very outgoing, a jovial person and a person who is a go-getter. I know her as a very generous person, and I am not surprised that she has now been nominated for generously giving to the women back home.

We are proud of you, and I am sure that the people of Kakamega are proud of you. My party, which nominated Sen. Shiyonga is proud to have nominated such a strong lady who has finally ended up getting that international award. We, therefore, thank those who nominated her and those who have awarded her this award.

Thank you for making us proud, Sen. Shiyonga.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, what do you want to say? I thought that they were congratulating you, and you were not going to blow your own trumpet?

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir. I just wanted to take this opportunity to thank the Senators for the messages of encouragement they have sent for winning the award that I was nominated for.

I take this opportunity to also thank you and your office for the logistical support that you gave me to facilitate this award. I thank the Members of this Senate, Sen. (Dr.) Milgo and Sen. Iman, who accompanied me to Houston, Texas in America to receive this award. I also thank all the other hon. Members for their words of encouragement.

Thank you.

**The Speaker** (Hon. Lusaka): Thank you. Let me also congratulate you, as your Speaker, for making us proud. I am proud that you got this award during my tenure, as the Speaker of this Senate. Thank you very much.

I want to encourage others who can also scoop more awards to do so, so that we can continue projecting to the rest of the world.

What is your intervention, Sen. Faki?

**Sen. Faki:** On a point of order, Mr. Speaker, Sir. I understand that the delegation that went to receive this award had no gender, and I know that Sen. Shiyonga is an ardent supporter of the gender rule.

Thank you.

*(Laughter)*

**The Speaker** (Hon. Lusaka): It is noted; it had no men. That is what he meant. One-sided committee.

Sen. Mutula Kilonzo Jnr., will make his Statement. After that, we will go to voting and then I will allow comments after that.

#### DEATH OF MARIAM KIGHENDA AND AMANDA MUTHEU AT LIKONI FERRY CROSSING

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker Sir, I rise pursuant to Standing Order 47(1), to make a Statement on the untimely death of Mariam Kighenda and Amanda Mutheu on 29th September, 2019, at Likoni Ferry Crossing.

On 29<sup>th</sup> September, 2019, a video of a car sinking into the ocean went viral. We later learnt that the said vehicle and its occupants were aboard the MV Harambee. The car and bodies of the occupants were later retrieved after hue and cry of Kenyans.

To date, the Kenya Ferry Services (KFS) and the Ministry of Transport and Infrastructure have not issued any statement on the circumstances that led to this horrific incident.

During their burial in Kilome, Makueni County on 19<sup>th</sup> October, 2019, I received information that this incident was as a result of the sorry state of our five ferries operating on the Likoni channel; that is MV Kwale, MV Nyayo, MV Kilindini, MV Harambee and MV Likoni.

I have it on record that the ramps commonly referred to as prows are not functioning and in the case of MV Kilindini, the prows are raising at less than 45 degrees.

It is now clear that had the ramp of MV Harambee been functioning properly, the said car would not have slid into the ocean on 29<sup>th</sup> September, 2019. Surprisingly, MV Harambee was rehabilitated in what is commonly referred to in maritime terms as dry dock at a cost of Kshs157million in the Financial Year 2016/ 2017.

I hereby table on the Floor of the Senate, a report of the Kenya Ferry Services Limited titled “Road Map to Improvement of Ferry Services” dated January, 2016.

Mr. Speaker, Sir, I strongly suspect that the said amount of Kshs157million was misappropriated. This matter requires urgent investigations.

If, indeed, the Ferry, MV Harambee, was rehabilitated at the cost I have stated before, the investigation is bound to tell the country where the scrap metal of the said ferry was disposed of. Kenya Ferry Services had single-sourced a company in the name African Marine Limited as a sole company for the dry dock. This too ought to be investigated.

It has also come to my attention that, on 31<sup>st</sup> July 2019, the Board of KFS through Hon. Danson Mwazo Mwakulegwa issued a report to the Cabinet Secretary, Amb. Macharia. Although the appointed Board of the KFS was revoked last week, the problem at the KFS lies on the incompetent and inept management led by the Managing Director Mr. Bakari Hamisi Gowa.

This Senate should investigate the status of the financial management of the said company including and not limited to the fencing at a cost of Kshs40 million, construction of a warehouse at Kshs137 million and equipping of the same warehouse at a cost of Kshs200 million and uncertified paint that is lying in the stores of Kenya Ferry Services worth Kshs20 million.

Mr. Speaker, Sir, a day after the incident, Kenya Maritime Authority issued a letter to the Managing Director of KFS stating that it had come to his attention that all the coxswains operating the KFS do not hold any requisite certificates as required by the Merchant Shipping (Training and Certification Regulations, 2016)

I have tabled the letter with this Statement.

Kenya Maritime Authority issued a further letter on 1st October, 2019, which states as follows:

“That the prows of the ferries crossing the Likoni Channel are not functional and/or are not lifted when the ferries are underway.”

The letter continues to say that:

“The loss of the two lives on 29th September 2019, could partly be attributed to this deficiency.”

This is confirmation of liability on the part of KFS.

From the letters, I have attached to this Statement, it is apparent that KFS through the Managing Director are culpable for the death of Mariam Kighenda and Amanda

Mutheu and Kenya Ferry Services Limited is liable for compensation for the loss of their lives.

The revocation of the Board of KFS incident is a cover-up of the incompetent and corrupt management of KFS.

Mr. Speaker, Sir, lastly, I make this Statement conscious of the fact that if no action is taken, there is real apprehension and risk of loss of lives of Kenyans who are using these ferries on a daily basis. This is an urgent matter of national concern that should be taken up immediately and investigations conducted through EACC on the conduct of the management of KFS in order to establish the veracity of these claims and to take legal action for the loss of the lives of Mariam Kighenda and Amanda Mutheu.

May their souls rest in eternal Peace. Amen

**The Speaker** (Hon. Lusaka): As I said, if there are any comments they will come later.

Next Order.

### MOTION

#### ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY2013/2014

THAT, the Senate adopts the Report of the 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.

*(Sen. M. Kajwang' on 22.10.2019)*

*(Resumption of Debate interrupted on 16.10.2019)*

**The Speaker** (Hon. Lusaka): I ask that the Division Bell be rung for five minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): I order that the Division Bell be rung for two more minutes.

*(The Division Bell was rung)*

I now direct that the Bar be drawn and the doors closed.

*(The Bar was drawn and the doors closed)*

I will put the question, which is, that the Senate adopts the Report of the 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.

Log in and start voting.

*(The Senators proceeded to vote)*

Sen. Mwaura, please come and vote.

*(Sen. Mwaura walked to the Clerks-at-the-Table and registered his vote)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senate adopts the Report of the 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 put, and the Senate proceeded to vote by County Delegations.)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; and, Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Speaker** (Hon. Lusaka): Hon. Senators, the results are as follows:

**AYES:** 32

**NOES:** Nil.

**ABSTENTIONS:** Nil.

The "Ayes" have it.

*(Question carried by 32 votes to nil)*

**The Speaker** (Hon. Lusaka): I direct that the Bar may be undrawn and the doors opened.

*(The Bar was undrawn and the doors opened)*

Next Order.

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

*[The Speaker (Hon. Lusaka) left the Chair]*

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

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

*(Resumption of debate interrupted on 31.7.2019)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are now in the Committee of the Whole to consider The Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018). We are going for Division.

I now order that the Bar to be drawn and the doors closed.

*(The Bar was drawn and the doors closed)*

I will now put the question, that Clauses 6, 9, 10, 13, 14, 16, 17, 2 and the title be amended as proposed.

Kindly log in and vote.

*(The Senators proceeded to vote)*

### DIVISION

### ELECTRONIC VOTING

*(Question, that Clauses 6, 9, 10, 13, 14, 16, 17, Clause 2 and the Title be amended as proposed, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki,

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Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County and Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, the results are as follows:

**AYES:** 30

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 30 votes to nil)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clauses 3-5, 6 (as amended), 7, 8, 9 (as amended), 10 (as amended), 11, 12, 13 (as amended), 14 (as amended), 15, 16 (as amended), 17 (as amended), 18, 19, Clause 2 (as amended), the Title (as amended) and Clause 1, be part of the Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; and, Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, the results are as follows:

**AYES:** 30

**NOES:** Nil.

**ABSTENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 30 votes to nil)*

Hon. Senators, we now proceed to Order No.10; The Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019). We will report progress together.

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL  
(SENATE BILLS NO. 3 OF 2019)

*(Resumption of debate interrupted on 31.7.2019)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, I now put the question, that Clause 2 be amended as proposed.

You can now vote.

*(The Senators proceeded to vote)*

**DIVISION**

**ELECTRONIC VOTING**

*(Question, that Clause 2 be amended as proposed put,  
and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. Langat, Bomet County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; and Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Chairperson** (Sen. Nyamunga): Hon. Senators, the results of the first Division are as follows:-

**AYES:** 31  
**NOES:** Nil  
**ABSENTIONS:** Nil

*(Question carried by 31 votes to nil)*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question that Clause 2 (as amended), the Title and Clause 1 be part of the Bill put, and the Senate proceeded vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Sakaja, Nairobi City County; and Sen. Wetangula, Bungoma County

**NOES:** Nil.

**The Chairperson** (Sen. Nyamunga): The results of the second Division are as follows:-

**AYES:** 31  
**NOES:** Nil  
**ABSENTIONS:** Nil

*(Question carried by 31 votes to nil)*

**The Chairperson** (Sen. Nyamunga): Hon. Senators, we now move to The Commission on Administrative Justice (Amendment) Bill (Senate Bills No. 6 of 2019). Kindly be vigilant so, that we do not take a lot of time on this exercise. Just be attentive so that we take the vote.

THE COMMISSION ON ADMINISTRATIVE JUSTICE  
(AMENDMENT) BILL (SENATE BILLS NO.6 OF 2019)

*(Resumption of debate interrupted on 18.9.2019)*

**The Chairperson** (Sen. Nyamunga): Hon. Senators, kindly be vigilant so that we do not take a lot of time on this exercise. Just be attentive so that we take the vote.

I now put the question; that the New Clause 3A be now read a Second Time.

Hon. Senators, kindly vote now.

*(The Senators proceeded to vote)*

**DIVISION**

**ELECTRONIC VOTING**

*(Question, that New Clause 3A be now read a  
Second Time, put and the Senate Proceeded  
to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Sakaja, Nairobi City County; and, Sen. Wetangula, Bungoma County

**NOES:** Nil

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows:-

**AYES:** 31

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 31 votes to nil)*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that Clause 3 be amended as proposed,  
put and the Senate proceeded to vote by  
County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Sakaja, Nairobi City County; and, Sen. Wetangula, Bungoma County

**NOES:** Sen. (Dr.) Mbiti, Trans Nzoia County.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows:-

**AYES:** 31

**NOES:** 1

**ABSTENTIONS:** Nil

*(Question carried by 31 votes to 1)*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that Clauses 2, 3 (as amended) 4, 5, New Clause 3A,  
the Title and Clause 1 be part of the Bill, put and the Senate  
proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo,

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Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; and, Sen. Wetangula, Bungoma County

**NOES:** Nil.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, the results of the third Division are as follows:-

**AYES:** 32

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 32 votes to Nil)*

**The Temporary Chairperson** (Sen. Nyamunga): We are now going to report to the House.

Sen. (Dr.) Zani, proceed.

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

**Sen. (Dr.) Zani:** Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of The Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)  
BILL (SENATE BILLS NO.3 OF 2019)

**Sen. (Dr.) Zani:** Madam Temporary Chairperson, I beg to move that Committee do report to the Senate its consideration of The Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE COMMISSION ON ADMINISTRATIVE JUSTICE  
(AMENDMENT) BILL (SENATE BILLS NO.6 OF 2019)

**Sen. Were:** Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of The Commission on Administrative Justice (Amendment) Bill (Senate Bills No.6 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Speaker (Sen. (Prof.) Kamar) in Chair]*

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Members, please, consult in low tones. We are almost towards the end of the process of these Bills. We will start with The Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018).

Let us have the Chairperson to report progress.

## REPORTS AND CONSIDERATION OF REPORTS

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

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018) and its approval thereof with amendments.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report. I request Sen. Murkomen to second.

**Sen. Murkomen** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move that the Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018) be now be read a Third Time. I request Sen. Orengo to second.

**Sen. Orengo** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): The Division will be at the end. Let us go to the next Bill.

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)  
BILL (SENATE BILLS NO.3 OF 2019)

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019) and its approval thereof with amendments.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said Report. I request Sen. Kibiru to second.

**Sen. Kibiru** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move that The Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019) be now read a Third Time. I request Sen. Faki to second.

**Sen. Faki** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): The Division will be at the end. Let us go to the next Bill.

THE COMMISSION ON ADMINISTRATIVE JUSTICE  
(AMENDMENT) BILL (SENATE BILLS NO.6 OF 2019)

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Commission on Administrative Justice (Amendment) Bill (Senate Bills No.6 of 2019) and its approval thereof with amendments.

**Sen. Were:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee of the said report. I call upon Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. Were:** Madam Temporary Speaker, I beg to move that The Commission on Administrative Justice (Amendment) Bill (Senate Bills No.6 of 2019) be now read a Third Time.

I call upon Sen. Loitiptip to second.

**Sen. Loitiptip:** Thank you, Madam Temporary Speaker. I beg to second.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, for seconding.

*(Question proposed)*

Division will be at the end.

Okay. We are now ready for voting on the three Bills. The first Bill is The Bill on Natural Resources Benefits Sharing Bill (Senate Bill No.31 of 2018.)

You can vote now.

While they are doing the tallying, the next Bill is The Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019).

Those who have not logged in, please, do so. Vote now.

Hon. Senators, while tallying is going on, we are ready for the next vote. The next vote is on The Commission on Administrative Justice (Amendment) Bill (Senate Bills No.6 of 2019).

Please, start voting now.

*(Voting in Progress)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): The Senator for Bomet, please come and vote.

Order Hon. Members, I now want to announce the results of the voting

### THIRD READINGS

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

### DIVISION

### ELECTRONIC VOTING

*(Question, that the Natural Resources (Benefit Sharing)  
Bill (Senate Bills No. 31 of 2018) be now read a Third Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitytip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Musuruve, Kakamega County); Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori

County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, the results of the Division are as follows:-

**AYES:** 32

**NOES:** Nil

**ABSTENTIONS:** Nil

The “Ayes” have it

*(Question carried by 32 votes to nil)*

*(The Bill was accordingly read the Third Time and passed)*

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)  
BILL (SENATE BILLS NO. 3 OF 2019)

**DIVISION**

ELECTRONIC VOTING

*(Question, the Public Finance Management (Amendment)  
Bill (Senate Bills No.3 of 2019) be now read a Third Time,  
put and the Senate Proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang’, Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang’ata, Murang’a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitipitip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Musuruve, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, the results of the Division are as follows:-

**AYES:** 32

**NOES:** Nil

**ABSTENTIONS:** Nil

The “Ayes” have it

*(Question carried by 32 votes to nil)*

*(The Bill was accordingly read the Third Time and passed)*

*(Applause)*

THE COMMISSION ON ADMINISTRATIVE JUSTICE (AMENDMENT)  
BILL (SENATE BILLS NO. 6 OF 2019)

### DIVISION

#### ELECTRONIC VOTING

*(Question, that The Commission on Administrative Justice  
(Amendment) Bill (Senate Bills No. 6 of 2019) be now read a  
Third Time, put and the Senate proceeded to vote  
by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County;; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Musuruve, Kakamega County); Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado; Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, the results of the Division are as follows:-

**AYES:** 31

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it

*(Question carried by 31 votes to nil)*

*(The Bill was accordingly read the Third Time and passed)*

*(Applause)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senators.

I now order that the bars be drawn, and the doors be opened.

*(The bars were drawn and doors opened)*

Hon. Senators, there is a lot of serious business here. I hope we are not going to vacate the House.

Hon. Senators, for the convenience of the House, I am going to defer Orders No.12,13,14 and 15.

### **COMMITTEE OF THE WHOLE**

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND  
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL  
(SENATE BILLS NO. 2 OF 2018)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE ELECTION LAWS (AMENDMENT) BILL  
(SENATE BILLS NO. 33 OF 2018)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT)  
BILL (SENATE BILLS NO. 38 OF 2018)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE CANCER PREVENTION AND CONTROL (AMENDMENT)  
BILL (SENATE BILLS NO. 9 OF 2019)

*(Committee of the Whole deferred)*

Next Order.

### **MOTION**

ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL OPERATIONS OF  
VARIOUS COUNTIES FOR FY2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Wednesday, 9th October, 2019.

*(Sen. M. Kajwang' on 22.10.2019)*

*(Resumption of Debate interrupted on 22.10.2019)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I am sorry to take you back. Before we proceed with Order No.16, there was a Statement from Sen. Mutula Kilonzo Jr., which has attracted a number of requests for comments. I would like to open the Floor for that shortly. I will accept a few comments before we go back to Order No.16.

Proceed, Sen. Faki of Mombasa.

**Sen. Faki:** Asante Bi. Spika wa Muda---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sorry, are we seeing an intervention from Sen. Cherargei? Is it an intervention or contribution?

**Sen. Cherargei:** Madam Temporary Speaker, I wanted to contribute on the Motion. I thought---

**The Temporary Speaker** (Sen. (Prof.) Kamar): You are the next. Thank you. Sen. Faki, please go ahead.

*(Resumption of Debate on Statement)*

## STATEMENT

### DEATH OF MARIAM KIGHENDA AND AMANDA MUTHEU AT LIKONI FERRY CROSSING

**Sen. Faki:** Asante Bi. Spika wa Muda kwa kunipa fursa hii---

*(Sen. Sakaja consulted loudly with Sen. Mwaura)*

Naomba Seneta wa Jiji la Nairobi atupe fursa ya kuhudumia watu wetu pia sisi.

**Sen. Sakaja:** Hoja ya nidhamu, Bi. Spika wa Muda.

**The Temporary Speaker** (Sen. (Prof.) Kamar): What is your point of order, Sen. Sakaja?

**Sen. Sakaja:** Bi. Spika wa Muda, nimemsikia ndugu yangu, Seneta wa Mombasa, akiniomba nimpe nafasi ya kuhudumia watu wake. Ningependa atueleze kinaga ubaga, ni kwa njia gani nimekua kizuizi ama nimefanya asiweze kuhudumia watu wa Mombasa ambao nawapenda sana. Ingekuwa vyema atueleze.

**Sen. Faki:** Bi. Spika wa Muda, Seneta wa Jiji la Nairobi alikuwa amesimama pamoja na Seneta Maalum wa Kiambu, Sen. Mwaura wakishauriana kwa sauti kubwa ambayo ni kinyume na Kanuni za Bunge. Kwa hivyo nikawaomba kwamba watupe fursa ya kuhudumia wananchi wetu. Kwa hivyo ilikuwa ni sawa Seneta wa Nairobi achukue kiti chake ili aweze kuona vile atawafanyia kazi watu wa Nairobi.

Asante, Bi. Spika wa Muda.

*(Laughter)*

Nikirudi kwa Arifa iliyoletwa na Seneta wa Makueni, ningependa kuiunga mkono kwa jambo moja. Kwanza, ningependa kukemea uamuzi wa Serikali wa kuvunja Bodi ya usimamizi ya Kenya Ferry Services. Wameondoa wale waakilishi ambao ni raia, ambao ni *members of the public*, yaani wananchi wa kawaida, lakini wakaacha wale watumishi wa Serikali ambao wanakaa katika Bodi ile. Kwa mfano, kuna Katibu Mkuu ama Katibu wa Kudumu katika Wizara ya Fedha ambaye anakaa katika Bodi ya Kenya Ferry Services. Kuna Katibu wa Kudumu katika Wizara ya Usafiri na Uchukuzi ambaye pia anakaa katika Bodi ile na kuna mwakilishi kutoka Shirika la Kenya Ports Authority; wote wanakaa katika Bodi ile.

Kwa hivyo, wakati wengine walipokuwa wanapelekwa nyumbani, hawa pia walikuwa wanafaa kwenda nyumbani kwa sababu wao wamehusika pakubwa katika maamuzi yote ambayo yamefanyika katika Bodi ya Kenya Ferry Services.

Jambo la pili ni kwamba mpaka sasa Shirika la Kenya Ferry ama Wizara ya Uchukuzi haijatoa chanzo ama sababu ya ajali ambayo ilitokea. Itakumbukwa kwamba mnamo mwaka 1994, kulikuwa na mkasa wa *ferry* kama huu na wakati ule, Serikali iliunda Tume ambayo iliongozwa na Jaji Mbogholi kuchunguza swala lile. Tume ile ilifanya uchunguzi wake na ikatoa mapendekezo yake kwa Serikali lakini mpaka leo, mapendekezo hayo hayajatekelezwa.

Bi. Spika wa Muda, kwa sasa hatuwezi kuwalaumu wasimamizi wa Kenya Ferry Services kwa sababu kuchunguza swala kama lile, unahitaji utaalumu tofauti tofauti ambao kwa sasa hakuna katika Shirika la Kenya Ferry Services.

*[The Temporary Speaker (Sen. (Prof.) Kamar) left the Chair]*

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

Bw. Naibu Spika, Serikali inapaswa iteuwe Tume maalum ya kuchunguza mkasa kama ule ama kuwe na tume ya kudumu ambayo itakuwa inachunguza mikasa kama hii ambayo inatokea katika nchi yetu.

Kwa kumalizia ni kwamba mimi mwenyewe binafsi nilizuru Shirika la Kenya Ferry wakati mkasa ulipotokea na vile vile wakati miili za marehemu zilikuwa zinatolewa, nilikuwa pale na nikashuhudia zoezi lile likiendelea. Kazi ambayo ilifanyika pale ilikuwa kazi ngumu sana kwa wanamaji wetu. Pia, tungependa kuchukua fursa hii kuwapongeza wanamaji wetu kwa kazi yao nzuri waliofanya.

Ukiangalia katika kile kivuko cha *ferry*, ni kama Thika Highway kwa sababu meli zote kubwa zinaingia pale, zinazoleta makasha na kutoa mizigo katika Bandari ya

Mombasa. Hii ni kama kuweka pikipiki katika Thika Super Highway ambapo unaona pikipiki zinaruka wakati magari makubwa yanapita na kurudi. Kwa hivyo, katika kivuko cha feri, mpaka sasa kuna hatari kubwa ya wananchi kupata hasara kwa sababu pale katika kivuko, meli kubwa ambazo zinaingia kuleta mizigo katika Bandari ya Mombasa zinatumia sehemu ile na hakuna njia yoyote ambayo mpaka sasa Serikali imefanya kudhibiti ajali ambazo zinatokea katika sehemu ile.

Bw. Naibu Spika, nilitangulia kusema wakati nilipotoa taarifa tarehe moja mwezi huu kwamba uwekezaji wa Serikali katika Shirika la Feri umekuwa duni sana. Katika bajeti ya Kshs1.2 billion, Serikali inatoa Kshs400 million pekee, ambapo pesa zile zinatakikana zitolewe kuhakikisha kwamba feri zimeekwa katika hali ambayo ni salama kwa wale wanazozitumia kila siku.

Kila siku, feri inavusha raia 300,000 kutoka Likoni na kurudi. Kwa hivyo, feri ni kivuko muhimu ambacho kinasaidia usafiri kati ya Mombasa na nchi jirani ya Tanzania. Ni kiungo muhimu ambacho kinasaidia usafiri kwa watalii wanaoenda kujivinjari maeneo ya Diani na pia ni kiungo muhimu ambacho kinasaidia kuunganisha Kaunti ya Mombasa na Kaunti ya Kwale.

Asante Bw. Naibu Spika, kwa kunipa fursa hii.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. We do not have a lot of time. The item on Statements had been considerably treated earlier on. However, I will allow the Chairperson of the Committee on Justice, Legal Affairs and Human Rights two minutes and maybe the Senator for Kwale.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I had informed the Speaker that was before you that I would want to contribute on the Motion by the Chairperson of the Public Accounts and Investments Committee.

Maybe I can just take one minute because I love the people of Mombasa.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I would rather you donate that time to the Senator for Kwale, who is directly affected and Sen. Kabaka who was indirectly affected.

Proceed, Senator for Kwale.

**Sen. Boy:** Asante Bw. Naibu Spika kwa kunipa fursa hii niweze kuchangia pia. Kitendo au mkasa ulitokea haukuwa mkasa mzuri katika nchi yetu. Kusema ukweli, mkasa ulitokea kwa bahati mbaya lakini kwa vile kitendo kama kile kimetokea, lazima tuzungumze kama viongozi.

Wakati hii ajali ilipotokea nilikuwa safarini nje ya nchi kule Estonia. Niliona habari hii kwa mtandao lakini niliporudi, siku ya pili nilienda mpaka pale kwa afisi ya Kenya Ferry Services na tukafanya mkutano na *Board of directors* na mkurugenzi wa Kenya *Ferry Services*. Kusema ukweli, tusiwalaumu wakurugenzi wa Kenya Ferry Services; wamefanya kazi yao kiusawa kabisa; haswa Mkurugenzi wa Kenya Ferry, Bw. Bakari. Siku hiyo nilikuwa na Mkurugenzi, Bw. Bakari na *Chairman*; Bw. Danson Mwazo. Niliongea nao na nikawapongeza kwa kazi waliofanya. Wamekuwa pale kutoka wakati kile kisanga kilitokea mpaka wakati maiti zilipatikana.

Mimi kama kiongozi ambapo pia hicho ndicho kivuko changu kwenda kwenye Kaunti yangu ya Kwale, nikitoka Nairobi, ni lazima nivuke *ferry* kuenda Kwale, hakuna njia nyingine. Kwa hivyo, Serikali inapaswa kuteuwa tume maalum ichunguze

kinaganaga mkasa huu ulitokea namna gani. Hii tume inafaa kutoa habari kwa Serikali na nchi yetu tukufu.

Bw. Naibu Spika, ningomba Serikali iteuwe tume ichunguze hii ajali ilitokea namna gani kuliko kulaumiana, kulaumu bodi, au wakurugenzi wa Kenya *Ferry Services* ambao ni wanadamu kama sisi. Wamefanya hii kazi kwa uzuri sana. Mimi mwenyewe nilikuwa pale, nikamuona Mkurugenzi wa Kenya Ferry, Bw. Bakari, na Mwenyekiti; Bw. Mwazo, aliyekuwa Seneta wa Taita Taveta zamani. Nilizungumza nao na wamefanya hiyo kazi kwa kweli kabisa. Pia, ningependa kuwapongeza wanamaji wetu wa Pwani waliofanya kazi nzuri sana.

Kwa hivyo, tusilaumiane hapa. Tuunde kamati au tume ya kuchunguza mkasa hu una kutoa ripoti kamili kwa Serikali.

Asante, Bw. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kabaka, briefly.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief.

I support the Statement by the distinguished Senator of Makeni, Hon. Mutula Kilonzo Jr. I wish to state that this is not the first time that such an incident or disaster has happened in Mombasa.

We have had several disasters such as Mtongwe Ferry Tragedy. I understand that up to date, some of the family members who lost their loved ones in that tragedy have not been compensated fully.

We need to know the causes of some of the disasters. The causes could be twofold. They could be caused by nature or what we call an act of God, which is not questionable in law. It could also be as a result of human negligence, which is my concern.

Mr. Deputy Speaker, Sir, as a professor of law, you appreciate that naturally, there are case laws where if things or sacks in a warehouse start falling by themselves when you walk there, we invoke the maxim of *res ipsa loquitur*. There must be a reason why they are falling. In other words, some negligence is attributable to the owner or the tortfeasor. Of course, the person who is injured has no obligation in law to prove the negligence. Naturally, such persons are bound to be compensated.

My last line of thought is that it is around 57 years since Independence. Why has the Government not constructed a mega bridge or even tunnel like those in Europe, China and other countries? This country has a lot of money. It is time we thought outside the box and constructed big bridges like those in California, San Francisco, China and Abraham Lincoln Bridge in New York.

There is also the issue of maintaining discipline in terms of the management of the ferry. I appreciate from the clips we watched that the way the vehicle moved out of the ferry was not in angular formation. I mean the door was supposed to have been raised maybe at an angle of 45 degrees but it was not. That is why it was very easy out of a little inertia or commotion of that vector in a linear motion for the vehicle to topple from its natural state. That is how the accident occurred.

Notwithstanding that, we are yet to get the report. Once we have the report from the body concerned, it will be tabled here and we shall comprehensively decipher it.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I have looked at the documents tabled by Sen. Mutula Kilonzo Jnr., and I am convinced that there is a *prima facie* case of wrongdoing. I therefore, direct the Committee on Roads and Transportation to seize itself of this matter and produce a report with clear, concrete, and actionable recommendations within two weeks from today.

It is so ordered.

### COMMUNICATIONS FROM THE CHAIR

#### KNCHR BREAKFAST MEETING AT THE INTERCONTINENTAL HOTEL

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have been requested by Sen. Mwaura to bring to your attention that there is a breakfast conference organised by the Kenya National Commission on Human Rights (KNCHR) tomorrow at the Intercontinental Hotel from 7.00 o'clock to 10.00 o'clock in the morning. The conference is on the rights of intersex persons. All Senators are welcome.

I also have a communication to make before we proceed with other items. It is not long.

#### INJUNCTION OF PARLIAMENT BY COURTS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, you will recall I had promised to issue further clarification on the issue of injunctions last week. I beg your pardon because this should have come a little earlier but I hope it is not too late to discharge my duty.

Hon. Senators, during the sitting of the Senate on Thursday, 17<sup>th</sup> October, 2019, I gave a ruling on the extent to which the activities in the Judiciary impact on Parliament, specifically, regarding the application and implications of the *sub judice* rule in Standing Order No.98 and the concomitant issue of courts injuncting Parliament.

My ruling emanated from interventions made by Sen. Mwaruma of Taita-Taveta County and later on by Sen. M. Kajwang' of Homa Bay who had unsuccessfully sought my intervention to stop further proceedings of this House in the ongoing matter of the removal from office by impeachment, of Hon. Granton Samboja, the Governor of Taita-Taveta County.

While I exhausted the issue of the *sub judice* principle and how it applies in the relationship between Parliament and the Judiciary as independent arms of Government, regarding the second issue of injunctions, I promised to give further directions or clarifications which I hereby do. As sought by various Senators who rose on points of order after my ruling, in fact, there was a barrage of points of order that afternoon, including the Senate Majority Leader, who represents Elgeyo-Marakwet County.

Hon. Senators, past Speakers of Parliament have ruled before, which rulings I fully concur with, that the constitutional mandate and autonomy of Parliament must be guarded jealously if our legal system and democracy is to be given full and faithful effect.

I have stated several times before that no person, entity, authority or institution other than the institution of the people themselves acting directly through a referendum

tells Parliament in a compulsive manner what to do, what not to do and when or how to do it. The other sister arms of Government; the Executive and the Judiciary, must respect that legal reality. It is baffling, therefore, to say the least, to hear that there have been attempts by the Judiciary to gag this House from undertaking its constitutional and legal duties as the arm of Government that is the people's representatives.

There are at least three jurisprudential reasons why injunction of Parliament by courts is not constitutionally and legally tenable. First, courts injuncting Parliament is a frontal and deadly attack on the substratum of the hallowed legal doctrine of separation of powers, the bedrock upon which our constitutional order is raised.

Separation of powers is now a trite and settled centerpiece of the Constitution and the common law system. In its most basic form, separation of powers affirms that governmental functions in a democracy are performed best when not concentrated on a single authority or arm of Government, but are instead dispensed among different branches.

As Hon. Kenneth Marende, Speaker of the National Assembly of Kenya then aptly ruled in respect of the Adoption of the Report on Mau Complex on 3<sup>rd</sup> September 2009: "Power thus divided prevents the absolutism of the Executive, the possible anarchy of Parliament or the presumption of the Judiciary".

Speaker Marende continued thus:

"The operation of the principle both separates and blends powers so that each branch serves as a check and balance on the powers of the others. It ensures the protection of the rule of law and secures the fundamental rights of the individual. The principle of separation of powers has a superficial simplicity, but is in reality, inherently complex."

Thus, the *prima facie* simplicity of the doctrine of separation of powers is an allure to authorities and institutions keen on the natural tendency of trying to expand their jurisdiction. That it is natural for arms of Government to try and expand their jurisdiction unless and until checkmated by the arm of Government victim of such expansionist tendency was flagged by no less a person than the ideological progenitor of the separation of powers doctrine, the French Scholar, Baron Charles de Montesquieu, in his oft-cited words in his seminal work: 'The Spirit of the Laws.' He said, and I quote:

"But constant experience shows us that every man invested with power is apt to abuse it and carry his authority as far as it will go. There will be no freedom anyway if the judicial body is not separated from the legislative and executive authorities."

The whole idea of separation of powers under our Constitution is to create separate branches of Government with equal, but different powers. Each arm of Government must exercise its powers in a fine balancing act to ensure that it properly and effectively carries out its functions while at the same time, it does not infringe on the powers and responsibilities of the other branches of Government.

Parliament must call out any attempts to freeze the discharge of its constitutional duties. While it shall tremendously respect the Executive and the Judiciary, it shall not entertain any condescending behaviour from any of the other two arms of Government or from any quarters whatsoever.

Secondly, hon. Senators, trying to curtail Parliament's constitutional responsibilities undermines the *sui generis* stature of Parliament as the constitutional organ that is directly elected by the people and thereby exercises the sovereign will of the people. Parliament whose Members are direct representatives of the people cannot be prevented from giving voice to the will of the people of Kenya.

However, in the spirit of the concept of checks and balances, which is in itself an offshoot of the separation of powers doctrine, our constitutional design ensures that the Judiciary is empowered to scrutinize legislation and other outputs of Parliament *ipso facto* to ensure that the Constitution and the law have been complied with.

Thus, the unfettered, but solemn privilege of Parliament to proceed unhindered by the Judiciary and the Executive is moderated by the reality that the Executive can veto legislation - as it happens sometimes when the President returns legislations to Parliament - and courts of law in exercise of their judicial authority under the Constitution retain a residual power to declare in justifiable instances, any legislation or other output of Parliament illegal, unlawful or unconstitutional.

Thirdly, attempts to injunct Parliament is inimical to the desirable levels of institutional comity and cordial relations among the branches of Government and is in itself tantamount to subversion of the Constitution.

The crown jewel of inter-branch relations in Government is inter-institutional respect and deference in a mutual, not unilateral manner, on the basis of reciprocity. Parliament ought to respect the Judiciary and *vice versa*.

As I said on the Floor of this House last week, I observed with great admiration, as the Hon. (Dr.) Willy Mutunga, Chief Justice and President of the Supreme Court of Kenya, as he then was, in 2017, led the Judiciary in successfully making a case for the non-appearance for vetting by Parliament of judges, who had been appointed members of the Judicial Service Commission (JSC), as required of all other commissioners of the JSC and, indeed, commissioners of all other independent constitutional commissions. It cannot be right for the Judiciary to guard their institutional independence jealously and wrong for the Speakers of Parliament to do likewise for our institution, Parliament. As the adage goes - what is good for the goose is good for the gander.

The need for inter-branch and institutional respect and deference between Parliament and the Judiciary could not have been enunciated better than was done by no less an authority than the Supreme Court of Kenya in Petition No.32 of 2014 at paragraph (57) by stating that:

“Separation of powers must mean that courts must show deference to the Legislature as an important institution in the maintenance of our constitutional democracy.”

In Speaker of the Senate and another Vs Attorney General and 4 others, Reference No. 2 of 2013, paragraph (61), the Supreme Court said succinctly:

“The Court will not question each and every procedural infraction that may occur in either House of Parliament. The court cannot supervise the workings of Parliament. The institutional comity between the three arms of Government must not be endangered by the unwarranted intrusions into the workings of one arm by another.”

Why courts in this country may be tempted to defy the edict of the highest court in the land, Supreme Court, regarding the need for judicial restraint from interfering with the workings of Parliament defies logic?

Accordingly, I respectfully, but firmly determine that beyond peradventure, courts of law cannot and shall not stop or attempt to prevent Parliament from undertaking its constitutional mandate. Neither can the Judiciary compel any action to be undertaken by Parliament.

I rule that any injunction interfering with the work of Parliament has no effect on Parliament in exercise of its constitutional functions. Such court orders have no effect on the National Assembly or the Senate or on any of their Committees, respectively. In the unlikely event of any such orders, Parliament and its committees shall proceed unabated, unfettered and unhindered, as may be directed by the respective Speaker of Parliament.

Thank you for your patience. I had to discharge that duty.

*(Applause)*

Proceed Sen. M. Kajwang'.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I rise to hail your ruling.

Listening to you, I am reminded of two great men who have lived in our lifetime. One is the Speaker of the House of Commons; Hon. John Bercow, and the former Chairman of the Federal Reserve, Allan Greenspan.

In terms of the courage and the fire in your belly to defend the space and the constitutional mandate of the Senate reminds me of the robustness with which Mr. John Bercow has defended the space of Parliament in the United Kingdom.

In terms of jurisprudence and the richness and depth with which you bring into focus legal principles, reminds me of Mr. Alan Greenspan and what used to be called Fedspeak when he was the Chair of the Federal Reserve of the United States.

Mr. Deputy Speaker, Sir, you delivered a very detailed ruling when we were discussing the Solai Tragedy Report. Just like in the recent case, a Senator who was within his constitutional right brought in the issue of *sub judice* before the Solai Tragedy Report was tabled. I still remember your ruling because it was detailed and lengthy. I felt that it was a ruling that ought to have been shared with the county assemblies. Standing Order 43 allows messages to the county assemblies. That dealt with the issue of *sub judice*. I do not think that anyone should contest that ruling on *sub judice*.

The matter that we have been discussing in the last one or two days has been on whether the courts can injunct Parliament. I agree with your ruling that the courts cannot injunct Parliament. The County Public Accounts and Investments Committee (CPAIC) was meant to receive the Inspector-General of Police whom we had given orders to arrest the Governor for Machakos County. However, the Inspector-General wrote back to us saying that the Governor had secured a court order quashing the arrest order that had been issued by Parliament. That is an issue that we need to address.

If Parliament within its constitutional duty in line with the Parliamentary Powers and Privileges Act and Article 125 of the Constitution issues arrest orders against any person, should the courts quash those orders? My considered view having listened to your ruling is that the purported quashing of the arrest orders is unconstitutional and the

Inspector-General of Police is still required to produce the Governor of Machakos County before the Senate.

Mr. Deputy Speaker, Sir, as I conclude, I would like to state that we need to help counties. We have defined our space as the Senate. We are clear on our minds on *sub judice* and on the role of courts in the injunction of proceedings in the Senate. However, we have not provided similar guidance to the county assemblies. Our county assemblies have received court injunctions at every turn. In the case of Gov. Samboja, the issue was probably not an injunction on the Senate. The order sought to injunct the county assembly. The orders sought to stop the county assembly from doing a duty that is theirs and given to them by the Constitution.

The county assemblies have been stopped by the courts of law from impeaching County Executive Committee (CEC) members as a result of a ruling that was made in Bungoma County. To date, there is no single county that has successfully impeached a CEC. County assemblies cannot impeach CECs or summon a governor to appear before the committees of the county assembly. If the county assemblies do not have any power to question a governor, then what is the duty and role of the county assemblies? County assemblies cannot impeach the speakers of the assemblies yet they are the ones who appoint them. This is because the speakers of the assemblies run to court who issue injunctions in the process.

Mr. Deputy Speaker, Sir, in line with Standing Order No.43, I would like to beg you to put your communication in a language that is universally understandable so that it can be distributed to the county assemblies with the necessary guidance. We can also put in a paragraph or two which the county assemblies can rely on when the courts seek to injunct them when they are carrying out duties that have been given to them by the Constitution. I agree with you, congratulate you and hope that this will trickle down to the county assemblies.

I thank you.

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

On the particular issue of the arrest warrant against the Governor of Machakos County, I encourage you, as the Chairperson of the CPAIC, to find ways of bringing up the issue formally to the attention of the Senate by way of statement or a periodic report with a clear request to the Speaker to guide on how the Committee should dispose that issue.

Thank you so much for your input. The kind words that you said earlier on are appreciated.

Kindly proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, allow me to congratulate you for that profound ruling. Sometimes when we congratulate you so many times that it might be taken for granted that we congratulate you at every point. You allowed debate in the case of Solai Dam Tragedy whereas objection was raised by one of the Senators but you found it not to have merit.

The Senate and Senators who are going to be here way after us will not benefit from some of the rulings and wisdom that you have made in the past such as the ruling that you have given in this case and in the case of the Advisory Opinion.

There is some space in this Chamber where the rulings of the Speaker can be made available for us to peruse when an issue like this arises so that we do not have to reinvent the wheel. If a ruling has been issued by a court of a higher jurisdiction, in this case the Supreme Court – by principle of *stare decisis* – there is no way a High Court can defy. The Speaker's Panel must find a way of keeping their rulings somewhere available for us to peruse.

Mr. Deputy Speaker, Sir, secondly, I borrowed a practice from Justice Majanja who made a ruling about the Government Proceedings Act and forwarded it to me saying that we had a lacuna in the law in terms of Government proceedings. The county governments were excluded when the Local Governments Act was repealed and that they were no longer protected. That caused me to move the amendment on the Government Proceedings Act and the county governments are now protected the same way the national Government is protected under the Government Proceedings Act.

Would I be in order to suggest that your ruling be forwarded to the Judiciary formally, expressing our displeasure that the rulings of the Supreme Court seem to appear to not have any value with regard to the courts below them? If there is something that the Chief Justice can do, he ought to inform his officers in some form of circular or otherwise that we are not averse to the idea of respecting the Judiciary but they should wait for us in a case like this one where we have been given a jurisdiction that nobody has. An impeachment is given only to the Senate. We are the only trial Chamber. It is therefore contemplated under the law that the county assemblies will make mistakes. Those mistakes are supposed to be corrected here and not in the High Court.

Mr. Deputy Speaker, Sir, I did not see the Chairperson of the Select Committee looking into the impeachment of Gov. Samboja in the Chamber. I believe that for good order, precedence and record, your ruling should be attached to their report that will be tabled in the Chamber tomorrow.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mutula Kilonzo Jnr., for those comments. I undertake to the House that I will relay the decision to the Committee. More importantly, the issue of inter-branch committee and good relations between us and the Judiciary is a continuous project.

The Speaker of the Senate, hon. Lusaka, has assured me that just like we did in the previous term under the former Speaker, hon. Ethuro, we are going to engage constructively with the Judiciary at the highest level so as to avoid this kind of unnecessary exchanges. The mutual respect between Parliament and the Judiciary must be safeguarded. However, as I have said, it is reciprocal. It goes both ways. The Judiciary must respect Parliament the same way we respect the Judiciary.

On the issue of compiling some of the rulings, I will also follow it up in our Speaker's Panel meetings. This is because we have very good and progressive rulings, even from previous Speakers of the National Assembly, over the years; some of which have been quoted in other Commonwealth Parliaments outside this country. Therefore, if we can have a compendium, it can even be good for graduate research students, who are going to come and study this matter. They can come to our library, the same way the Library of Congress is useful for research in the United States of America (USA).

I think the other speakers are for the other order, which has been called out; or is it on this Motion?

*(Sen. Were spoke off record)*

Very well; only Sen. Were, maybe. The rest of the requests are for the Motion on the County Public Accounts and Investments Committee (CPAIC). Make it brief so that we try and go to the CPAIC Motion.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief, as usual. I first want to congratulate you on that ruling, which is very Solomonic. It should also go down in history as one of the best rulings we have had, especially on this issue of arms of Government not respecting each other's boundaries.

Mr. Deputy Speaker, Sir, if county assemblies cannot play their primary oversight role because courts will interfere, it is then obvious that, that is an attack on devolution. We should treat it as such, and not with kids' gloves. This is also in line with the various attacks on the Senate that have gone on by the Executive. The Judiciary is just adopting the bad manners that they have seen the Executive doing; taking this House for granted.

Therefore, Mr. Deputy Speaker, Sir, your ruling should not just end here; it should go further than that. I join my colleagues in requesting that these rulings be complied; and this one, in particular, should be lodged in the court, especially in the cases that we have before the court.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Those are very useful comments.

I am advised that the compendium on the Rulings of the Speaker for the 11<sup>th</sup> Parliament are almost getting published. I remember that there was such a recommendation the last time, which had come from Sen. Orengo. I am, therefore, advised that the publication is almost out. The process of compiling critical rulings for the 12<sup>th</sup> Parliament is ongoing. That is called news.

Proceed, Sen. Poghio, and then Sen. Onger after that.

**Sen. Poghio:** Thank you very much, Mr. Deputy Speaker, Sir. I join my colleagues in congratulating you on your ruling.

Mr. Deputy Speaker, Sir, I just want to dwell on a matter of communication from the Chair. To communicate is to create understanding, to share meaning, because we should have the same meaning. Sometimes rulings are made and just transmitted, but not communicated. The idea that is coming out here, is that to deal with this, and to be understood the same way that we understand here, both short distance – not far from here in the Chamber – and long distance – being the other branches - we should be able to understand, communicate and share the same meaning

Mr. Deputy Speaker, Sir, you have ruled, and I am sure that no one, in any sphere, can have a different opinion than the one that you have given. That is especially if they have the kind of background that you have, plus also having the worth of experience and tools that you have to make a decision like this.

We, therefore, trust this decision to be communicated, and not just transmitted, so that the Judiciary has the meaning that we have. All the courts in the land should have the same meaning of this ruling, as the Speaker of this House has made. The county assemblies and the Executive should have the same meaning of this. This is what we need

to do in order to have clear communication. Therefore, mine is to make sure you do not just transmit it in the air. I wish this would be prime time communication, so that even some members of the public would hear it firsthand.

This is because, Mr. Deputy Speaker, Sir, what happens is that some courts do not even hear what we are hearing; and they do not seem to have understood the same way that you have communicated here. I, therefore, just want to thank you and congratulate you again. The Chair has protected this House; we continue to say that we are right behind this ruling and we support you in this.

Thank you very much, Mr. Deputy Speaker, Sir.

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

Proceed, Sen. (Prof.) Onger. You have a minute or two.

**Sen. (Prof.) Onger:** Thank you, Mr. Deputy Speaker, Sir. I want to join my colleagues in appreciating and congratulating you for the ruling.

This ruling is fitting at this moment of time, when we seem to have a paradox on the rules or procedures that need to be followed on either side, whether at the Judicial level, or at the Senate level.

Mr. Deputy Speaker, Sir, my understanding of the Constitution is that the ruling of the impeachment is a preserve of the county assembly and the Senate. Until such a time this Senate pronounces itself on an Impeachment Motion which has been generated by a county government, it would be difficult for any branch of Government, including the Judiciary, to come in and interfere with that process.

Mr. Deputy Speaker, Sir, the same way there are rules or procedures that are adopted at the various levels of the court – be it at the High Court, the Magistrates Court, the Appellate Court and the Supreme Court – similarly, there are also rules and procedures that are adopted and which Parliament follows through our Standing Orders on how to impeach a governor or even a President.

Mr. Deputy Speaker, Sir, I have listened very carefully to that ruling. I was listening to it during the coffee break, and I decided to come in and hear you out loud and clear. I, therefore, want to join you by saying that, indeed, you have not stated anything outside the rules and procedures that govern this House. Therefore, you are within the realms of this, and I call that a Solomonic ruling, because it needs to be available.

Earlier on, Mr. Deputy Speaker, Sir, Sen. Kajwang' said that we are getting conflicting signals when it comes to the business of the committees. We were being injuncted left, right and center for carrying out our normal duties in accordance with the oversight rule that is given to us through Article 96 of the Constitution. Indeed, your ruling conforms to what I believe would have been Article 181 of our Constitution; to the fidelity of the reasons why a governor is being impeached. The only other body that can take over that matter is this Senate, when the matter is properly presented before the Senate through the normal procedure.

I, therefore, congratulate you for this ruling. We stand by you, and we stand by this ruling. We would like this information to be available to our county assemblies, because sometimes in our engagement with them through the CPAIC, we find out that they need a lot of learning on the procedures that they need to follow so that they can be the first primary centers of action before it comes to the Senate; call it an appellate body.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Onger. Proceed, Chairperson of the Committee on Justice, Legal Affairs and Human Rights. You have four minutes, Sen. Cherargey.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. I join my colleagues in congratulating you for the ruling you have given today. It goes to the many history books that it has formal precedent. Of course, having known you in various discourse, especially in the academic world, I know that you will be quoted from the length and breadth of the globe, as you have espoused the legal wisdom that will guide many decisions that will be made.

Mr. Deputy Speaker, Sir, I thank you because you have given life and breath to the doctrine of separation of power. This shows the way; that you are even assisting other organs or independent arms of Government – like the Legislature, the Judiciary and the Executive – that it is very important to respect the doctrine of separation of power.

Mr. Deputy Speaker, Sir, you have allowed ordinary Kenyans to learn from this historic ruling that you have made today.

As the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, I want to be on the HANSARD for being amongst the people that are proud of you for making a statement that will be heavily borrowed by various organs that will make decisions in the near future.

My colleagues have spoken about our county assemblies which are in legal quagmire. They do not know what to do because there are many court interferences and injunctions that are happening here and there.

I hope that we will discuss these issues with the CAF - the Speakers' Forum, that was formerly chaired by the Speaker of Kajiado County Assembly and is now chaired by the Speaker of Nyandarua County.

I wish my good friend, Sen. Mutula Kilonzo Jnr., a happy birthday. As he discusses the future of legislative conferences in the near future, he should build the capacity of our county assemblies on these monumental discussions so that they can fast-track and do their work seamlessly as the primary oversight bodies at the grassroots level.

Mr. Deputy Speaker, Sir, I thank you and wish you well. I have always said that your future is bright. I hope that you will join me in wishing the Senator for Makueni, Sen. Mutula Kilonzo Jnr., a happy 44<sup>th</sup> birthday. I hope that he will grow in wisdom and stature.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Mutula Kilonzo Jnr., will you invoke the laws of privacy or you permit your brother to not only disclose your big day but also your age?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, my age and date of birth are not a secret. Therefore, I will not invoke the laws of rights of privacy. I thank him for wishing me well.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The Chair also wishes you well. Sen. Cherargei has said that your future is bright and so is the Chair's and that of everybody else. Thank you, Sen. Cherargei.

We had interrupted the Motion on Order 16. I direct that it be called out again.

## MOTION

ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL  
OPERATIONS OF VARIOUS COUNTIES FOR FY2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015, beginning 1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015, laid on the Table of the Senate on Wednesday, 9th October, 2019.

*(Sen. M. Kajwang on 22.10.2019)*

*(Resumption of debate interrupted on 22.10.2019)*

**Sen. (Prof.) Kamar:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support the adoption of this report on the financial operations of the county executives for Financial Year 2014/2015.

I start by congratulating the Committee for doing an excellent analysis of the report from the Auditor-General. The analysis has made far-reaching recommendations on various counties. It has exposed the performance of our governors in many ways.

I would like to touch on a few that affect my county of Uasin Gishu. One of the observations by the Committee which bothered me was that county governments are not submitting documents to the Auditor-General for audit purposes. This affects Uasin Gishu County and a number of other counties.

This raises a lot of concern because if the County Executive Committee (CEC) members or the governors are not able to substantiate any of the expenditures. It is extremely worrying that in a number of projects that have been outlined, it is very clear that in my county, documents were not submitted to the Auditor-General for verification.

It begs the question: Why were documents not submitted? How can documents not be submitted if they actually exist? If they exist, then they should be submitted. It is low and begs the question on the transparency and accountability of our counties.

Mr. Deputy Speaker, Sir, I saw a number of projects where the Committee rightfully observed that documents were not submitted in my county. Of course, the Committee has made their recommendations that the responsible officers should be prosecuted for breach of Section 62 of the Public Audit Act. However, the implication of documents not being submitted is more than just prosecuting an officer. It begs other questions; is it that they were not submitted because there is something that is being covered?

Is it possible that the other observation which was made, that there were unsupported expenditures, is as a result of the fact that expenditures were actually done and no documents were brought forward? This is very worrying.

As I said, I observed that it is not just my county but other counties also. To me, that is the first point. Why would documents not be submitted, if for sure you have spent

money in the right way? If your expenditure is as per the budget, why would you not submit the documents?

The other observation that was extremely worrying, to me, is something called unsurrendered imprest. When we have unsurrendered imprest running into millions of shillings, you ask yourself; is there an accounts department in our counties? Do we have accounts departments that actually watch and inspect their own books to ensure that any officer who is given an imprest comes to surrender it?

More worrying is an observation by the Committee that other than the issue of unsurrendered imprest, members of the executive or officers accessed more imprest while they had not surrendered previous imprest. This again, should really worry this House because if an officer can go for a trip, come back and go for a second trip without surrendering the first imprest, it becomes a bulk that nobody knows whether the trip occurred or not.

Mr. Deputy Speaker, Sir, this is a very worrying trend in counties. We cannot run counties like entities that do not account to anybody. It is therefore, possible that because of these bulking of imprest around individual officers, it is impossible for them to surrender the documents for audit purposes because that is when the issues will be unearthed. So, that again becomes a major loophole in the financial management in our counties.

In our case, we have the unreconciled land rates receipts and non-reconciliation of collections of revenue.

It is worrying because it appears that our counties collect and bank money but there is a major difference between what is banked and what is collected.

Another observation that came from the Committee is the fact that there seems to be something called direct expenditure. It means revenue is collected and spent directly at source. These are accounts for FY 2014/2015. If expenditure by imprest was done in FY 2014/2015, it cannot take five years to collect receipts and surrender imprest. It means there is something deeper than what we are seeing.

I thank the Committee because they went further to interview CECs and governors in the hope to recover more documents even after the audit was done. It seems they did not make any headway because they did not get documents. The documents that were not surrendered to the Auditor-General do not seem to have been found even before they appeared before our Committee. Is that not impunity? How can counties take five years to make an officer account for money? Spending at source is against the law. You cannot collect money and spend it.

Mr. Deputy Speaker, Sir, it is unfortunate that my county is among those that did direct spending at source. The documents cannot lie. The documents presented by the county show that there was collection of revenue to the tune of Kshs800 million but a colossal sum of Kshs133 million was not surrendered. What does that tell us? Are we still looking for the documents or waiting for them or are we still waiting for accountability? What exactly is going on?

I picked the glaring issues in my own county. I tried to compare my county with other counties because I started getting worried that I seem to come from a county where people are not accountable to anybody. However, I discovered that the other counties are also doing the same. We need to find out what is going on in our counties. Does the

executive in the counties believe that there is no need to account to anybody? How can we put them on track so that accountability is part of our life?

Mr. Deputy Speaker, Sir, the laws that we have are supposed to put us on track. We do not need any other law to put us on track. I thank the Committee because they are very clear on matters they think that concerned officers should be prosecuted on. They have also stated that imprest must be paid by the concerned officers whether they are in office or not.

The Report is about audit reports for FY 2014/2015 and it is possible that some officers concerned may have left because of the changes as a result of 2017 General Elections. Some governors who were retained could have also changed their officers. Therefore, some of the officers who may have contravened the law may be out but they are in Kenya. Since they are Kenyans, they must be prosecuted as per the recommendations of the Committee.

Mr. Deputy Speaker, Sir, I worry about what happens after our Committee has made these recommendations. What happens when a recommendation has been made that the Directorate of Criminal Investigations (DCI) and the Ethic and Anti-Corruption Commission (EACC) move in to prosecute the officers responsible for this mess? Do those agencies actually implement the recommendations of our report or we still have a set back on the implementation? Unless we set the standards of spending, accountability and transparency at the county level, we might come back next year to look at the financial report on the operations of the 2015/2016 and 2016/2017 financial years in vain. We keep piling reports yet we do nothing about them. We must start thinking about what to do.

I admire a strong recommendation that was made by the Committee although I am not sure whether they have identified ways of getting solutions. The Committee has made recommendation to capacity build the MCAs. The MCAs should be the first point of alerting the country that there is a problem. According to the recommendation by the Committee, they have rightfully said that the MCAs should have the capacity to interrogate the reports that come from the Controller of Budget.

Mr. Deputy Speaker, Sir, I thank the CPAIC for moving a step forward to demand that the Controller of Budget gives reports to Senators. We receive the same report that our MCAs have but we know that they do not have the capacity to deal with it and monitor. The CPAIC has identified that problem but how are we going to solve the matter?

Truthfully, the MCAs are supposed to interrogate the reports of the Controller of Budget because they are supposed to be doing first line oversight before we read the reports from the Office of the Auditor-General. The MCAs should have a say on whether the projects are on-going or they have been delayed due to non-payment. The MCAs have been unable to interrogate the reports of the Controller of Budget. I wonder whether they read the reports from the Office of the Controller of Budget.

Participating in the budget cycle is the responsibility of the county assemblies. The county assembly is supposed to move with the budget process right from the proposals from the Executive to the public participation process where they are part of those who give inputs as to what is going to be budgeted for, listening to the public to

ensure that the public has put in the right inputs, then they are supposed to monitor the expenditure itself. Do the MCAs have the capacity to do all that?

Mr. Deputy Speaker, Sir, whereas I believe that the Committee observed very well that the capacity of our MCAs must be built, they have given the job to the wrong group. The report by the CPAIC states that the National Government entities should give the MCAs capacity. I think we need to design another way of building capacity of the MCAs. The Senate must come up with a structured policy of how our MCAs must be given capacity building.

I know the Centre for Parliamentary Studies and Training (CPST) should be training both Members of Parliament and MCAs---

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

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Prof.) Kamar, would you like to be informed by Sen. Mutula Kilonzo Jnr., whom you said is your friend's son?

**Sen. (Prof.) Kamar:** Yes, Mr. Deputy Speaker, Sir, I would.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, there is a programme that is run by the World Bank called The Kenya Devolution Support Program (KDSP) which is capacitating county executives on financial management and reporting. It is in the same breath that we have requested that that the capacity building on financial reporting should be transposed to the county assembly.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Prof.) Kamar, as you receive the information from Sen. Mutula Kilonzo Jnr., I would like to apply Standing Order 31 and extend your time by three minutes to allow you conclude rather than interrupting you because you have three minutes left. We shall therefore extend this sitting by three minutes.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I thought I had ten more minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Prof.) Kamar, you are left with three minutes according to my watch.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I thank Sen. Mutula Kilonzo Jnr. for the information. That is good information.

We need to ensure that the facility is used because we need to make sure that our MCAs can do what they are required to do.

If there will be change in the Constitution, there is one thing that must be changed completely. We need to ensure that the qualification of MCAs is exactly the same as that of the people they are doing oversight on.

We realized that there was no qualification cut-off that was given to the Members of County Assemblies (MCAs). Qualifications cut-off for the County Executive Committees (CECs) and the governors were degrees. They said anybody can be an MCA. Some of the MCAs are feeling intimidated by this discrimination in qualifications. They are not able to perform their duties just because of that categorization. It is very important that we make sure that they are of the same level, so that they can interrogate matters properly.

Finally, Mr. Deputy Speaker, Sir, my observation was on payment for incomplete projects. I was hoping I will deal with this issue tomorrow, but now I have two minutes to do so. Incomplete projects are a glaring problem in this country, not just in Uasin Gishu County, but in other counties---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Members! She has just come to terms with reality.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, hold my minutes.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hold her time. What is it, Sen. Were?

**Sen. Were:** Mr. Deputy Speaker, Sir, I would like to donate my time to Sen. (Prof.) Kamar so that she can finish.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Which time?

**Sen. Were:** Mr. Deputy Speaker, Sir, I have pressed to speak.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You have no powers to donate anything, not even time. I hope you had held her time. We are already past 6.30 p.m. So, we cannot go back.

Senator, would you want a minute or two to conclude?

**Sen. (Prof.) Kamar:** Yes, Mr. Deputy Speaker, Sir. As I said, payment of incomplete projects is glaring in my county. Incomplete projects mean we have no value for money.

I am happy with the recommendation from the Committee that the responsible persons and contractors be investigated. Before any payment is done, it is important to inspect the project and give its status of completion or otherwise. There seems to be a whole chain of events here. We have a contractor, the accounting officers, the auditors and the accounts department overseeing implementation of the project. Why would they pay for incomplete projects? It is a very sad situation. When I saw this, I was really saddened that money was released even before the projects were completed.

Mr. Deputy Speaker, Sir, I know my colleagues will be able to raise some of these issues tomorrow. I want to thank you most sincerely for the two minutes. I really support the report.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, our time is up for today. It is now 6.34 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 24<sup>th</sup> October, 2019 at 2.30 p.m.

The Senate rose at 6.34 p.m.