

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 12<sup>th</sup> November, 2019

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

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

### PRAYER

### PETITION

**The Speaker** (Hon. Lusaka): There is supposed to be a Petition by Sen. Omanga but she is not yet here so we defer that to tomorrow.

DELAYED OPENING OF NJIRU SECONDARY SCHOOL,  
NAIROBI CITY COUNTY

*(Petition deferred)*

### STATEMENTS

**The Speaker** (Hon. Lusaka): Sen. Halake, Sen. (Dr.) Ali, Sen. Cherargei, Sen. (Dr.) Musuruve, Sen. Faki are not in. The Chairperson Standing Committee on Agriculture, Livestock and Fisheries is ready to issue a Statement.

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE,  
LIVESTOCK AND FISHERIES

**Sen. Ndwiga:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Standing Committee on Agriculture, Livestock and Fisheries for the period commencing 1<sup>st</sup> July to 30<sup>th</sup> September 2019.

During the period under review, our Committee held a total of 15 sittings, considered four legislative proposals, one Petition and three Statements. The Committee also held one engagement with stakeholders and a public hearing forum on one legislative proposal.

In respect of legislative proposals, the following are the proposed Bills that were considered -

- (1) The Potato Produce and Marketing Bill.
- (2) The Mung Bean Bill.
- (3) The Fisheries Management and Development Amendment Bill.
- (4) The Kenya Meat Commission (Amendment) Bill.

On the Potato Produce and Marketing Bill and the Fisheries Management and Development (Amendment) Bill, the Committee carried out pre-publications scrutiny of the Bills and recommended that the Bills proceed for publication.

With regard to the proposed Mung Bean Bill, the Committee held a public hearing forum on 19<sup>th</sup> September, 2019 in Kitui County during the Senate sittings in Kitui County.

The Public Hearing Forum was well attended with representation from the County Executive, the County Assembly, and cooperatives in the mung bean industry and farmers. The Committee received numerous views on the proposed Bill and is in the process of collating submissions with a view to providing recommendations to the hon. Speaker on the matter.

With regard to pre-publication scrutiny of the Kenya Meat Commission Bill, the Committee carried out a pre-publication scrutiny on the Bill and shall submit its comments on the Bill to the Speaker within the course of the week.

Mr. Speaker, Sir, regarding Statements, pursuant to Standing Order No.48 (1), three Statements were referred to the Committee during the period under review. The Committee held a meeting with the Cabinet Secretary, Ministry of Agriculture, livestock, Fisheries and Irrigation and his team on 3<sup>rd</sup> July 2019 and on 11<sup>th</sup> September 2019, with regard to Statements which were sought by Sen. (Dr.) Milgo and Sen. Faki respectively, on the fall armyworm invasion in the North Rift and the construction of Kenya Fisheries Services headquarters in South C, Nairobi.

The other Statement was sought by Sen. (Prof.) Margaret Kamar, MP, on the Status of Implementation of the Resolutions of the *ad hoc* Committee on Maize. The Cabinet Secretary vide a letter dated 24<sup>th</sup> September, 2019, has requested for time for the recommendations of the Maize Industry Taskforce to be processed and directions given by the appointing authority on the overall direction of the recommendations.

The Committee is scheduled to hold a meeting with the Cabinet Secretary to discuss the same on Wednesday, 20<sup>th</sup> November, 2019.

With regard to petitions, the Committee considered one Petition concerning the challenges facing small-scale tea farmers in the Kenya Tea Development Agency (KTDA) which was committed to the Committee on 18<sup>th</sup> June, 2019. The Committee met with the petitioner and KTDA on 11<sup>th</sup> July, 2019 where it emerged that the issues raised in the Petition were *sub judice* and, therefore, the Committee was unable to consider the matters raised therein. The Committee tabled a report on the Petition in the Senate.

During the period under review, the Committee met with stakeholders including the Biodiversity and Biosafety Association (BIBA), SeedCo., and the Ministry of Agriculture and the Ministry of Health to discuss the ban on genetically modified organisms (GMOs) and the dangers of using glyphosate (RoundUp herbicide).

It emerged that the two Ministries had conflicting stands on these issues. On the one hand, the Ministry of Health advocates for precautionary use of GMOs and acknowledged that, indeed, glyphosate posed serious health risks to human beings.

On the other hand, the Ministry of Agriculture was of a contrary opinion, stating that GMOs are harmless and that no scientific evidence exists on the dangers of the use of glyphosate. Noting the rise in cancer incidences in the country, the Committee is in the process of reviewing submissions and scientific studies and shall soon hold a follow-up meeting with the two Ministries upon completion.

The Committee also met with the Ministry of Agriculture, Livestock and Fisheries, the National Treasury and the South Nyanza (SONY) Sugar Company Limited to discuss challenges facing the company and to seek a way forward. At the meeting, it was agreed that the National Treasury would meet with SONY officials with regard to a request to take a loan from the County Government of Migori. The Committee is scheduled to hold a follow-up meeting to establish the status of the request on 26<sup>th</sup> November, 2019.

You will recall that the Committee has been looking into the Galana Kulalu Irrigation Scheme Project. The Committee received the Special Audit Report of Capital Works on Irrigation Projects undertaken by the National Irrigation Board (NIB). The Special Audit contains an audit of the Galana Kulalu Irrigation Scheme Project.

However, upon scrutiny, the Committee found that the audit had major gaps. The Committee held a meeting with the Office of the Auditor-General on 9<sup>th</sup> October, 2019 and resolved that another special audit on Galana Kulalu Irrigation Scheme Project be carried out, guided by specific terms of reference defined by the Committee.

Going forward, the Committee intends to carry out the following key activities during the next quarter.

- (a) Meet with the National Treasury and the South Nyanza Sugar Company Limited for a status report on the implementation of the request by the company to take a loan facility from the County Government of Migori.
- (b) Hold a follow-up meeting with the Ministry of Agriculture, Livestock and Fisheries and the Ministry of Health to agree on the way forward with regard to GMOs and use of glyphosate.
- (c) Hold a follow-up meeting with stakeholders of the Galana Kulalu Irrigation Scheme Project to chart a way forward for the completion of the project.

Thank you.

**The Speaker** (Hon. Lusaka): Thank you, Chair. Next is the Chair, Standing Committee on Devolution and Intergovernmental Affairs.

Before you do that, let me acknowledge---

*(Loud consultations)*

Order, Members. Order, Sen. (Eng.) Mahamud.

*(Interruption of debate on Statements)*

**COMMUNICATION FROM THE CHAIR**

## VISITING DELEGATION FROM MIGORI COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation from the Migori County Assembly. They are -

- |                                 |   |                        |
|---------------------------------|---|------------------------|
| (1) Hon. Kevinze Keke           | - | Majority Whip          |
| (2) Hon. Mwinze Augustine Mwera | - | Member                 |
| (3) Hon Beatrice Adhiambo       | - | Member                 |
| (4) Hon. Brian Odhiambo Osodo   | - | Member                 |
| (5) Hon. Orina Samwel           | - | Member                 |
| (6) Hon. Roselyn Oyoo           | - | Member                 |
| (7) Ms. Visenzia Awino          | - | Senior Clerk Assistant |
| (8) Mr. Dickson Odir            | - | Serjeant-at-Arms       |

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

I thank you.

*(Resumption of debate on Statements)*

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION  
AND INTERGOVERNMENTAL AFFAIRS

**Sen. Kinyua:** Thank you, Mr. Speaker, Sir. I take this opportunity to welcome the delegation to the Senate.

I rise, pursuant to Standing Order No. 51(1) (b) to make a Statement on the activities of the Standing Committee on Devolution and Intergovernmental Affairs for the period commencing 1<sup>st</sup> July, 2019 to 30<sup>th</sup> September, 2019.

During the period under review, the Committee held a total of nine sittings, considered one Bill, one Statement and two Petitions. In respect of Bills, the Committee considered the National Assembly amendment to the County Government (Amendment No. 2) (Senate Bills No. 7) 2017 which was sponsored by Sen. Mutula Kilonzo Jr. The Senate disagreed with the amendments of the National Assembly and the Bill is currently in mediation.

Pursuant to Standing Order No.48 (1), the Statement was referred to the Committee during the period under review. The Statement was brought by Sen. Khaniri on the status of assets registers in the counties. The Statement was sought on 18<sup>th</sup> September 2019 and the Committee is currently considering the Statement.

Mr. Speaker, Sir, the Committee also considered a Statement sought by Sen. Outa on the delayed handing over of the Lake Basin Mall. The Committee met with the Cabinet Secretary of East Africa Community and Regional Integration on Tuesday, 30 July 2019. The Committee also met with the Ministry of Transport and Public Works, the

Office of the Auditor-General, the Ethics and Anti-Corruption Commission, the office of the Attorney-General and the officials from the Lake Basin Development Authority.

The Committee visited the Lake Basin Mall on 29<sup>th</sup> August 2019. The salient issues that arose from the meetings and the visits are -

- (1) There were active investigations on-going regarding the construction of the mall on account of inflation of the cost by Kshs2.5billion. This had deterred investors from leasing space in the mall.
- (2) The Ethics and Anti-Corruption Commission (EACC) had taken a long time in its investigation, hampering efforts of leasing out the mall as all the documents pertaining to the mall are with the EACC.
- (3) Officials working in the mall were in constant fear of raids from EACC and avoided being part of the tender committee.

Mr. Speaker, Sir, following the inquiries, the Committee requested the EACC to speed up and conclude the investigation.

On 6<sup>th</sup> September, 2019, 33 officials of Lake Basin Mall were arrested at the direction of the Director of Public Prosecution (DPP). The speedy completion of the investigations can be attributed to a large extent to the work of the Committee on this matter on behalf of the people of Kisumu.

With regard to Petitions, the Committee worked on two Petitions in the period under review. The Committee received a Petition by Mr. Moses Wanjala Lukoye regarding corruption and violation of the Constitution and other law by the County Government of Bungoma. The Petition was committed to the Committee on 13<sup>th</sup> June, 2019. The Committee met with the Petitioner on 3<sup>rd</sup> July, 2019. The Petitioner was advised to submit supporting documents on the issue. The Petition is still under consideration.

The Committee also received a Petition by Sen. Cherargei on behalf of a petitioner from West Pokot regarding the absence of the Deputy Governor of West Pokot County. The Petition was submitted to the Committee on 30<sup>th</sup> June, 2019. The Committee met with the Petitioner on 29<sup>th</sup> August, 2019 and met the Governor of West Pokot on 8<sup>th</sup> October, 2019. The Committee will be meeting with the EACC on this issue before bringing its report on the Petition.

The Committee met with the Members of the County Assembly (MCAs) of Taita Taveta on 29<sup>th</sup> August, 2019. This was with reference to the issues arising between the County Assembly and the County Executive. The Committee advised the MCAs that it was concerned that their challenges were negatively affecting the people of Taita Taveta. Members of the County Assembly were also informed that the budget process required compromise on both sides and that they should have done everything in their power to solve the issue.

Mr. Speaker, Sir, you may recall that on 7<sup>th</sup> August, 2019, I read a Statement pursuant to Standing Order No.51 (1) (a) of the Senate Standing Orders regarding this matter. In the Statement, I stated that the way forward in the matter was, first, the office of the Controller of Budget (CoB) to consider the issues raised regarding the budget process and invite both sides - the county executive and the county assembly for a joint meeting on the same.

Secondly, the Intergovernmental Technical Relations Committee (IGTRC) should come up with strategies to address the relations between county executives and county assemblies.

Mr. Speaker, Sir, I would like to report to the Senate that every effort was made by our Committee to ensure that an amicable solution was reached. However, it did not yield much fruit.

As this House is aware, on 9<sup>th</sup> October, 2019, the County Assembly of Taita Taveta voted to impeach the Governor. The matter was subsequently referred to the Senate, which considered it through a special Committee established pursuant to Section 33(4) of the County Government Act, 2012, and Standing Order No.75(2) of the Senate Standing Orders.

The Special Committee having considered the matter, found the charges brought by the county assembly to be unsubstantiated. It is, however, noteworthy that the Special Committee further recommended that the Senate, through its relevant organs, immediately assumes jurisdiction and invites the County Assembly and the County governor to a consultative process that will restore a functioning government to the people of Taita Taveta County. That process should commence and be concluded and a report be made to the Senate within 90 days. Our Committee shall ensure that it discharges its mandate in this regard and report to the Senate as appropriate.

Mr. Speaker, Sir, as I conclude, the Committee intends to carry out the following key activities the next quarter:-

- (1) The Committee has scheduled visits to Nyamira, Isiolo and Lamu counties.
- (2) The Committee will hold a meeting with the Council of Governors (CoG) and the Minister of Devolution and Arid and Semi-Arid Areas regarding the budget-making process at the counties. This is because many counties are experiencing challenges between the executives and county assemblies which has resulted in stalemates in the budget-making process.
- (3) The Committee also intends to have a meeting with the Minister of Devolution and Arid and Semi-Arid Areas on matters of regional blocs.

I thank you.

*(Applause)*

**The Speaker** (Hon. Lusaka): Let us have the Committee on Education. Proceed, Sen. (Prof.) Ongeru.

#### ACTIVITIES OF THE COMMITTEE ON EDUCATION

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir. I rise pursuant Standing Order No.51 (1) (b) to make a Statement on the activities of the Standing Committee on Education for the period commencing 1<sup>st</sup> July to 30<sup>th</sup> September, 2019.

During the period under review, the Committee held a total of 11 sittings, considered one Bill, one Petition, four Statements and has undertaken county visits to Kitui County. The Committee has also held two engagements with stakeholders from the Ministry of Education and other state agencies on the implementation status of the new

Competency Based Curriculum (CBC) and on the responses to a Statement requested by the various Senators.

In respect of the Bills, the Committee considered one Bill; the Kenya Sign Language Bill (Senate Bills No. 15 of 2019). This Bill was read a First Time on 11<sup>th</sup> September, 2019 and committed to Committee. The Committee held a public hearing on the Bill on Thursday 17<sup>th</sup> October, 2019, and we will be tabling the report on the same shortly.

Mr. Speaker, Sir, regarding statements pursuant to Standing Order No.48 (1), four Statements were referred to the Committee during the period under review. The Statements include:-

- (1) Increase in incidents of bullying in schools requested by Senator Iman on 17<sup>th</sup> July, 2019.
- (2) Incorporation of drama and co-curricular activities in the education curriculum in the country requested by Sen. (Dr.) Milgo on 23<sup>rd</sup> July, 2019.
- (3) Proposed assessment of grade pupils requested by Sen. Wetangula on 7<sup>th</sup> August, 2019.
- (4) Fatalities caused by the collapse of a classroom at Precious Talent School in Dagoretti South, Nairobi City County, requested by sen. Omanga on 25<sup>th</sup> September, 2019.
- (5) All the Statements sought have received responses from the Cabinet Secretary (CS) MoE and have been considered by the Committee and forwarded to the Senators who requested for them.
- (6) With regard to Petitions, the Committee considered one Petition concerning the Review of the Basic Education Curriculum Framework by the Ministry of Education which was committed to the Committee on 27<sup>th</sup> of March, 2019.

The petitioner was Dr. Erick Kinyanjui of Technical University, Mombasa. The Committee met on 16<sup>th</sup> May, 2019 and resolved to invite the Petitioner, the CS and the Kenya Institute of Curriculum Development (KICD) on 5<sup>th</sup> June, 2019. The Committee after meeting with all the relevant stakeholders was informed that the matter had been resolved in court and the court ruling was sent to the Committee.

The Committee will table its report on the Petition in accordance to the Standing Orders.

(7) In respect of county visits, during the period under review, the Committee visited Kitui County during the Senate sittings. The Committee visited Mulango Vocational Training Centre (MVTC), South Eastern Kenya University (SEKU) and St. Michael's School for the Deaf (MSD). Among the key findings was that there was need to sensitize all stakeholders on the new Competence Based Curriculum (CBC).

It was also established that there were inadequate teaching and learning materials in most learning institutions, shortage of infrastructural and sanitation facilities and shortage of teaching staff. The Committee also noted that special schools were hardest hit in terms of lacking the necessary learning materials, teacher shortage and inadequate funding from the both national and county governments.

The Committee also attended a retreat in Nakuru County on the status of implementation of the CBC where the Ministry of Education gave a status update. The

meeting recommended the continuous engagement of various stakeholders in order to ensure successful implementation of the new CBC.

Mr. Speaker, Sir, in the new quarter, our Committee will be interrogating the following matters-

(i) The status of implementation of the policy on 100 per cent transition from primary to secondary schools.

(ii) The new Competency Based Curriculum (CBC).

(iii) Assessment of the status of education at Early Childhood Development (ECD) and polytechnic level through county visits.

I thank you.

**The Speaker** (Hon. Lusaka): Thank you, Prof. Ongeru.

There are Senators who were supposed to have made their Statements earlier, but they came in late. Using my discretion, you will apologise for coming in late and then give your Statement.

Proceed, Sen. Faki and then Sen. (Dr.) Ali.

**Sen. Faki:** Asante, Bw. Spika kwa kunipa fursa hii. Kwanza, ninaomba msamaha kwa kuchelewa kufika Bungeni kwa wakati uliyotengwa. Hii ni kwa sababu tulipata shida ya usafiri kutoka kiwanja cha ndege hadi hapa jijini kwa sababu ya msongamano wa magari.

Tunaomba ile *Express Highway* itengenezwe haraka kwa sababu tunapoteza wakati mwingi barabarani. Hata hivyo, ninaomba kuuliza taarifa yangu.

#### MAANDALIZI YA UCHAGUZI WA SHIRIKISHO LA KANDANDA NCHINI

Nakushukuru kwa kunipa fursa hii ili niombe taarifa chini ya Kifungu No.48 (1) cha Kanuni za Bunge la Seneti. Naomba taarifa hii kwa Kamati ya Leba na Huduma za Jamii kuhusu maandalizi ya uchaguzi na usimamizi katika Shirika la Kandanda nchini yaani, *Football Federation of Kenya* (FKF) unaotarajiwa kufanyika tarehe 23 Novemba hadi tarehe 7 Decemba mwaka huu.

Katika taarifa hii, Kamati inapaswa kueleza-

(1) Sababu za kuzuiliwa kwa vilabu zaidi ya 23 vinavyoshiriki ligi tofauti zinazoandaliwa na tawi la FKF la Mombasa kutoshiriki katika uchaguzi wao akiwemo mwenyekiti wa shirikisho hilo katika tawi la Mombasa.

(2) Kufafanua mipangilio kuhakikisha kuwa matawi yote ya FKF nchini yanahusishwa katika uchaguzi utakaanza tarehe 23 Novemba, hasa ikizingatiwa kwamba kati ya matawi 47, matawi 37 tayari yamepita bila kupingwa; yaani hakuna uchaguzi katika matawi hayo.

(3) Kuelezea mikakati iliyowekwa kuhakikisha kwamba wagombea wote hawatafungiwa nje ya uchaguzi bila sababu thabiti na kwamba uchaguzi wa FKF ni wa haki na uwazi kwa washiriki wote.

**The Speaker** (Hon. Lusaka): Sen. Wetangula, proceed.

**Sen. Madzayo:** Hoja ya nidhamu, Bw. Spika. Naomba kungoza kwa taarifa ya Sen. Faki. Shirikisho la FKF linasimamia kandanda nchini. Kwa hivyo, ni sharti



lizingatie demokrasia kuchagua viongozi wa matawi mbalimbali. Ikiwa vilabu 18 ndivyo vinaruhusiwa kushiriki uchaguzi na vingine haviruhusiwi, tumeipoteza demokrasia.

Asante, Bw. Spika. Nilikuwa nataka kusema hivyo.

**The Speaker** (Hon. Lusaka): Hiyo si Hoja ya nidhamu. Hii ni sehemu ya mchango wako. Sen. Wetangula, ninakupa nafasi ya kuchangia sasa.

**Sen. Wetangula:** Mr. Speaker, Sir, I support the Statement by Sen. Faki. Before I make my comment, I want to join you in welcoming our colleagues from Migori County and encourage them to feel at home. This is the House and Chamber that protects counties and their governments. Their governments include the executives and assemblies. I encourage you as the first line of oversight to do your jobs so that when it gets here, we only follow up what you have done.

Mr. Speaker, Sir, as Sen. Faki has said, FKF is an organization that holds so much promise for Kenyans. However, it is also an organization that has frustrated Kenyans to a level where we cannot tolerate them anymore.

The FKF is run in a most opaque manner. It is extremely unaccountable and corrupt. You have heard of how money received from FIFA; close to Kshs300 million, just disappeared. I saw the Chairperson of the FKF on television; you could not tell what he was saying. He was just busy in denial.

Now that they are headed to elections, FKF as we know it, starts elections from the lowest level. Even counties that are not known for football in the far flung areas of this country also have got branches of FKF. To hear that they have limited only 18 clubs to participate in the elections is an outrage.

I want to encourage that this Statement should not just be spoken to here, the Committee on Labour and Social Welfare chaired by the distinguished Senator for Nairobi City County, should summon the FKF and look at how they are managing their affairs and direct them unequivocally that they start their grassroots elections from the lowest level giving every single Kenyan an opportunity to participate in these elections.

Football has become a big industry worldwide. It is only its management that can take out and showcase the talent of young Kenyans. Nigeria has over 150 professional footballers out there in Europe and other parts of the world. In Kenya, we only boast of three or four, yet we have the capacity to do what other countries do.

I support the Statement and urge that the Committee must look into this matter and correct the mess in the football sector.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, I also support this Statement. Football is a game of the people. All over the world, there is no popular sport than football. Historically, we have produced amazing talents in this country.

Unfortunately, our record at club and national level, be it Harambee Stars or whatever formation of national teams we have had before, we have not been doing well. For example, if you look at Kenya against Uganda over the years, Uganda has got a more superior football record. We never win any games against Uganda. Uganda has had so many problems. It cannot be explained why Kenya over these years cannot do better than Uganda.

There are other instances where we have had difficulties playing against teams like Tanzania and Somalia. This is a national disgrace. It cannot be left to the cartels that run the FKF to deal with issues of football in this country any more.

**Sen. Wetangula:** On a point of information, Mr. Speaker, Sir. I would like to inform the distinguished Senator for Siaya County that recently, Kenya was embarrassed when it was defeated by Somalia.

*(Laughter)*

**The Senate Minority Leader (Sen. Orengo):** That is what I was saying! Leave alone Somalia, if you count the number of times we have been beaten by Zanzibar, which is not a full nation, it is a national disgrace.

*(Laughter)*

Football cannot be run by governments. This the position of the International Federation of Association Football (FIFA). Although it cannot be run by governments, it cannot be left alone to cartels; the types that are running Kenyan football at the moment. The more we continue to leave this game to cartels---

It is important that we have representative bodies running football, but if it is left to cartels that decide who and which clubs should participate, then it will be the same people changing hands, one “don” to another one; it will be perpetual. This is a very important request for a Statement.

Mr. Speaker, Sir, the whole of the leadership of the Football Kenya Federation (FKF) and those people in Government who are concerned should be questioned on this issue. However, this cannot be allowed to continue. When you see the way Kenyans admire football and go to places where people watch football, Kenyans know players, they know those in British clubs, national teams in Brazil, but if you tell them to mention members in the Kenya national team, they will not be able to mention because they have given up on Kenyan football.

Mr. Speaker, Sir, this is a very important Statement. If we continue this way, we will be beaten by Guinea Bissau, which is an Island and the Comoros, which is a small island. No doubt, no Kenyan leader will want to watch some of these matches because they will just be left in disgrace. Look at what South Africans have done with rugby. It is defeating the North. The South is beating the North in rugby, be it Australia, New Zealand and the Caribbean.

In hockey, you find India, Bangladesh, which are not the countries of the North, but because of the way they are organized. I hope answers will come if the Committee can deal with the Statement the way it should.

Thank you.

**Sen. Kinyua:** Asante sana Bw. Spika, kwa kunipa fursa hii. Kwanza, ninataka kumpongeza Senata wa Mombasa, Sen. Faki, kwa taarifa yake nzuri.

Mchezo wa kandanda unaweza kutumika na vijana wetu kama kitega uchumi. Lakini kitega uchumi hiki kimeanza kufuatiliwa na ufisadi. Itakuwaje uchaguzi katika Shirikisho la Kandanda utafanywa na vilabu 18, ilhali nchi yetu kuna vilabu vingi sana?

Katika kila kaunti kuna vijana ambao wanacheza, ilhali wao hawatahusishwa wakati kuna uchaguzi. Hii inaonyesha kwamba, kuna vibaraka ambao kazi yao ni baada ya pesa kupeanwa na Shirika la FIFA hawasikiki tena. Hawataki kujua vijana wetu watafaidikaje kwa michezo.

Bw. Spika, Kamati ambayo imepewa jukumu kuhusu taarifa hii inafaa waangalie mambo haya kwa marefu na mapana. Wanafaaa wazingatie uchunguzi kuhusu ufinisadi. Inafaa wajue kama ufinisadi uko. Kama uko, waonyeshe wazi ni nani wafinisadi ili waweze kuchukuliwa hatua za kisheria. Tukifanya hivyo, tutasaidia mchezo wa kandanda na vijana wetu kwa sababu michezo ndiyo kitega uchumi ambacho kinaweza kusaidia aliyesoma na yule ambaye hajasoma. Vijana wakiwa na talanta ya michezo, wanaweza kuitumia ipasavyo bila kuzuiliwa na wafinisadi ambao kazi yao ni kujinufaisha na kujitajirisha.

Asante.

**The Speaker** (Hon. Lusaka): Asante. Sen. Madzayo naona ulikuwa umebonyeza, lakini ulikuwa umezungumzia taarifa hii. Kwa hivyo, sio halali kurudia tena kuizungumzia mara ya pili.

It is so ordered.

**Sen. Madzayo:** Mr. Speaker, Sir,---

**The Speaker** (Hon. Lusaka): Hapana, nimeshatoa uamuzi kwa sababu ulikuwa umesha zungumzia jambo hili.

Proceed, Sen. (Dr.) Ali.

#### STATUS OF PENDING BILLS IN THE COUNTIES

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I appreciate you for the opportunity given. I am sorry I came in late.

Pursuant to Standing Order No.48 (1), I rise to seek a Statement from the Standing Committee on Finance and Budget on the status of pending bills in counties.

In the Statement, the Committee should-

(1) State whether county governments process their pending bills in accordance with the laid down policy or regulatory framework.

(2) Confirm the status of compliance by county governments with the Public Procurement and Disposal Act.

(3) Give the current status of pending bills in the 47 county assemblies and county executives.

Mr. Speaker, Sir, the issue of pending bills is very serious in our counties. These bills are accumulating. Every governor will just use the money and leave the bills there. Another governor will come in and they will not pay. The people who are in the counties including contractors and those who do business with the counties are already suffering. They will continue to suffer if action is not taken.

I would like the Committee to look into the issue of contractors who are supposed to be paid, but are never paid. When their names are put in the Integrated Financial Management Information System (IFMIS), it is sent to the Controller of Budget (COB), and when the money goes back to the county, the companies are not paid, but other

individuals are paid. The Senate has to look into this and see what we can do in the near future. Otherwise, many Kenyans will seriously suffer because of this issue.

Thank you.

**Sen. Wetangula:** Thank you. Mr. Speaker, Sir. The Statement sought by the distinguished Senator for Wajir is so important. We have been told by the Controller of Budget that outstanding pending bills in counties are now at an excess of Kshs120 billion. This is a lot of money.

First, to have accumulated these pending bills is a violation of the law. The Public Finance Management Act is very clear that you cannot procure goods and services unless you have an attendant budget for it.

Whoever is holding pending bills has already violated the law. Two and more importantly, I want to urge the Chairman of the Committee on Finance and Budget in which I am a Member, to take up this matter.

Recently, two or three months ago, the President gave a directive. He did not give an opinion or make a Statement. He gave a directive that all pending bills must be paid. What is the value of a Presidential directive?

If you go to the counties, I am sure each and every Senator in this House, is routinely visited by young people, women and all manner of people from their counties, asking them to help them to get paid. They go and borrow money, provide goods and services, and at the end of the day, no payment is made.

Mr. Speaker, Sir, in fact, the devolution that everybody was looking at and expecting to devolve wealth to the grassroots has now become a nightmare. It is bankrupting people everywhere.

Therefore, I want this Statement not just to pass. The distinguished Senator for Wajir and somebody else brought a similar Statement here before. The Committee on Finance and Budget should summon the Cabinet Secretary (CS) for Finance, the Controller of Budget, and the Council of Governors (CoG). The Committee should speak with them, give them direction, and ensure that they must pay the pending bills.

If this is not done, the Directorate of Public Prosecutions (DPP) and the Directorate of Criminal Investigations (DCI) should step in and find out who, in their right senses, procured for goods and services without budgets to pay for them. Kenyans cannot continue suffering, taking loans from banks and shylocks; and now this reckless Government has removed the interest cap. Yesterday, some reckless bank manager gave a directive that they were now going to revise interest rates at will. The people are suffering and we must stop this suffering.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir, for also giving me this chance to contribute to this Statement. This is a very important Statement bearing in mind the fact that devolution brought about county governments where, in matters of procurement, women, Persons with Disabilities (PWDs) and the youth are to be given jobs to undertake in those counties. However, you will realize that if the youth manage to get any finances to begin any jobs in the counties, it is through borrowing.

Mr. Speaker, Sir, despite the fact that even the President of this country, Uhuru Muigai Kenyatta, recently declared that pending bills should be cleared, many counties still have a lot of pending bills. Many youth and even women normally come to me in my

county, asking me to go and assist them to be paid. However, I have realized that the issue of payment has been affected by corruption, in this case, because it is only friends of governors who are normally paid.

I know that the Finance Act stipulates that you cannot procure goods unless you have finances. Normally, an accounting officer is affected by three major things; mismanagement, embezzlement or, in this case, not paying for goods, otherwise, procured.

There is a lot of mismanagement going on in these counties and I am sure that once this Statement goes to the Committee, this issue will be looked into seriously so that it is dealt with once and for all. This is not a problem of only one county, but in all counties all over the country.

Therefore, this is going to cure the problem and assist our people. Just imagine a PWD who borrowed money and they have to pay interest out of the little jobs they were given, yet they have never been paid.

Thank you. This is a very important Statement.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity to comment on this Statement by the Senator for Wajir.

The devolution dream in this country is slowly but surely becoming a nightmare, especially on account of pending bills. The law is very clear on how contracts and tenders should be issued in counties and in the national Government. There is no way that accounting officers would continue to issue tenders to business people in the counties, yet they have not ring fenced the monies for payment to those contractors once the jobs are done.

Last year, this House was told that the pending bills had accumulated to the tune of Kshs100 billion in the counties. A few months after that Statement was made, the President issued a directive that all genuine pending bills must be cleared before the end of the last Financial Year. This Financial Year, we are being told that pending bills in counties amount to almost Kshs120 billion, which is absurd.

Mr. Speaker, Sir, it will be remembered that I sought a Statement on the Floor of this House concerning pending bills in Kitui County. The Speaker gave a directive, that within 30 days, the Committee on Finance and Budget was to deal with that matter and get back to this House on the status of pending bills. However, more than six months down the line, that response has not come back.

The people sitting in counties and committing counties to pending bills must take responsibility for wastage of public resources. This is because very soon, very few people will be willing to get contracts and tenders to work in counties because no one is sure when or whether they will actually be paid.

I, therefore, urge that as the Committee looks into this matter, they should also look into matters in other counties, including Kitui, because we have that Statement. They should act in a manner that will express intention to ease the suffering of business people across this country.

As I conclude, I suggest that because every Senator in this House has an issue with pending bills from their counties, it may serve this country right to get the concerned

Ministries and county governments to sit before the Committee of the Whole and explain to us how they plan to deal with pending bills which are crippling people in the counties.

I beg to support.

**Sen. Wario:** Asante, Bw. Spika, kwa kunipa nafasi hii. Katika serikali zote za kaunti nchini Kenya, utakuta watu wamesimama katika majengo ya kulipia hela hizo. Wengi hawakupata hela zao kwa sababu gavana ambaye alitangulia kuwapatia kandarasi hizo hayuko katika utawala wakati huu.

Bw. Spika, utaona kwamba watu wengi wakilalamika, wakisema *pending bills*, na jambo hili limekua kidonda ndugu katika kaunti zote za Kenya. Hata katika Kaunti yangu ya Tana River, kuna watu wengi wanaodai pesa kwa kandarasi ambazo walifanyia serikali iliyotangulia. Wakati huu, Gavana ni mwingine, na jambo hili sio katika kaunti ya Tana River peke yake, bali katika Kenya nzima. Watu wanalalamika kuwa hawapati pesa zao.

Bw. Spika, watu waliofanya kandarasi hizo walitumia pesa zao, na hata walikopa madeni katika benki tofauti tofauti. Hawawezi kupata pesa zao kwa sababu kaunti hazilipi. Kwa wakati huu, wale magavana walio katika mamlaka wanataka kufanya kandarasi mpya. Hizo kandarasi mpya ndizo walizopeana saa hii, na wako tayari kuzilipa. Hivyo hivyo, wanawacha zile kandarasi ambazo wanaziita *pending bills*.

Wakati huu ni muafaka kwa Shirika la Magavana linaloitwa *Council of Governors* (CoG) kukaa pamoja na *Contoller of Budget* ili kuangalia hizi *pending bills*, ili watu hawa wasiwe na shida zaidi. Tukifanya hivyo, wataweza kulipa madeni yao, na maisha yao yasisimame.

Bw. Spika, Taarifa hii imetoka wakati mzuri, ila tayari tumechelewa, lakini ni vyema kabisa kwa Seneta wa Wajir kutoa taarifa hii kwa wakati huu. Tunaunga mkono kwamba magavana walipe pesa hizo. Hakuna mtu anadai gavana pesa, kwa sababu kandarasi imetolewa na serikali. Wao wameenda kuweka vidole pamoja na serikali hio. Huyu gavana atatakikana kulipa hiyo pesa hata kama hatakuwa mamlakani kwa sababu hio pesa sio yake bali ni pesa ya serikali.

Ninaunga mkono.

**Sen. Madzayo:** Ahsante sana, Bwana Spika. Ninataka kujiunga na ndugu yangu, Seneta wa kaunti wa Wajir, Sen. (Dr.) Ali, kuzungumzia madeni ambayo yanadaiwa serikali za kaunti. Siongei kuhusu serikali ya kaunti fulani bali ninaongea kuhusu serikali zote za kaunti.

Hizi kaunti hulipa watu wengine na hawalipi wengine ilhali wote wamefanya kandarasi ndani ya serikali za kaunti na hilo ni jambo la kusikitisha. Utapata ya kwamba, wale wanaofaidika katika hizi kaunti ni wale mabwenyenye. Wanabiashara wadogo katika kaunti ambao wanajaribu kujikimu kimaisha na biashara zao ndio wanapata taabu.

Kwa hivyo, hii taarifa ni muhimu sana kwa taifa letu la Kenya kwa sababu linazungumzia swala la malipo ya kandarasi za wafanyibiashara ndani ya kaunti.

Mara nyingi tunaona ufisadi katika kaunti kwa sababu hao hulipa wanabiashara wengine na wanakosa kulipa wengine. Hizo kaunti huwa hazipeani sababu ya kutokulipa bali hao wanabiashara wanaambiwa tu eti wangoje. Wanabiashara wadogo huwa wamechukua *loans* kutoka kwa benki ilhali kaunti zinachukua mwaka mmoja, mbili ama

tatu kabla ya kuwalipa. Baadaye, unapata ya kwamba, pesa walizopata kwenye benki inashinda deni walilokopa.

Watu wengi wamekuwa na ugonjwa wa moyo, wengine wamejitia vitanzi na wengine wamekufa. Si haki mtu kutokulipwa baada ya kufanya kazi. Taarifa hii ni muhimu sana katika nchi yetu. Magavana wanafaa kulipa watu ambao wamefanya kandarasi. Wale *chief officers* ambao wanazembea kazi zao kwa kuwalipa marafiki wao wanafaa kuchunguzwa na ikipatikana eti wanafanya hivyo, basi hatua ichukuliwe.

Ninaunga mkono kauli hii ambayo imeletwa na ndugu yangu ambaye ni jabali katika lile Bunge la Kiafrika, kule Johannesburg, na vile vile katika Bunge la Seneti.

**Sen. Haji:** Ahsante sana, Bwana Spika. Ninataka kumpongeza ndugu yangu, Sen. (Dr.) Ali, wa kaunti ya Wajir, kwa kuleta hii taarifa. Yale maneno ambayo maseneta wenzangu wamezungumza ni ya haki na kweli kwa sababu magavana wamekuwa ni mtindo wa kutumia pesa kiholela wanapojua ya kwamba hawana hizo fedha katika hazina zao.

Hao hupeana kandarasi mwaka mmoja kabla ya uchaguzi wakidhani ya kwamba watawashawishi wananchi kuwapigia kura. Hao pia huajiri watu kiholela wakifikiria ya kwamba watu watawapigia kura. Ukweli ni kwamba, wananchi wanajua mtu ambaye wanafaa kumchagua.

Rais alisema ya kwamba, magavana walipe *pending bills* lakini hakuna dalili ya kwamba hiyo inafanyika. Kuna haja ya kuzindua sheria ambayo itawajukumu magavana kulipa hizo *pending bills* kwa sababu hii ndiyo *the biggest corruption*.

Kuna watu ambao huenda kukopa kwa duka ama benki wanapopata kandarasi. Yule mwenye duka hutarajia malipo na biashara yake huzama asipolipwa. Kwa hivyo, watu wengi huteseka wakati magavana wanakosa kulipa wanakandarasi. Hii ni kwa sababu huyo mtu ana watoto, bibi na hata jamaa ambao anawasaidia. Unapokata hiyo *lifeline* yake, inakuwa ni vigumu kwake kuishi.

Kwa hivyo, ninapendekeza ya kwamba *Committee on Justice, Legal Affairs and Human Rights* watengeneze sheria ambayo ita *wahold responsible* magavana wale ambao watakosa kufanya vile ambavyo sheria inavyosema.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I also rise to support the Statement by Sen. (Dr.) Ali.

The issue of pending bills is something that baffles me. In real sense, there should be no single pending bill if county governments follow the law. Each county is required to come up with a five year development plan and there are priorities that are set out of the five year development plan. There is something called annual development plan and we should not have any pending bills if the counties follow the annual development plan.

Earlier, I heard my colleague say that the Committee should summon the Controller of Budget for him to give an explanation but I do not think that the Controller of Budget can help in this case. It is the county assemblies that should take the lead. This House should come up with a piece of legislation that will hold those county governors accountable.

I am of the view that the county assemblies should be the ones to approve the budget and they should confirm that the budget falls under their five year plan and any

budget that does not fall under their five year plan should be considered as going against the County Governments Act that Sen. Wetangula spoke about.

The County Government Act, 2012, prohibits any money that has not been budgeted for, from being spent. I sit in the Committee on County Public Accounts and Investments (CPAIC) and governors come there and say that they have pending bills. Some of them are actually confused. They say that Treasury has not given them money. When we went to Samburu County, the Governor said that the Controller of Budget was holding Kshs6 billion of his funds which was baffling to us.

**Sen. Cherargei:** On a point of information, Mr. Speaker, Sir.

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

**Sen. Cherargei:** It is a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Olekina, do you want to be informed?

**Sen. Olekina:** Yes, Mr. Speaker, Sir.

**Sen. Cherargei:** Ahsante Mheshimiwa Spika. Ningependa kujulisha ndugu yangu, Seneta wa Narok, na Bunge nzima la Seneti ya kwamba, kulingana na taarifa ya *Intergovernmental Budget and Economic Council (IBEC)* baada ya mikutano ambayo ilifanyika jana, deni la wanakandarasi limeshuka kwa mwaka huu kutoka Kshs108 bilioni hadi Kshs34.5 bilioni.

Ninafikiri, Kamati husika ikiongozwa na Naibu Mwenyekiti ambaye yuko nyuma yangu; Seneta wa Meru, inaweza kushughulikia jambo hilo, kwa sababu inaonekana kwamba Intergovernmental Budget and Economic Council (IBEC) na Baraza la Magavana wanaendelea kushughulikia swala hilo.

Asante sana, Bw. Spika.

**Sen. Olekina:** Mr. Speaker, Sir, I thank my colleague for informing the House on the developments. However, my problem is: Why should county governments continue accumulating these pending bills, yet every year they sit and plan on how they will fund development in their counties?

Yesterday, I called a friend of mine and asked him whether he could hire his trucks. He said: "My brother, three of my trucks were taken by the banks because I could not afford to pay them. This is because a certain governor refused to pay me."

I do not believe that the Controller of Budget (CoB) will solve this problem; I believe that it is this House. I was consulting with Senior Counsel, Sen. Orengo, whether this House can now be scrutinizing budgets from the assemblies to find out whether when they are passed, they have considered pending bills as the first charge in their account. There is no way we will make any progress if we will keep on talking about pending bills.

We now hear that IBEC has said that it has come down to Kshs113 billion. That is not a solution in my view. The solution is simple; we look at the issue of the accounting system used by these county governments. We should look at whether we can move away from cash base to the accrual system. For us to help our citizens in this country, we should restrict ourselves to looking at the annual plan and come up with legislation that will bar county assemblies, if it is possible, from passing budgets that do not consider the pending bills. Otherwise, we will continue sending people to Mathari Mental Hospital because we are not bold enough to send them to Kamiti Maximum Prison.



I support this Statement, and other than that, I want to encourage the Chairperson, who is a very competent Senator, to look into all these budgets and say: "Have we considered this?" This is particularly for counties like Nairobi that have billions of shillings. This applies to even my own county, Narok, Mombasa and all other counties.

There is no reason we should be approving money going to county assemblies, yet the people who are doing work for county governments for them to get money to send their children to school or pay their medical bills cannot do so because county governors are not paying.

I support.

**Sen. (Eng.) Mahamud:** Thank you very much, Mr. Speaker, Sir. Let me thank the Senator for Wajir for bringing this Statement. Indeed, it is a very important Statement because pending bills is an issue that is very baffling. Nobody can establish what the figures are. In fact, the Controller of Budget did report that by June, 2018, the figure was Kshs108 billion.

The Auditor-General was asked to make a special audit and he came up with a figure of Kshs130 billion, as mentioned by the Senator for Nandi. That is when the President said that the figure must be paid. We have heard the sentiments of the Members. It is a very serious matter and we want to get the root cause of it. The people to be summoned include those from the National Treasury, Controller of Budget and maybe even the County Assemblies Forum. We need these people to come before us so that we can look at this together.

The issue of pending bills should not arise because counties get their full allocation, as enacted in County Allocation Revenue Act (CARA) in every financial year. I think there is foul play and monies are misallocated to functions that are not budgeted for. We take the matter seriously, and as a Committee too, will look into this matter. We encourage all Members who have any information about this to come to us.

Thank you very much.

**Sen. Faki:** Asante Bw. Spika kwa kunipa fursa hii kuchangia Taarifa ambayo imeombwa Bungeni na Seneta wa Wajir, Sen. (Dr.) Abdullahi. Kwa hakika---

**The Speaker** (Hon. Lusaka): Sen. Linturi, what is your point of intervention?

**Sen. Linturi:** Mr. Speaker, Sir, I hope that this has not been overtaken by events. My intervention is to bring to speed the Chairman of the Committee on Finance on the update with regard to pending bills in the counties. I think this information is very important and relevant for them to come up with a report.

As the Vice Chairperson of the County Public Accounts and Investments Committee (CPAIC), I am very aware that this House is properly seized of this particular matter. The CPAIC has tabled a fiduciary risk report and one of the cross-cutting issues amongst the counties was the aspect of pending bills.

During our interactions with the Office of the Auditor-General, we ordered for the audit of all pending bills in the counties and a report has been tabled before the CPAIC, which can be relevant to the Committee that will be charged with the responsibility of addressing this particular Statement.

However, it is worth noting that it is not that we do not have adequate legislations to deal with this matter. The Public Finance Management (PFM) Act requires that every

pending bill be a first charge in the subsequent financial year. It is in the law and regulations. What we lack is the goodwill and the moral ability of the Chief Executive Officers (CEOs) of this counties to implement the law in regard to payment of the particular bills that are not payable or not paid at the end of the financial year.

It will also be important to understand the causes of the pending bills, so that when solutions are being proposed, they are relevant to the issue. What has come before our Committee is that some governors have continually accumulated bills because they procure without a procurement plan and budget. That is completely out of order and inconsistent with what the law provides.

**The Speaker** (Hon. Lusaka): Sen. Linturi, what are you doing? Are you contributing or is it a point of order?

**Sen. Linturi:** Mr. Speaker, Sir, I am doing both because I know that you will not give me an opportunity to talk again.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order, Senator! You cannot do both. I think you have made your point.

**Sen. Linturi:** Mr. Speaker, Sir, let me conclude by saying that we will be willing to share information with the Chairperson of the Committee on Finance and Budget. We will ensure that the necessary information that we have towards addressing this issue is given to them because it is important for this country.

**The Speaker** (Hon. Lusaka): Sen. Faki.

**Sen. Faki:** Asante Bw. Spika kwa kunipa fursa hii kuchangia Taarifa ya Senator wa Wajir, Sen. (Dr.) Abdullahi. Kwanza, ninampongeza kwa kuleta Taarifa hii Bungeni. Madeni yamekua ni donda sugu katika kaunti zetu. Hii ni kwa sababu kila kaunti ina madeni ya mamilioni ya pesa.

Singependa kukosoa maelezo yaliyotolewa na Sen. Cherargei, kwamba, madeni yamebaki Kshs33 bilioni, lakini kusema ukweli, ripoti ya madeni yote ambayo yako katika kaunti iko mbele ya Kamati ya Uhasibu. Kamati hiyo imekua ikiwahoji magavana tofauti tofauti ili kuthibitisha ni pesa ngapi ambazo wanadaiwa na wananchi ambao ni wanakandarasi katika kaunti hizo. Sio kwamba hakuna sheria; sheria iko lakini tatizo ni utekelezaji.

Utapata kwamba madeni mengi yanachukuliwa bila kufuata mpango wa kuweza kununua bidhaa na kuendeleza miradhi ambayo wamepania kufanya katika kaunti kutumia pesa hizo.

Bw. Spika, pia utapata kwamba sheria ambayo inasema kwamba baadhi ya wanakandarasi, wawe ni akina mama, vijana na walemavu haifuatwi. Utapata kwamba wanakandarasi labda wameweka watoto wao ili waweze kuzingatia swala la vijana ama wameweka bibi zao kwa sababu ni wanawake ili waweze kupata kandarasi ile halafu wanajilipa kwanza na wanawacha wale wanakandarasi wengine ambao hawana labda mfidhili fulani ama *Godfather* katika kaunti ile kudai pesa zao kwa miaka na miaka, na hivyo, wanapoteza pesa zao.

Mabibi wamekimbia kutoka kwa nyumba nyingi kwa sababu ya madeni ambayo yamekumba familia ambazo zimepatiwa kandarasi na kaunti. Ukiangalia gazeti siku ya Jumatatu na Jumanne, utapata kwamba kurasa zaidi ya kumi zimeandikwa orodha ya watu ambao wanadaiwa na benki, ambao nyumba zao na mali yao zinanzwa kwa sababu ya kushindwa kulipa madeni kutokana na kazi ambazo wamefanyia kaunti.

Swala hili pia haliathiri serikali za kaunti pekee; ulipaji wa madeni umekuwa shida hata kwa Serikali kuu. Kwa hivyo, ningepomba kwamba Kamati husika, itakapoangalia swala hili, itoe mapendekezo ya mambo ambayo tunaweza kufanya kwa haraka; hata kama itabidi *Controller of Budget* aombwe azuie kutuma pesa katika kaunti zile zenye madeni mengi. Tunataka jambo hili lifanyike ili wanakandarasi wetu walipwe madeni yao.

Asante, Bw. Spika.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I will be very brief. I just walked in when this important debate was going on. I want to support Sen. (Dr.) Ali of Wajir for this timely Statement, which has also been brought severally by different Senators including myself.

We can sit here and discuss but one thing is critical, that this problem cannot be wished away. However, I have a solution, a cure punch, that as a Member who sits in the Committee of Finance and Budget, I think we should find a solution where these outstanding county bills can be paid by the Treasury at the source regardless.

I really sympathize with the new governors who are going to take over the mantle after the next election. These governors will find it very hard to manage the county business. It is high time that parties who have problems with the counties, like the contractors, desist from the tactic of taking matters to court. Governors are very happy when the matters go to court and even if judgment will be issued with interest, they do not care. This is because they know that they have misdirected the budget sum to other unrelated programmes, which will attract some damages thereof.

Therefore, it is my humble contribution that the Treasury pays the money at the source. That is my humble view. I support.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Next Order.

#### OPERATIONS OF SILVERSTONE AIR IN KENYA

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, and my apologies for coming late because as you are aware, the issue of the United Nations conference is on-going.

I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Roads and Transportation on the recent incidents in the operations of Silverstone Air in Kenya.

In the Statement, the Committee should -

- (1) explain the circumstances surrounding the three air traffic incidents involving aircrafts belonging to Silverstone Air Services Limited within a period of one month;

(2) indicate the level of compliance with aviation standards, particularly, whether it meets the required standards and procedures of Kenya Civil Aviation Authority;

(3) state what measures are in place to improve the poor state of Wilson Airstrip that has raised concerns amongst the operators;

(4) explain the aspect of conflict of interest that may have compromised the standards considering that one of the senior executives of the company was previously an employee of Kenya Civil Aviation Authority during the licensing process, and finally;

(5) indicate the frequency of inspections conducted by Kenya Civil Aviation Authority on aircrafts from all airlines at ports of arrival and departure to minimize or stop such incidents.

Thank you, Mr. Speaker, Sir.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM THE EAST AFRICAN LEGISLATIVE ASSEMBLY

**The Speaker** (Hon. Lusaka): Before I allow contributions to that, Hon. Senators, I have a Communication to make.

I would like to acknowledge the presence in the Speaker's Gallery this afternoon of the Speaker of the East African Legislative Assembly (EALA), hon. Martin Ngonga, who is accompanied by a staff, Mr. Bobby Odiko.

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

Thank you.

*(Applause)*

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I also join you in welcoming the Speaker of EALA and encourage him that he must spearhead the realization of the East African integration dream. Many of us who come from frontier counties like you, the Clerk and I, know that the integration of East Africa is what will clear the arbitrary boundaries created by selfish colonialists without any regard to the cohesion of communities.

*(Resumption of debate on Statement)*

I want to contribute to the Statement raised by the distinguished Senator for Nandi. For many of us who use aerial travel internally, Wilson Airport has been like a dream come true. Jomo Kenyatta International Airport (JKIA) is too far. The system of getting flights from there is too cumbersome and above all, Kenya Airways still lives in a dream world when they were enjoying the monopoly in the country and are still

extremely expensive. A flight to Kisumu using Silverstone or other airlines from Wilson Airport or other airlines costs less than half what you pay on Kenya Airways.

Perhaps, by the time the distinguished Senator drafted the Statement, he was not in know that Silverstone themselves, in response to issues from Kenya Civil Aviation Authority, have grounded all their flights. This is a blow to many of us because we have been dependent on the activities of small airlines at Wilson Airport. But equally important, the convenience of having cheaper budget airline should not override the safety concerns.

You remember, the flight from Wilson Airport that crashed in the Aberdares, coming from Kitale that cost the immediate death of several people including one of my nephews. When you go to Wilson Airport, and I have had an opportunity to visit the Minister for Transport, the Airport is in very poor condition.

If you look at the apron, where the planes are parked and where passengers board the planes, the entire tarmac is coming off. That is why you find that as planes take off, some wheels get stuck in mud. How do you get a plane sticking in the mud before takeoff? This endangers lives. The problem with aerial travel is that if you crash on the road, your chances of survival are a lot higher than when you tumble from the air. When the plane crashes, survival rates are minimal, if not nil.

Therefore, Mr. Speaker, Sir, I urge you to direct that the Committee on Roads and Transportation gets seized of the matter immediately. They should then visit Wilson Airport, see and appreciate the economic activities going on there, whether it is Silverstone, Safari Link or Air Kenya. All those small airlines do a fantastic job of flying Kenyans around the country and the region. We must protect that area and the turf; we must make the airport usable and user friendly.

Thank you, Mr. Speaker, Sir.

**Sen. Madzayo:** Asante, Bw. Spika. Pia, ningependa kumpa kongole ndugu yetu, Sen. Cherargei, kwa kuleta Taarifa hii. Ni vyema kuwa na ndege zitakazoweza kuchukua watu sehemu kidogo; ambapo malipo yake pia yatakuwa ya kadri.

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

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

Lakini, Bw. Naibu Spika, ikijiri kwamba tunataka ndege za usafiri, na hali iwe nadra, itakuwa jambo la kusikitisha kuona ya kwamba wakati tukitafuta ndege ambazo pengine zitakuwa zinasafirisha watu kwa bei nafuu, lakini zinahatarisha Maisha yao. Hivyo basi, ingekuwa bora ndege hizo zipigwe marufuku kuliko kuhatarisha Maisha ya watu, hata kama ni ya watu wawili au watatu wakiwa ndani ya ndege hizo.

Bw. Naibu Spika, tunaona hatari kubwa katika uwanja wetu wa ndege wa Wilson. Naunga mkono aliyoyasema Sen. Cherargei, kwamba hata hali ya ulinzi sio njema. Nikiwa mmoja wa wale wanaosafiri na ndege hizo mara kwa mara, nimeona kwamba mtu yeyote anaweza kuingia ndani ya huo uwanja wa ndege vile anavyotaka, ikiwa nia yake ni mbaya. Pengine hivi sasa tuko na bahati nzuri ya kwamba hakujakuwa na mtu mwenye nia kama hiyo. Lakini ikiwa kunakuwa na mtu atakayekuwa na nia kama hiyo,

basi kuingia ndani ya Uwanja wa Ndege wa Wilson ni kama tu kuingia ndani ya mlango wa hospitali. Kwa hiyo, uangalifu wa Uwanja wa Ndege pia unahitajika katika kitengo hiki; na pia kamati yetu ya uchukuzi inafaa iangalie jambo hili kwa kina.

La mwisho, Bw. Naibu Spika, ni kwamba kama vile ilivyosemwa hapo awali, uwanja huu upo katika hali ya kusikitisha hata kama unatumiwa na vifaa hivyo vya kusafiri, kama ndege. Wakati ukija na ndege hiyo ndogo, utaona vile utakavyodunda, urudi hewani kwanza, halafu ndio uregee tena uendelee mpaka ndege isimame.

*(Loud consultations)*

Ndio; ndege inadunda kama mpira. Haiwezi kutambaa kisawasawa hadi isimame. Nikiwa mmoja wa wasafiri, kila siku moja au mbili zinazopita, hujiandaa kwenda nyumbani kwa kutumia ndege hizo katika uwanja wetu wa Wilson.

Bw. Naibu Spika, kama nilivyosema, hivyo ndiyo ndege hizo zinavosafiri. Ndio sababu jambo hili ni la kusikitisha, kuweza kutambua ni ndege gani. Lakini kwa hivi sasa, ambavyo wananchi wanajua kwamba ni Silverstone, basi ni lazima kampuni hiyo wajikakamue. Kama wanahitaji ndege zao kuendelea kutumia uwanja huo, basi walete ndege ambazo hazitahatarisha Maisha ya watu. Kwa hivyo, naoimba Kamati yetu ya Uchukuzi ichunguze zaidi uhamasishaji wa watu wanaosafiri kwenda zao nyumbani, ili tusipoteze maisha ya Wakenya.

Asante, Bwana Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wario, please speak very briefly.

**Sen. Wario:** Asante, Bw. Naibu Spika. Nitazungumzia jambo hili kwa ufupi. Kweli kabisa, nilipomsikia rafiki yangu, Sen. Madzayo, akizungumza, nilikumbuka siku ambayo nilidunda mara tatu katika Jimbo la Kilifi, ambako ni jirani na kwangu. Kidogo roho yangu ilipaa juu kidogo.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Ulidunda ama uliyumba?

**Sen. Wario:** Nilidunda nikiwa ndani ya ndege hiyo. Sikuyumbayumba; huko juu ilikuwa---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula? Ni hoja ya nidhamu ama hoja ya utaratibu?

**Sen. Wetangula:** Bw. Naibu Spika, ni hoja ya utaratibu.

*(Laughter)*

Ni vyema Sen. Wario atueleze iwapo ni yeye alidunda, ama ni ndege iliyodunda?

*(Laughter)*

Kama yeye amekaa ndani ya ndege, atadunda namna gani?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Utadunda vipi? Ni kudunda ama kuyumbayumba?

**Sen. Wario:** Asante, Bw. Naibu Spika. Kweli, kwa aliye ndani ya chombo, chombo ndicho hudunda. Nawe ukiwa ndani ya chombo hicho, basi unadunda maradufu.

*(Laughter)*

Hii ni kwa sababu chombo kikiyumbayumba, pia aliye ndani ya chombo hicho pia huyumbayumba. Kwa hivyo, Sen. Wetangula, kile chombo nilichokuwa ndani, ambacho ni ndege, kilidunda mara mbili au tatu.

Nilipomsikia rafiki yangu akielezea jinsi ndege hiyo haikumpeleka vizuri kwenye anga, nilikumbuka kuwa utakuwa unayumbayumba huko angani, na unadundadunga hapa kwa mchanga pia. Hiyo ni hatari kubwa sana.

Kwa hivyo, Bw. Naibu Spika, tunaionba Kamati tekelezi ya Uchukuzi na Mawasiliano ifanye uchunguzi, kwa sababu ni juzi tu ambapo ndege hiyo ilitoka hapo uwanjani na ikaanguka hapo nje, na kuhatarisha maisha ya watu wengi. Kwa hivyo, ni vizuri Kamati hii iangalie vile ndege hizi zinafanya uchukuzi.

Asante, Bwana Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Asante, kwa kuongea kwa ufupi.

Proceed, Sen. (Dr.) Ali, please be brief also, since we are not doing very well, time wise.

**Sen. (Dr.) Ali:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief. While we appreciate what these airlines are doing, because they are helping those of us who come from the far-flung areas, we also accept that accidents do happen. However, we would like the Committee to make sure that these airlines follow the procedures and the laws of this country.

Mr. Deputy Speaker, Sir, when you go to Wilson Airport, it is full of potholes. Consequently, when the planes are taking off, they bounce off those potholes, which can cause problems.

I, therefore, urge the Kenya Airports Authority (KAA) to make sure that not only the airlines follow the rules, but they should also make sure that those potholes are taken care of, so that the passengers and their clients do not suffer a lot.

Thank you, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Finally, Sen. Halake. Please, follow the cue and be brief too.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I support the Statement by Sen. Cherargei. We need to focus on a lot on the spate of modernisation of our aviation infrastructure.

I have put a question to this House about other smaller airports, especially with regard to the safety, quality and the amount of investments that have gone into them. As much as the airlines must be investigated and safety of our aircrafts be determined, the state of our aviation infrastructure should be taken into account.

That said, we must never forget that this country has done very well in other areas. The JKIA, for instance, met all the safety standards for direct flights to the United States of America to be allowed. People coming through our airport increased from 2.5

million to 7.5 million. Therefore, there is a lot to be proud of. However, that is not to say that we should be complacent.

Wilson Airport that we are talking about is very important in Africa. It is one of the best and has served us very well. However, we cannot afford it to now have a bad name. *TripAdvisor* today was advising people against using Wilson Airport, which is a shame, because that is our tourism circuit enabler in this country.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Sen. Halake, you are late, but I will indulge you. Did you have a statement to request or make? Is it a statement under Standing Order No.47(1)?

**Sen. Halake:** Yes, Mr. Deputy Speaker, Sir.

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

#### ELECTORAL VIOLENCE IN BY-ELECTION CAMPAIGNS

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to read this. This Statement was unfortunately somewhat overtaken by events, but I think it is still relevant. Therefore, I will read it.

I rise pursuant to Standing Order 47 (1) to make a Statement on electoral violence that takes place during the election campaigns. Kenya has been at a political crossroad since 2007 General Election. While there has been relative peace, general calmness and a running Government, the state of affairs has remained fairly fragile and uncertain. Electoral violence has been common place in our country since the introduction of multiparty politics in 1991. We have lost thousands of lives and disrupted so many others as a result of this poor political culture.

The Commission of Inquiry on Post-Election Violence, 2009, (CIPEV) that investigated the 2007/2008 post-election violence attributed the country's history of electoral violence to a combination of longstanding conflict drivers such as inter-communal clashes and divisive politics. Unfortunately, we have not put in place measures to address these challenges.

There are deep concerns with the current spate of violence witnessed in the just concluded by-election campaigns in Kibra Constituency and by-election in Ganda Ward, Kilifi County. These unfortunate incidents are an important example of an increasingly widespread phenomenon in Kenyan politics. The fierce contest in the Kibra by-election should serve as a warning to the general population, candidates and campaigners involved in the by-election contest. They should be encouraged to stick to issue-based politics and avoid various forms of inflammatory statements during campaigns.

Mr. Speaker Sir, further, all elections management bodies namely, the IEBC, the National Police Service, the Judiciary and all political parties, should ensure that they act swiftly in order to deter, avert and resolve politically-instigated violence, since elections come and go, but the lives of Kenyans can either change for the better or retrogress.

The Government should, therefore, have specific measures in place to ensure that IEBC fulfils its key mandate of ensuring that instances of electoral misconduct, such as



incitement to violence, disruption of the voting exercise, assault, electoral offenses and breach of Elections Code of Conduct, are addressed without fail and punished.

Any breach of the Electoral Code of Conduct by political parties needs to be addressed as a matter of urgency by the IEBC in tackling these issues that continue to undermine the confidence of the citizenry. Additionally, the laws put in place should be applied and strictly complied with. Laws such as International Crimes Act, 2008 and Freedom of Information Act facilitate investigation and prosecution of crimes against humanity as well as enabling state and non-state actors to have full access to information, which may lead to arrests, detention and prosecution of persons responsible for gross violations.

Mr. Speaker Sir, moreover, it is the civic duty of every voter to shun any violence that may be impelled by politicians. In addition, the Government ought to have a deliberate plan in place to address the country's history of electoral violence, electoral misconducts and divisive politics that have jeopardized the spirit of oneness, unity and our democracy.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. That is the end of that particular item. Sen. Halake, did you have any specific prayers? Was it just a Statement?

**Sen. Halake:** It was just a Statement, but owing to the gravity of this matter---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, that is an afterthought, Sen. Halake. I just wanted to be clear that you have not made a prayer.

However, I agree with you that it is an important matter. I invite the Committee responsible to engage with you and see how to carry this matter forward.

Thank you very much, colleagues.

I will apply Standing Order No.40 as follows. We shall call out the next Order, which is Order No.8 and then skip the other orders that follow. Upon conclusion of Order No.8, we shall go to Order No.14, as per the recommendations of the SBC, which I approve.

Next Order.

*(Several Senators walked out of the Chamber)*

## MOTION

### EXTENSION OF TIME FOR THE *AD-HOC* COMMITTEE ON MES

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wetangula, are you the one moving the Motion?

I can see you are watching departures.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, the departing Senator does not seem to have been paying attention to what you were saying, because she was to second. However, I have colleagues from the Committee here.

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

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

THAT, Aware that the Senate resolved to establish a Select Committee comprising nine (9) Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment in the now 119 beneficiary hospitals country wide;

APPRECIATING that the mandate of the Select Committee lapsed on Friday, 8<sup>th</sup> November, 2019;

REGRETTING that due to heavy workload and sheer magnitude of the assignment the Committee is yet to table its report in the House and requires more time to conduct a further and thorough inquiry into the subject matter of its mandate;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of forty-five (45) days to enable it conclude its work and table its report in the House.

Mr. Deputy Speaker, Sir, this House approved a Motion while sitting in Kitui, under Senate *Mashinani*, to establish an Ad hoc Committee. The Committee has been sitting and I dare say that it is doing a very good job. We have visited hospitals that are recipients of these equipment in Isiolo, Garbatulla, Tana River, Malindi, Kilifi and Mombasa, and there are many more places to be visited.

The startling revelations are vindicating the fears and apprehensions of this House that public resources may not have been put to good use. We have many witnesses to appear before the Committee. The Committee has been sitting every other day including Fridays and Mondays, which are normally days set aside for Members to visit their constituencies.

Mr. Deputy Speaker, Sir, talking to colleagues before we moved this Motion, one colleague was apprehensive that probably we are seeking an extension because the Committee has not been moving with speed. Indeed, we have been sitting from 9.00 a.m. up to 1.30 p.m. every day. The only break we have been having is when we come to Plenary.

I want to thank the distinguished Senator for Tana River who joined us over the weekend. We work even on Saturdays to visit these hospitals to find out whether the people of Kenya - the taxpayers - are benefiting from this scheme that was designed and executed by the national Government ostensibly to benefit county governments. We want to see what benefits come out of it.

This is a Procedural Motion and the substance of the matter will come at the end of the sittings.

I want to encourage Members of the House that whenever we visit your counties sufficient notice will be passed on to you as we did to our colleague from Tana River County. You should be available to join us so that we can jointly work together to bring the truth to the fore.

Mr. Deputy Speaker, Sir, I know when we visited Isiolo; the distinguished Senator Halake was not with us although that is her county. It is regrettable if she was not

informed in good time but the head of the Delegation from Isiolo was with us and she happens to be the Chairperson of the Committee.

As I said, this is a procedural Motion and I urge the House to find favour with the Committee and extend the time so that we can work round the clock to achieve the set targets.

As a Committee, we have also sat and discussed that if we extend this time, our time will determine around Christmas time. The Committee has agreed that even when the House goes on recess, we shall seek the authority of the Speaker so that the Committee can continue working even through those festive season days so that by the time we resume sittings after the December Christmas Recess, the report will be ready. It will be a thorough report that will reflect on fact and truth about these equipment.

Mr. Deputy Speaker, Sir, many startling things are coming out. I want to encourage Members that we, as the team that you have entrusted with this process, will not let you down. We will make sure that the money that is being creamed off your counties - Kshs200 million per county creamed at source - must be money that can make sense in terms of expenditure of public resources and provision of services.

As I end, we have found out that equipment delivered in Garbatulla in Isiolo is still in carton boxes. It has not been installed or commissioned and is not working but the people of Garbatulla are paying. The Committee will also be bringing to this House issues of equity. How do you charge Isiolo, Lamu and Tana River the same amount of money as Nairobi, Kakamega, Kiambu and the big counties? Where is equity? You cannot say that you have picked on one or two hospitals in each county and regardless of the users, small and big counties are all paying the same amount.

If you gave a county such as Isiolo Kshs200 Million every year for four years, they will have state-of-the-art hospitals and healthcare. You cannot say the same of Nairobi with over four or five million citizens. However, there is no rationale whatsoever both in law and fact, even in economics, that the demographic profile of the country is totally ignored in the process of dealing with this MES structure.

Mr. Deputy Speaker, Sir, I want to end by urging the House that you favour the Committee with your discretion to extend the time so that we can bring to this House a reasoned and properly laid out report that will put to rest the issue and controversy surrounding MES. In cases where there will be people found to be culpable, the Committee will be courageous enough to point out the levels of culpability. We shall indicate whether it is civil or criminal culpability so that the agencies that deal with governance in this country can do their job.

Mr. Deputy Speaker, Sir, I end by inviting Sen. Omanga to second the Motion.

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

**Sen. Omanga:** Thank you, Mr. Deputy Speaker, Sir. I stand to second the Motion on extension of time.

The scope of work we have as a Committee *vis-à-vis* the timelines of 45 days we were given, we cannot be able to complete the work and do it thoroughly as it should be. We also need to see all the stakeholders involved in this MES saga. Some of these stakeholders are not in Kenya; some of them are giving flimsy excuses. As you know, we have to give a seven-day notice for any stakeholder to appear before the Committee. For

example, today we had some contractors who were to come and they were referring themselves as directors of companies while in the real sense, they are not. They have come before our Committee twice and we have been sending them away. This takes a lot the Committee's time and that is why we cannot complete the work on time.

I second.

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

*(Question proposed)*

I will allow few comments. Senators, this is a Procedural Motion. The matter is still being considered by the Committee but I will allow a few comments. Proceed, Senator Justice Madzayo.

**Sen. Madzayo:** Asante, Bw. Naibu Spika. Naunga mkono kuongeza muda kwa hii Kamati inayochunguza vifaa vilivyopelekwa katika Kaunti vya kusaidia wananchi kiafya katika kaunti tofauti katika taifa la Kenya. Ni ukweli kabisa kwamba kazi iliyopewa kamati hii nikiwa mmoja wao ni ngumu sana. Taifa nzima la Kenya limepewa vifaa kama hivi katika kaunti zote 47 vitumiwe kusaidia hospitali. Hata hivyo, uzito ni kwamba katika uchunguzi kupatikana kwa watu hawa kuja kutueleza na sisi kuenda kule kuangalia vile vifaa inachukua muda.

Kwa hivyo, ningependa kusema kwamba shughuli kama hii inatakikana iangaliwe kwa kina ili kuleta ripoti. Vifaa vingine ambavyo vinadhuru wananchi kiafya vimepelekwa katika sehemu fulani ambapo hakuna madaktari maalum. Tunauliza ni kwa sababu gani watu ambao sio wataalamu wanaruhusiwa kutumia vifaa kama vile vya upigaji picha na hawawezi kujua wataweka miale ya aina gani ambayo itaingia katika mwili wa binadamu?

Kazi iliyoko mbele yetu ni ngumu na inahitaji muda. Ninafikiria muda uliokubaliwa katika Kamati kwamba wanaomba muda wa siku 45 ni kadiri. Si muda ulioongezwa zaidi ama kidogo.

Natumaini kwamba katika muda huu wa siku 45, tunaweza kuafikiana na kufika mwisho wa safari yetu. Pia, tunaweza kuleta ripoti muhimu na iliyokamilika ya utumiaji wa vifaa hivi hospitalini.

Asante, Bw. Naibu wa Spika. Naunga mkono.

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

Sen. Wario, be brief and stick to the question of the extension of time; and not the merits of what the Committee is doing.

**Sen. Wario:** Asante, Bw. Naibu Spika. Nilipata fursa ya kutembea na Kamati hii, haswa wakati huu. Pia, nilipata fursa ya kutembelea Hospitali ya Hola, na kwa kweli, kazi inayofanywa na Kamati hii ni nzito. Hii ni kwa sababu wanatembelea zahanati zote, na kuwaongea na madaktari walioko humo. Wakitoka huko, wanaenda kuandika ripoti yao kuhusu yale waliona kule. Kwa hali hiyo, hauwezi kujua mambo haya mpaka uhusike na utembe nao. Mimi sio mwanakamati wa Kamati hii, lakini nimetembea nao. Nilikuwa nao katika kaunti za Malindi, Mombasa na Tana River. Hivyo basi, nilijua kwamba kazi wanayoifanya ni ngumu, na wanastahili kuongezwa muda ili waweze kutuletea ripoti kamili kwa kina, ili tuweze kutengeza sehemu hiyo.

Asante, Bw. Naibu Spika. Naunga mkono.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir. Since this is a Procedural Motion, I will not go to the substance.

The Committee requires that time, and they have shown that they are doing very good work. I have been following the work of the Committee, and there are instances where a simple witness requires quite some time to present what they have, and to be questioned.

On the other hand, of all the *ad hoc* committees that we have had, this Committee is dealing with a very important issue, and it should be given all the time. In fact, let them have the time added in respect to their unfinished work. However, if they are able to justify the need for more time, it will be better for them to have the maximum time and come here with an exhaustive and comprehensive report.

Mr. Deputy Speaker, Sir, if there is any Committee that will lift up the name of this Senate, it is this Committee. After the Solai Dam *ad hoc* Committee, this Committee and the Committee on Maize, this is yet another Committee that will show how effective we are in doing our oversight.

I beg to support.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Senate Minority Leader. Let us keep it short.

Proceed, Sen. Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support this Motion. This Committee is dealing with a very important issue. Even though you have advised us not to go into the content, the content does have a bearing on the time extension that is being requested.

Mr. Deputy Speaker, Sir, I am privy to the information, because I worked in the humanitarian sector and fundraised for medical equipment for a lot of our health centers, they did arrive around the same time with this MES. I remember our country literally rejecting the grant-based equipment, in favor of what we have now, which looks and smells worse, like a bad decision. It is a decision that is based on corruption, and not the best interests of our people.

Therefore, Mr. Deputy Speaker, Sir, this Committee must be given all the time, support and financial resources they need to do a good job so as to deal with this matter once and for all. Since I got to this House, we have been on this issue and, therefore, they deserve to have it concluded in a good way.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you very much. So far, so good.

Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Motion on the extension of time for the *ad hoc* Committee to investigate the MES. The reason why I support the extension of time is solely so that we can fully understand the difference between leasing and owning. When I sat at the Mediation Committee, that term was a little bit confusing to most Members. It will, therefore, be important for us to know who is at fault, in terms of this contract; is it the contractors or the national

Government? Now that the Committee has requested for more time, I would expect them to look at the entire contract so that we can ensure due process of the law in terms of core responsibilities.

Sometimes one of the challenges that we face is that when we travelled to Samburu County, we found some medical equipment in boxes. I believe that it was probably not one contractor who supplied that equipment; maybe they are from different contractors. It will, therefore, be important for us to be given a proper report that will clearly outline what each contractor supplied. That way, we can be seen to be the House of reason by how we will analyse whatever is brought to us. Similarly, we can give a proper explanation to Kenyans, particularly on the difference between purchasing consumable equipment versus purchasing a service.

Thank you, Mr. Deputy Speaker, Sir.

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

Finally, proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. I also stand in support of this Motion. I sit in this Committee, and I know that the MES is a very intricate web of contracts and subcontracts. It is now emerging that there is also another cadre of players, called the co-contacts.

Therefore, Mr. Deputy Speaker, Sir, we need time to visit as many facilities as possible, because according to records, a total of 124 hospitals are said to have benefited from these equipment. The Committee will need more time to visit as many of these facilities as possible, especially those ones in far-flung areas in our counties.

Mr. Deputy Speaker, Sir, at the core of this project is an investigation on the use of public resources in procuring these contractors. It will be remembered that the total cost of this project runs to almost Kshs63 billion. I, therefore, support the prayer by the Committee for extension of time to deal with this issue and visit as many hospitals as possible.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. This is not a matter concerning counties in terms of voting. So, the voting is by acclamation or *viva voce* vote.

*(Question put and agreed to)*

Thank you, colleagues. This is a very important exercise; so far, so good.

The *ad hoc* Committee on Managed Equipment Services (MES), the eyes of the nation are on you. We wish you all the best from the Chair.

Next Order.

### MOTION

EXERCISE BY THE DEPUTY COUNTY GOVERNORS OF THE POWERS AND FUNCTIONS  
VESTED IN THE OFFICE OF THE COUNTY GOVERNOR IN THE ABSENCE  
OF THE SUBSTANTIVE HOLDER OF THE OFFICE

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

THAT, COGNIZANT THAT, Article 179(4) of the Constitution designates the County Governor and the Deputy County Governor as the chief executive and deputy chief executive of the County, respectively;

FURTHER COGNIZANT THAT, pursuant to Article 180(6) of the Constitution, a County Governor and Deputy County Governor are elected on a joint ticket, with Article 179(5) providing that, whenever the County Governor is absent, the Deputy County Governor shall act as the County Governor;

AWARE THAT, in several Counties, Deputy County Governors have had to serve as County Governors due to the absence of the substantive County Governors, arising from ill health, incapacity or orders emanating from the Courts barring the substantive Governor from accessing office;

ACKNOWLEDGING THAT, Section 32(4) of the County Governments Act places limitations on the exercise, by the Deputy County Governor while acting as Governor, of the powers to nominate, appoint or dismiss that are assigned to the Governor under the Constitution or other written law;

NOTING THAT, other than the said limitations under section 32(4) of the County Governments Act, no other restraints are placed in law on the exercise, by the Deputy County Governor, of the powers and functions of the Governor whenever the Governor is absent;

AWARE THAT, in exercising the powers and functions of County Governor pursuant to Article 179 (5) of the Constitution of Kenya, Deputy County Governors face a myriad of legal, operational and administrative challenges, which hinder the effective functioning of the county governments and the efficient delivery of services to the public;

NOW THEREFORE, the Senate directs that the National Treasury, the Controller of Budget, the Auditor General, and the respective County Assemblies and County Executive Committee Members, work directly with the Deputy County Governor, while exercising the functions of County Governor, in order to facilitate the effective functioning of county governments and the efficient delivery of services to the public.

Mr. Deputy Speaker, Sir, the biggest challenge that we face in this country---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Olekina! From the documents before me---

**Sen. Olekina:** As amended. When I conclude---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Olekina! I am 100 per cent sure that you do not know what I am about to say. However, I can see some paper trail here. You have actually amended your Motion without saying so, which is irregular.

**Sen. Olekina:** After I had moved---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should say, 'I beg to move the following Motion in an amended form.' That should have been the opening sentence. That is number one.

Number two, that amended form, irregular as it was moved, is not supported by the version approved by the Speaker, which poses a technicality. As you are aware, the Standing Orders provide that if you want to amend your Motion after it has been put on the Order Paper and notice has been given, that shall be approved by the Speaker.

The version approved by the Speaker is not the one you have read. Therefore, you have two options. Option number one is to move the Motion as approved by the Speaker. Two, is to seek approval of the Speaker, which will not be instantaneous because it requires the Speaker to reflect on the amendment, and move your Motion once approved by the Speaker at a later time, including tomorrow. So, the choice is yours.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I appreciate your intervention. One of the challenges that I face is that the version that I signed is not the one that was brought here. So, I was actually at a loss. When I signed the document and it was sent, if there was any amended format, I could at least have been told that, that had been changed. That is what confuses me.

Mr. Deputy Speaker, Sir, I would like to seek your indulgence in moving the Motion in an amended format. If it is possible for me to do so from where I am standing. The challenge is that tomorrow I will be attending another function, where the Speaker has requested me to represent him.

*(Sen. Olekina stood in his place)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): As you know, Sen. Olekina, the approval of the amendment has to be consistent with the law, Standing Orders, practices, *et cetera*. Resume your seat for a moment; I will give further directions in a short while.

*(The Deputy Speaker consulted with the Clerk-at-the-Table)*

Sen. Olekina, as I said, the implication of your amendment requires reflection by the Speaker. However, I am looking at the Standing Orders which allow the Chair to allow a Senator to move a Motion in an amended form if the amendment does not materially alter the crux of the Motion.

Therefore, whereas your amended Motion, which actually amends one word, changes the implications of the Motion, I am convinced that it does not materially alter the crux of the Motion. However, this determination is particularly on this Motion as crafted, and does not apply to all Motions where similar words and amendments shall apply. Such other proposals for amendments, where the words involved are similar, shall be determined by the Speaker on a case by case basis.

Having said so, I direct that you can move your Motion in an amended form as proposed. Kindly proceed. Since you had done so, you do not have to repeat it.



**Sen. Olekina:** Thank you very much, Mr. Deputy Speaker, Sir. I really appreciate you allowing me to move this Motion in an amended form.

The genesis of this Motion is really on what is happening with the development of different court rulings which are coming up in this country. We are at a time where this House is developing legislations which are supposed to protect particular offices, but somehow, we forget that there are other consequences. It is said that choices have consequences. Article 179(5) of the Constitution of Kenya states as follows: -

“When the county Governor is absent, the deputy county governor shall act as the county Governor”.

Subsequently, Article 180 of the Constitution is very clear. It clearly states that a governor and a deputy governor are elected on the same ticket. In this country, we find ourselves in a situation where the courts - which is one arm of the Government – come up with very clear orders that a governor who has been elected by the people cannot have access to the office.

Mr. Deputy Speaker Sir, this governor is the same governor who appoints County Executive Committee Members (CECs) and chief officers (COs). We are in an environment where politics dictate and loyalty also rules in this country. If we find that the citizens of Kiambu County and Samburu County are suffering; it would be very wrong for us in this House, who are the people elected to defend the counties and their governments, to just sit and watch.

When the County Governments Act was enacted, I am of the view that certain things were overlooked. Although the Constitution prohibits the deputy governor from carrying out certain functions like firing CECs or those people who are appointed by the governor when he is in office, nothing else stops him from reshuffling them.

Currently, we have many problems in this country. There are so many pending bills; procurement laws and the Public Finance Management Act (PFM) have been violated. When a substantive governor is in office, some might even argue that everyone who is given business is someone who is close to that governor. All of a sudden, when the deputy governor now takes charge, because of the illness of the governor, that acting governor cannot do anything.

Mr. Deputy Speaker Sir, I decided that it is time we clarified this. People are suffering on the ground because the deputy governor is powerless. The deputy governor, having been elected on the same ticket as the governor, is not a flower-girl or flower-boy. He represents the people who elected him or her to office. We saw very well in Bomet, when the Lord decided to take the substantive Governor who had been elected, the Deputy Governor came in and took charge.

In this country because of challenges either with the Judiciary or the budget, sometimes some matters in court will not be decided expeditiously. It will take a very long time. Should we wait for five years to lapse before a matter can be determined? At the same time, should the people of Kiambu and Samburu counties continue to be dictated upon by a Governor who is sitting on the fence? I think that this House has a very good opportunity to do something about this.

I sit in the Committee on County Public Accounts and Investments (CPAIC). Whenever we ask the Controller of Budget to explain about certain things, they are

always quick to say the Governor should be the one to give us the right answers to this. However, when you have a deputy governor who is acting as the county governor and is not able to give us the answers because he is seen as a flower-girl or flower-boy, then we are really putting this country in jeopardy.

Mr. Deputy Speaker Sir, I do not wish to belabour this matter, however reading the Constitution and also the County Governments Act, nothing prohibits a deputy governor from carrying out functions which were being carried out by the governor except those which were clearly indicated in the Act.

Mr. Deputy Speaker Sir, I beg to move this Motion in an amended form and request Sen. Madzayo to second it.

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

**Sen. Madzayo:** Asante, Bw. Naibu Spika, kwa kunipa nafasi hii. Ningependa kuunga mkono na kuafiki Hoja ambayo imependekewa na ndugu yetu, Sen. Olekina.

Katika kizingumkuti hiki kwamba naibu wa gavana atakuwa hana mamlaka ama katika harakati ya kwamba atachukua ofisi nusu awache nusu, tunaona ya kwamba jambo hili limeleta hali ya sintofahamu. Kwa hivyo, Hoja hii ni muhimi ili iweze kufananua kamili ya kwamba kazi ya Gavana itaanza hapa na kuishia hapa na kazi ya naibu gavana itaanzia hapa na kuishia hapa. Hii ni kwa sababu wakati wa uchaguzi, hao wawili watasimama pamoja. Sheria inatumia neno “shall” kumaanisha kwamba ni lazima itekelezwe hivyo.

Hii inamaaniisha ya kwamba ikiwa naibu wa gavana atakuwa ofisini na hana mushkili wowote kumzuia kuingia kwa ofisi, ataweza kuruhusiwa kuwa ofisi, wakati gavana aliye katika mamlaka yuko katika sintofahamu zake za kwamba yuko katika ofisi ama hayuko. Hivi sasa, mahakama imesema kwamba magavana fulani wasikaribie ofisi zao. Lakini tunaelewa kwamba siku hizi, hata simu ama mitandao zinaweza kutumika.

Hata gavana akiwa Ulaya na mahakama imemwambia asikaribie ofisi, ikiwa naibu wa gavana hana kazi maalum ya kufanya isipokuwa kunywa chai saa nne; kungea katika mikutano ya hadhara; kupewa gari na askari, itakuwa si haki kwa mtu wa kiwango cha naibu wa gavana kuwa kama mtu ambaye hajijui mbele ama nyuma. Kwa hivyo, tunasema kwamba Hoja hii, vile ambavyo imeletwa na mageuzi yake, iweze kupitishwa hivyo.

Bw. Naibu Spika, naunga mkono.

*(Question proposed)*

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

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

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I need your guidance on a very critical issue. My brother, Sen. Olekina, has raised issues on the running of the counties, which is important. However, we need your ruling on the issue of how to remove a governor. There are four grounds that have been set out under Article 181 of the Constitution on how to remove a governor. It could either be through resignation, removal from office through judicial process, incapacity or death. The Motion by Sen. Olekina purports to say that when a governor is charged or is facing charges in a court of law, the powers that is

vested upon the office of the governor or the governor himself will cease and will be transferred to the deputy governor.

The issue of the governor and the presidency can be extrapolated. I want your ruling on this Motion. There is the principle of presumption of innocence until proven guilty. Take the example of the Governor of Kiambu or the Governor of Samburu County who are facing anti-graft charges in a court of law. Does it mean that we can now install the deputy governors as the governors and give them all the powers that have been limited by the drafters of the Constitution yet the Constitution is supreme? Does it mean or give a verdict that a governor who is facing charges is guilty?

I have seen the reliance on a subsidiary legislation. The Senator for Narok County should be aware that the Constitution is supreme and he cannot rewrite it. One can only rewrite the Constitution through a popular initiative or through a parliamentary initiative. Sen. Olekina wants to rewrite the Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you debating or you are on a point of order?

**Sen. Cherargei**: Mr. Deputy Speaker, Sir, I am raising three critical issues.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which are? I have heard you say that what Sen. Olekina's Motion is suggesting or proposing for adoption by this House constitutes to a backdoor effort to remove a governor from office, contrary to what is provided for under the Constitution.

**Sen. Cherargei**: Correct, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Then you have made your point. Do you have another point?

**Sen. Cherargei**: Yes, Mr. Deputy Speaker, Sir. The other point was on the presumption of innocence.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Does this Motion presume guilt?

**Sen. Cherargei**: No, Mr. Deputy Speaker, Sir. However, the fact that you want to confirm a deputy governor to have all the powers of a governor, who is facing charges in a court of law, means that you have already passed a verdict of guilt against the governor--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Would you like to be informed by the owner of the Motion?

**Sen. Cherargei**: No, Mr. Deputy Speaker, Sir. I do not want to be informed.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Do you have another ground?

**Sen. Cherargei**: Mr. Deputy Speaker, Sir, you are a professor of law with an illustrious career and you know that the Constitution should be supreme. Sen. Olekina has relied on an Act of Parliament and he is attempting to rewrite the provisions of Article 180, 181 and 182 of the Constitution on the issue of removal of a governor. There are two ways of amending or rewriting the Constitution. We have the parliamentary initiative and the popular initiative. I am seeking your indulgence and a ruling on this matter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Alright, Sen. Cherargei. Sen. Olekina, you have been challenged.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I respect my colleague but it is wrong for a colleague to jump into a matter without reading the Motion. This Motion is relying on the Constitution 100 per cent and not the substantive legislation.

I was very clear in my submission. I said that the difference that we have is situations where the deputy governors have not been restricted by the Constitution to carry out certain functions apart from those which are clearly indicated in the Act. My Motion, which I hope my dear brother read, states that: -

‘ACKNOWLEDGING THAT, section 32(4) of the County Governments Act places limitations on the exercise, by the Deputy County Governor while acting as Governor, of the powers to nominate, appoint or dismiss that are assigned to the Governor under the Constitution or other written law;’

There are certain limitations which are very clear, and I have acknowledged them. The deputy governor has not been limited or restricted from reshuffling the Cabinet. The Constitution under Article 179(5) gives the deputy governor the power to act as the governor when a substantive governor is not in office.

I am not suggesting that we now have more powers than the court of law when it has made a ruling. The court of law has already barred these two gentlemen from accessing the office. Therefore, should we just sit and watch as they run the county governments from outside? We live in a country where a telephone can make all the decisions. When the governor is not in office as is the case in Samburu and Kiambu counties, those people are suffering.

Mr. Deputy Speaker, Sir, I would like to clarify to the distinguished Senator for Nandi that I am not in any way attempting to bring a deputy governor as the governor through the backdoor. All I am saying is this; now that the court has barred them from accessing their offices, they cannot purport to be running the county governments from outside their offices. We need services to continue. Since both the county governor and the deputy governor were elected on the same ticket by the people and the Constitution gives the deputy governor powers to act as a governor, of course, with limitation, nothing else have they been restricted from carrying out.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No! No! Sen. Cherargei, you already raised your point of order. I heard you clearly. Unless you want to give supplementary information because the issues you raised are extremely heavy constitutional issues which the Chair must address.

**Sen. Cherargei:** I have supplementary information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the supplementary information?

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I was trying to use the courtesy of your office where we have modern equipment. I am trying to get the ruling on the issue of deputy governors and their powers to act by Justice Mumbi Ngugi.

Mr. Deputy Speaker, Sir, I want to draw your attention, even as you retreat into your Solomonic wisdom on this matter, to raise an issue on Article 179(7). The argument that Sen. Olekina wants to perpetuate is that when a governor or a deputy governor is facing charges or allegations Article 179(7) states that:-

“if a vacancy arises in the office of the county governor, the members of the county executive committee appointed under clause (2)(b) cease to hold office.”

Does it mean that by time the governor is facing charges in a court of law, that seat is vacant? We have a governor, therefore, who for all purposes should reconstitute the county executive and the running of the county government as envisaged by Article 179(7)---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Cherargei, you are trying to debate matters which are not before this House. These are matters which are out there. You are trying to debate matters about particular issues, cases, counties, governors and deputy governors, which is not the subject matter of this Motion. This Motion is about giving effect to the functions of a deputy governor who is acting as governor in the absence of the substantive governor by operation of the law.

Sen. Cherargei, you raised an important issue about whether a court order which has restricted – and I think part of it is also in the Motion or in the words of the Mover – the physical presence of a governor. That would amount to giving effect to the governor not being able to perform its functions. To me, that is the main issue. These other issues are neither here nor there. We should not even discuss those particular issues. This Motion is not even discussing any particular case. I know that the Mover mentioned examples of current cases. However, this Motion in its text, is general; it is on points of law. We should, therefore, apply the Constitution, the applicable statutes and, where possible, our Standing Orders. I am actually impressed.

I can see a request from Sen. M. Kajwang.’ Are you on a point of order, or do you want to debate the Motion? The same with Sen. Wamatangi.

Sen. Cherargei, out of your very well detailed point of order, the thing that I have picked that is important to the House is whether this Motion meets the constitutional test on removal from office of a governor. If it does not, then it means it is unconstitutional. Therefore, the Senate cannot pass an unconstitutional Motion.

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

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I was following the debate from Nakuru where a friend of mine lost the brother.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am sorry about that, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am sorry for coming late.

I have a fundamental problem with this Motion which emanates from the place that says, “Orders emanating from the courts barring substantive governor from accessing office.” The fundamental argument here is for us to ask ourselves, as the Senate; first, the debate is out there, whether the courts can bar any governor from being a governor, in the first place.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Whether they can remove a governor from office through a court order?

**The Senate Majority Leader** (Sen. Murkomen): Yes. This is because I am aware that there is a decision to be made by the courts. I may not bring the proceedings to the Floor of the House here, but there was a case of the Governor of Samburu, Hon. Moses Kasaine, where the courts issued an order barring him from holding office. They have appealed in the Court of Appeal and a decision will be made any time before next year. There was a similar case of the Governor of Kiambu, Hon. Waititu. The same will happen to all other governors, if that was to be the precedent in terms of where they are facing corruption cases.

In a Committee chaired by Sen. M. Kajwang, this House has made tremendous and serious recommendations to be implemented by the Ethics Anti-Corruption Commission (EACC) against many governors for matters related to corruption.

Mr. Deputy Speaker, Sir, the question this House should be answering is: Can a court do so? Can we, therefore, legitimize through a Motion that which is unconstitutional? From my personal position, and without interfering what is happening in the courts, I do not believe that when someone is a suspect, there are any provisions of the Constitution – from page one to the last page – that says that the President or a governor can be suspended from office.

Mr. Deputy Speaker, Sir, I really wish that Senators can take this seriously. Under Article 96, we have been elected to defend and protect the interests of counties and county governments. You have a national Government that has control of the Directorate of Criminal Investigations (DCI). You have a national Government that has a big say in the Office of EACC and where the President has the constitutional responsibility of appointing the Director of Public Prosecutions (DPP). Now, the most dangerous one is the DCI, because it is just a policeman appointed under the National Police Service (NPS).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is a police officer, not a policeman; it can be a lady.

**The Senate Majority Leader** (Sen. Murkomen): Yes; it can be a lady. Therefore, there is a danger here. Where the national Government has a fight with counties – whether political or ideological, like it has happened in the past. The danger is for this House to legitimize a process where charges will be brought against any governor and, as a result of those charges, they are told, “You must stay out of office for 5 years.” This is a constitutional coup, and this should be in principle.

Mr. Deputy Speaker, Sir, I know that my governor is under investigation and he will be appearing before the EACC tomorrow. Whatever decision the EACC makes, there is one thing that I do not agree with. I will not believe that it was intended in the Constitution that when a governor is charged for misappropriation of funds or all that, that he must leave office, including the Governor of Elgeyo-Marakwet County.

Mr. Deputy Speaker, Sir, the fundamental argument I have with this is the part that says that the governor has been barred from accessing office. This in my opinion is the fundamental position of this Motion. It is what we call the substratum of this Motion. In the absence of that provision, the last paragraph becomes superfluous because automatically where a deputy governor has been given in writing by the governor, like in the situation of Bomet County--- Before the late Governor of Bomet passed on, she had

given the powers to act in writing to the Deputy Governor, who is now the Governor. There was no problem with the ministries concerned in terms of dealing with the issues because that is already provided for in law.

It becomes superfluous to talk about Government Ministries cooperating with a governor who is acting legally, because in any case, it is legal. The reason this Motion is being brought up is where there is a grey area, which is whether a court order can bar a governor from holding office.

I have been asked in this House when you were sitting in the Chair to withdraw a Motion, which was a constitutional amendment. I really beg my colleague, Sen. Olekina, whom we sit together in the Senate Business Committee, to allow us room to ventilate over this issue. For you to give a proper ruling on that particular issue, we should stay the debate for the time being until the Speaker gives a proper rule on the constitutionality of that position. This is because the substratum of this Motion will be lost if we do not deal with that matter.

**Sen. M. Kajwang**: Mr. Deputy Speaker, Sir---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hold on, Sen. M. Kajwang.'

Sen. Murkomen, I would like to invite you to help the House. Does a court order asking a governor not to physically access his office amount to removing that governor from office? Is it your view that a court order issued directing a governor not to physically access his or her office is a removal of that governor from office, whether temporary or permanent?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, if you look at court orders or read this part it says: 'or orders emanating from the courts barring the substantive governor from accessing office.'

The office of the governor is not the building. If you say that you are not accessing the office of the governor, it is constructively. As I speak, that is the case in Kiambu and Samburu counties. Constructively, it means even an office of the Governor of Kiambu in Thika. This is because the office of governor in Thika is performing that function. It is just like saying that a judge should not access his office. Where is the office of a judge? A judge is a judge even when he is in a carpark or his house.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Even in his house. I remember in the olden days, a judge could give you orders even from his house on Sunday.

**The Senate Majority Leader** (Sen. Murkomen): Absolutely. So, constructively, first of all, the definition of what is an office of a governor is in question. Does it even include that the governor should not perform his functions like appointing or sacking a County Executive Committee (CEC) Member, or signing papers?

Mr. Deputy Speaker, Sir, it has just come into my mind that the answer to your question is in the last paragraph. The mischief that is being cured in the last paragraph, which is that the Controller of Budget, the Auditor General, respective county assemblies and CECs to work directly with the deputy governor while exercising the functions of county governor in order to facilitate effective functions.

It means that the governor is unable to do all those things. Therefore, it is not the physical office. It is not his physical presence that is being challenged here, but the performance of his function as an officer in that office. If that was not the case, then

there was no need for the last part. This is because he can still sign letters and somebody can do the documents in whatever location---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): By the way, Sen. Olekina, I want to thank you for this Motion and the Senate Business Committee (SBC) for scheduling it because it is addressing current challenges that devolution is facing. If there is a House where this should be canvassed, it is here.

The Motion is good because it allow us to make a very objective, impartial and nearly perfect findings as a House. Just jot the notes; we will give you a bit of time to respond to anything that has been said. You do not have to interrupt.

Proceed, Sen. Murkomen.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. As I conclude, in effect this Motion is answering your question in the last paragraph; that such governor, who has been barred from accessing his office, unable to work with CECs, the National Treasury, Controller of Budget, Auditor General. If it was just physically accessing office and not his functions, anyone would have taken the documents to the governor's house to sign them when required. This Motion is alluding to what is already happening out there, where the governors are being barred from performing the functions of a governor constructively.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): A follow up question, quickly. When a court of law says that a governor should not access office, does that mean that a governor should not perform the functions of that office? My understanding is that the orders were about accessing office as a criminal suspect or a suspect of a criminal process not to attend the office, which is where the alleged crimes took place. It is not the suspect being told that he cannot perform his role because he is a suspect.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am giving you this information and willing to supply the House with further information once actually collected from the proceedings of the High Court. In both cases of Kiambu and Samburu counties, the decision has already been made; it is just being appealed. However, in the decision that have been made, it has been interpreted by the courts to constructively mean failing and barring him from performing his functions. I am saying so, because if it was about evidence it would have meant protecting the information that is there for purpose of prosecution, which cannot be indefinite.

The courts would have given the DCI or DPP, say six months, to collect all the data that they want and then this person can go back to the office. If you see the indefinite nature of even those orders it means, therefore, that it is not about the evidence that is being collected. It is continuing to act as a governor to bar him from running the affairs, constructively, from the order that has created that opportunity.

Sen. Orenge said on the Floor of this House when disagreeing with the order barring governors that we may be laughing at governors, but sooner than later, we will be told that a Member of Parliament should be barred from accessing his office. You then wonder what is that accessing of office *vis-à-vis* the rule of eight sittings and so forth.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You are right, Senate Majority Leader, because there are some Members of Parliament who have been charged with criminal offenses. So, it should not be seen as a purely governors' thing.



Very well, I remember Justice Mumbi Ngugi, just to give you further areas of reflection, did actually in the process and in a short statement, give her views that certain parts of the law were unconstitutional. This is because it tries to cushion governors from what we are discussing here. In her reasoning, even though that was not canvassed before, she thinks that, that section is unconstitutional. It is contradictory for somebody who has been accused of plundering resources to be asking to be allowed to exercise functions about administration of the same resources in the same county where the accusation was made. This means it has to do with the charge and not the evidence. It has to do with the fact that a person has been charged and not the evidence.

Sen. Murkomen, one last minute so that I hear Sen. M. Kajwang' and I give the Mover ample time to respond to all the interventions.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it must be remembered that in this country we do not have a Jury. There is no pre-trial to determine threshold. The threshold for one being charged can be as low as the decision of the DPP sitting at that particular time. Neither this House nor the office of the governor has control over the collection of evidence. Therefore, there is no place where evidence is being sieved. Therefore, by the time someone is ultimately going through trial and cases are being dropped on the way and some evidence is becoming apparent, the impact on the citizen is so high.

Let me give this example. The actual quantum that the Governor of Kiambu County is dealing with; contract was said to be Kshs500 million. However, the amount that he is being accused of is about Kshs20 million. I am not saying that there is a smaller sin or crime, but just imagine the impact of maladministration in Kiambu County contributed by that decision when he is not in office. Just imagine the impact in terms of service delivery in such a county or Samburu County where the Governor and Deputy Governor are fighting. The same is happening in Kiambu.

Mr. Deputy Speaker, Sir, we, as a House, will create a very dangerous precedence if we are going to be a part and parcel of this. Since the courts will make their decision, this House will also have to make a decision thereafter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This House does not have to wait for the court to make a decision. As the protectors of devolution, we are also empowered to make our own decisions in accordance with the applicable laws and Standing Orders.

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

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

**Sen. Kajwang'**: Mr. Deputy Speaker, Sir, I have been struggling to contextualize whether the debate is really a point of order or a point of debate, but because---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is a point of order which raises a point of law that affects debate of this Motion.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, in light of the submissions and the point of order by the two distinguished Senators, allow me to also bring to the attention of the House that Article 179(5) of the Constitution talks about when the Governor is absent; the word there is "absent".

Article 182 talks about vacancy in the office of the county governor. My view, not being a legal scholar, but being average when it comes to English language, is that “absence” and “vacancy” are two different things.

Mr. Deputy Speaker, Sir, “vacancy” has been clearly defined in the Constitution. Article 182 states that:-

“The office becomes vacant as a result of death, resignation, impeachment or imprisonment for a term exceeding 12 months”.

This Motion does not address vacancy because where there is a vacancy there are clear procedures for succession. This Motion addresses absence. The reason why this Motion comes up is because the Constitution does not define what constitutes absence. We have taken a fairly narrow view because we are focused on the issues that were prompted by Justice Ngugi’s ruling on issues of state officers when they are charged. This means they have some integrity issues and, therefore, they should stay out of their offices.

There are court orders that could legitimately lead to the absence of a governor. If you look at Article 182(1) (d), the office of a governor becomes vacant only if the governor is charged and sentenced to imprisonment for a period exceeding 12 months. What if a governor was imprisoned for eight months? Is that a vacancy or an absence? In my view, that is absence. If a governor would be in jail for 11 months, should we not as Senate, then provide directions and guidance for the deputy governor to step in, not as a substantive governor, but as an acting governor because the governor is absent?

Mr. Deputy Speaker, Sir, secondly, there are cases of illness. In my County of Homa Bay, my governor has been ill and it has been in the public domain. Indeed even appearances before the County Public Accounts and Investments Committee (CPAIC) have been deferred because he has travelled. That is absence; that is not vacancy.

Finally, and this happened in this Republic, when the President was going to The Hague, that was construed not as a vacancy in the office of the President, but as an absence.

Mr. Deputy Speaker, Sir, we need to allow this debate to go on. Probably, what we need to focus on is the definition of absence away from the clearly defined circumstances of vacancy that are already in the Constitution.

If anything, the ruling by Justice Ngugi has been described as *obiter dictum* by some of us and as has rightly been pointed out it affects State officers. Governors and Senators are State officers. It is a matter at the Court of Appeal. We, probably, might want not to limit ourselves to the issues that arose in that particular ruling, but look at this matter broadly. There are many circumstances that will lead to absence of a governor.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. M. Kajwang’, you have started with a disclaimer that you are not a lawyer, but you have done fairly well. If it was in my previous life, I would have recommended you for an award of certificate in legal philosophy. Now I do not have that capacity.

If I may quickly ask you, Sen. M. Kajwang’, according to you, absence is caused by the physical inability to perform functions while vacancy is caused by legal incapacity to perform functions.

Did I understand you correctly?

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, the use of inability is tricky because that then is impeachable.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When a holder of an office is abroad then he is absent. There is a physical limitation of performance of duty and, therefore, they would appoint a deputy to act. However, vacancy implies legal incapacity meaning that office is vacant and the person holding it has no legal capacity to perform those functions.

For further reflection, let us listen to Sen. Olekina and close that matter.

Sen. M. Kajwang’, thank you for reminding us that Judge Ngugi’s observation was *obiter dictum* which is important. It was not part of the matters canvassed before the court, but it is thought provoking though.

Sen. M. Kajwang’, I have one last clarification to ask from you; do you not think if absence connotes physical inability to perform functions, it means, therefore, a court order, in my view, which limits the governor’s capacity to perform functions by saying the governor cannot access office. The office can be the physical building or it can be interpreted broadly to mean the actual performance of those functions from wherever; as in the case in Kiambu County.

Do you not think, therefore, that definition of absence that limits the governor from performing functions technically moves that issue towards creating a vacancy of a temporary nature or thereabout? Do you not think so?

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, indeed, I will not claim to have a direct answer. However, in my consideration and having listened to the challenge that you have put before us, I would say that absence is, therefore, determined by the office bearer.

In the example that I gave of the President travelling to The Hague and he decides that he is going to be absent and, therefore, in his absence, his Deputy shall assume that role. Absence shall be determined by the governor himself, and the challenge then---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can court determine absence? Can court determine an absence which amounts to limiting the functions or performance of a governor?

**Sen. M. Kajwang’:** Indeed, Mr. Deputy Speaker, Sir, assuming that a governor---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Going by your distinction between vacancy – which I found very impressive – and absence, when the court says that you cannot access the office and, therefore, according to what we are discussing, the governor cannot perform those functions, whether temporarily, permanent, long-term or short-term; do you not think that it is no longer the governor determining that absence, but a court? Where does that leave us when you look at the grounds for creating vacancy, as you rightly put it? It is either somebody was not qualified to stand for governor; resignation, death or conviction, which is a judicial determination of conviction and jailing someone for more than 12 months.

This is food for thought; you do not have to answer it now. You were still on your feet; maybe you can wind up your thoughts?

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, this is not to really answer, but just to provoke further thought. This is a conversation we have had, even within my

Committee. Under Article 182(1)(d), that conviction to a term exceeding 12 months, what happens if a governor is convicted to a term of 10 months, and the governor then determines that while he is Kamiti, he is still able to continue exercising or discharging his duties?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is permissible by law.

**Sen. M. Kajwang'**: Are you going to forcibly remove him? That is why, upon reflection---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You cannot. The same way for a Member of Parliament (MP) who is jailed less than six months. If an MP is jailed for less than six months, he does not lose his seat and there is no vacancy.

**Sen. M. Kajwang'**: Indeed, Mr. Deputy Speaker, Sir. Therefore, it will fall on the governor himself to make a determination that his 10-month jail term is going to prohibit him from executing his duty. In the case of absence, there has to be an agreement between the governor and the deputy that, indeed, I will be absent. He cannot be directed by other quarters or by the court. The court can only direct a vacancy rather than an absence.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In your view, in the case of Kiambu and Samburu counties, has the court declared a vacancy or an absence?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, in the Samburu and Kiambu cases, the courts have not declared a vacancy. In my view, the determination of the courts could lead to an absence, but it will fall upon the governor to say that, being barred from accessing office will limit my functions, as a governor. Therefore, he will then appoint or delegate his duties to the deputy.

*(Laughter)*

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

I am sorry, colleagues; we have run out of time. Sen. Olekina, we have to make a determination that helps us to move, one way or the other. Unless there is a burning issue, I want to ask Sen. Olekina to just say a few things in reply, and then I will make a ruling.

How many minutes do you require, Sen. Wamatangi because this is a point of order?

**Sen. Wamatangi**: Mr. Deputy Speaker, Sir, I will try to make them---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, how many minutes do you need?

**Sen. Wamatangi**: I can do with 15.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will give you three minutes.

**Sen. Wamatangi**: Three minutes will be a bit short.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for bringing the light note, but I will give you three minutes.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, can I indulge you to allow me to also have my take on it, just like every other Senator?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In three minutes.

**Sen. Wamatangi:** Thank you, Mr. Deputy Speaker, Sir. First, I want to allude to the fact that this House was seized of this matter even before it became a court struggle. In the last session of the Senate, in defining what the functions of a deputy governor should be, we attempted to come up with legislations. You will remember that you were the Senate Majority Leader then. However, that law never saw the light of day. I wish that was done because this would have been dealt with here.

Mr. Deputy Speaker, Sir, the point I want to make here is that, in my view, the presumed vacuum in law does not exist. The law has addressed itself to all those questions, including the question you were asking Sen. M. Kajwang', on absence and vacancy.

Mr. Deputy Speaker, Sir, because Kiambu is one of the counties that is affected by this matter, it is important to clarify. To my mind, it is clear that when a governor is facing charges, or when there is doubt on the conduct of a governor, it is in order for a governor to be charged in a court of law, and that cannot be prevented by all means. Therefore, once the governor is charged, the process of how the court determines the guilt or innocence of that person must be followed to its finality.

However, the point I want to make, with the volumes that you were asking, is on those two issues that you asked. On the question of absence and presence, first, the question of the absence of the governor is addressed in Article 179(5), where the law says that -

“When the county governor is absent, the deputy governor shall act the county governor.”

In reply to that particular provision, the law has expressed itself on what happens then, in Section 32 of the County Governments Act. The law has defined precisely what should happen, and that is why I think that the remedy or the mischief that the Motion was trying cure would be, probably, be best cured by an amendment of the law. This is because Section 32(4) of the County Governments Act says that:-

“When acting in office as contemplated in Article 179(5) of the Constitution, the deputy governor shall not exercise any powers of the governor, to nominate, appoint or dismiss, that are assigned to the governor under the Constitution or other written law.”

*(Sen. Murkomen and Sen. Cherargei consulted  
the Deputy Speaker)*

Mr. Deputy Speaker, Sir, I do not know whether we collaborated with you, because I can see that you have a lot of interference. This is the question you asked. The point I want to make very clear is on that question of absence, which is addressed in Article 179(5), which says that:-

“When the county governor is absent, the deputy governor shall act the county governor.”

That answer is provided for very clearly in the Section 32(4) of the County Governments Act, as I have quoted earlier. So, there is no vacancy or any lacuna in law to lead you to ask, "How do you act when there is absence?"

Second is on the question of a vacancy, which is also clearly defined as to how it arises. It is also answered by the Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay. What is your position?

**Sen. Wamatangi**: It is answered by a process of a sanction.

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

**Sen. Wamatangi**: Mine was a contribution, not necessarily a point of order.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, what is your---

**Sen. Wamatangi**: Mr. Deputy Speaker, Sir, my position is that I am agreeing with most of the views that have been aired here by my colleagues. One, I have expressed my concern, that in the process of charging a governor or any other person, that can be undertaken.

Mr. Deputy Speaker, Sir, on the question of whether a vacancy should be assumed by the fact that a court order has been given, and then that is predicated to mean then that the effect of when a vacancy has occurred should be assumed; my answer is that, I do not think that is the right way to go.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): All right; thank you.

Proceed, Sen. Olekina, as briefly as you can.

**Sen. Olekina**: Mr. Deputy Speaker, Sir, I have listened to the contributions by my colleagues and I am baffled because we are the House that is tasked with protecting the interests of the counties and their governments. Devolution being a new baby which is crawling, there are so many things which are unique in their characteristics. This is what in law is defined as *sui generis*. This is a situation where we have found ourselves; that a court of law which is another arm of Government has barred these governors from accessing their offices.

If you read the decision by Justice Mumbi Ngugi, she equates it to these governors having been accused of committing a moral illegality. The term she used is 'moral ill-health.' She is not saying that she is barring these people from accessing their offices entirely, but for the duration of the trial; what they have been accused of.

We are seeking to find a solution, where we have a county governor barred from accessing his office. This is where I differ with the Senate Majority Leader when he says that governors can perform their functions outside the office. They cannot do so because when you look at the circumstances that led to that governor to be barred from accessing that office, it is what the judge called 'moral ill-health.' But in this case, I am not focussing---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is okay, but those words by Justice Mumbi were *obiter dictum*, meaning they had not been canvassed and are not binding in law, to be honest with you. It is just to provoke thought. You can rely on them in that persuasive manner, but they are not binding.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, that is true. However, my issue is that a governor could be admitted in a hospital somewhere in this world and they stay there for a period where it is not defined or determined---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): As was the case in Bomet County.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, as was the case in Bomet County. What about the public interest and services to the people? Apart from a governor, even the President is not referred by the Constitution as a Chief Executive Officer (CEO). Every legislation looks at the governor as the CEO. If you look at other parastatal bodies that we have in this country where a CEO has been asked to step aside during criminal proceedings, that person has not been removed from that office.

In the case of Kenya Pipeline Company or Kenya Power Company, those two CEOs were asked to step aside from their offices and temporary CEOs were put in place, so that we do not interfere with the services being provided to the citizens.

Mr. Deputy Speaker, Sir, I request my colleagues that because of public interest and given that this is a House of reason, I want us to divorce politics from public service--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Olekina! You should not impute improper motives, unless you have proof that there has been politics by any particular Senator. This is because I have not heard any politics.

**Sen. Olekina:** That is true, Mr. Deputy Speaker, Sir. I take that back.

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

**Sen. Olekina:** Mr. Deputy Speaker, Sir, the key issue here is that this is a unique situation that we have found ourselves in. I plead with the Senate Majority Leader to think about the merits of this matter. Hypothetically, suppose we change the words "being barred from accessing the office by a court order?" What about if a person is out there ill and they cannot access the office?

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

**Sen. Olekina:** You will get your time. I think you should be patient enough because---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let him finish.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, this is a matter of public interest and has nothing to do with the position of a governor. Maybe in future some of us might aspire to be there, but we are looking for continuity. People in Kiambu and Samburu counties are suffering. Maybe another governor somewhere may fall sick. Even though the law does not spell out what should happen, I think it behoves us, as the House of reason to come up with something that comes in between.

We have heard even from the submissions from my colleagues that the deputy governor is not supposed to either dismiss or appoint a new County Executive Committee (CEC) Member. All I am asking is for you to see the logic behind continuity and public interest.

Mr. Deputy Speaker, Sir, I request that this Motion proceeds and then we can vote for it, even if calls for county governments to vote for it, so long as all of us would have been given an opportunity to try and ensure that this country maintains fiducial

responsibility. It is very sad to see deputy governors out there arguing that now that the substantive governor is out--- I have been watching the Deputy Governor of Kiambu County speaking and other people talking in the media. I have heard the Deputy Governor for Samburu saying that whatever changes they want to effect, the CECs are taking orders from the governor out there.

A couple of days ago when we were debating the issue of raising the national debt ceiling to Kshs9 trillion I quoted the President. The Chief Justice should go and sit down with him and discuss. I think it will get to a point where even the Speaker of this House would find some time to sit with the Chief Justice and the President, because they are the leaders of the three arms of Government. They should discuss and ask: "What happens in a situation like this." This is a unique position. We, as the House of reason, must come up with a unique solution to it.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I did not want to come back, but my colleague provoked me to focus on the merits. I assure you that my submissions are based on merit and something I believe in.

As you make your decision, remember that we are being invited by this Motion to act notwithstanding--- Paragraph Four of the Motion acknowledges the limitations to the functions of county deputy governor. It goes ahead to say that public offices should work with the deputy governor directly, notwithstanding the legal limitations. In my opinion, that is an amendment through the backdoor; using a Motion to amend the Constitution.

If you say, for example, that the CECs should take orders from the deputy governor and be moved, appointed and transferred--- I am just saying

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is not in the Motion; it is hypothetical.

**The Senate Majority Leader** (Sen. Murkomen): Yes, it is not in the Motion, but hypothetical. If we say, for example, that the CECs should be moved from one department to the other or given additional assignments that is taking an order from the deputy governor. The question is: Does that order or direction comply with the constitutional requirements?

We must also be careful to appreciate that telling the National Treasury and the Controller of Budget (CoB), the Auditor General and county assemblies to work directly with the deputy governors is a blanket directive by the House. Where is the limitation where there is a legal and constitutional limitation?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is captured in the Motion. One of the paragraphs there talks about County Governments Act, Section 32.

**The Senate Majority Leader** (Sen. Murkomen): It just says 'notwithstanding.' It is just recognizing---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The deputy governor can do all that he is empowered to do, except the limitation. That is my understanding.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is the drafting itself. That should be inferred. However, the last paragraph states:-

"Therefore, work with the deputy governor---



**The Deputy Speaker** (Sen. (Prof.) Kindiki): Working is just working. There is no harm in work.

Sen. Cherargei, please, make it very brief.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, Sen. Olekina has relied heavily on what Justice Mumbi Ngugi said. In her statement, she said that the orders they gave was not to remove the county governor. He went ahead to rely on Swazuri's case in terms of authorization to access his office.

In this instance, the absence of a governor to an office is created or there is controlled access by the courts. In Swazuri's case, they had said, before the Chairman of the National Land Commission (NLC) could access the office, he must get authorization from the CEO of the Ethics and Anti-Corruption Commission (EACC). That is the matter that Justice Mumbi Ngugi was ruling on, on the Governor of Samburu. We should get the difference; it was not the removal per se.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Cherargei, are you saying that that clarification means that the absence created for the governors in question was physical absence that had nothing to do with the function? Even that physical presence could be supervised as in the case of Swazuri. Is that your view?

**Sen. Cherargei:** That is my view. But interestingly enough, Justice Mumbi Ngugi questions the same that, is it practical enough, occasionally, for the CEO of the EACC to be giving authorization for the Governor?

In my opinion, the creation of absence of a Governor is not only physical but in terms of functionality of his office.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Olekina, please, approach the Chair.

*(Sen. Olekina approached the Chair)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sorry for that hiatus. As you will realise, I have allowed a lot of interventions. Points of orders are normally procedural issues; they should not take a lot of time. What has happened this afternoon is that the Point of Order by Sen. Cherargei raised extremely weighty and complex constitutional and legal issues.

The interventions and observations that arose from that point of order, from all the Senators that have spoken – including the Mover of this Motion – have even brought out the complexities in greater details and manner.

It will be some form of injustice to, in a *cavalier* manner, dispose of this matter without looking at all these aspects so that this House can help the country move forward and help devolution. I have a lot of regards for the other arms of government. We could even help courts, because they do not have the monopoly of knowledge, to try and understand, because we are the lawmakers. They just interpret what we make. We can, therefore, help them to understand the mind of the lawmakers, so that they can help this country interpret the law.

I have accordingly consulted with the Mover of this Motion. Having listened to all the Senators who have spoken – whom I thank profusely – had some consultations with the Mover, I direct that we proceed as follows. First, I direct that because Motions are

timed, the time that has been consumed in conversing the point of order by the Senator for Nandi County shall not, and should not count towards exhausting the time set for debate of this Motion. It, therefore, freezes the time.

*(Applause)*

Having said so, hon. Colleagues, I direct further that debate on this Motion proceeds, and I will say why. The reason is because this matter is so weighty, the more Senators articulate themselves on this issue, the more clarity and the more the Chair is able to clarify in his head on some of these issues, so as to offer proper guidance. This issue is best dealt with exhaustively when it is hot and live, and when a situation like this has arisen.

Because of that directive, I, therefore, direct that the debate continues. However, no voting on this Motion shall take place until the Speaker has retired and carefully considered all the Constitutional and legal issues; and provided a well-reasoned ruling.

*(Applause)*

It is upon that ruling that this House will decide whether or not--- If, for example, hypothetically, the Motion is found to be within the constitutional limits, as the Mover and other Senators, like Sen. M. Kajwang, urged, then we can vote on it and it would be a binding decision of the House. No Business of this House is binding until a vote has been taken. If, on the contrary – as has been the view by Sen. Cherargei, the Senate Majority Leader, Sen. Murkomen, and a few others who spoke – the Motion is found to have overstretched itself and infringed on any aspects of the Constitution, the Speaker would then direct what happens to such a Motion. This is because this House cannot pass an unconstitutional Motion.

Having said all that, debate continues. The usual time that is allocated to the Motion will apply. However, no division or voting on this matter will take place until the Speaker makes a well-considered ruling.

We have agreed that the Speaker's ruling be issued in seven days' time. Thereafter, depending on the ruling of the Speaker, the issues in this Motion should help this House. I have recommended to the Mover or any other Senator to take this matter forward into bringing legislative proposals that can help the country address this matter in a clearer and more positive way.

Thank you very much. It is so ordered. The ruling will be on Thursday, next week, at 2.30 p.m.

Let us continue. Where were we? Had the question been proposed? The Seconder was Sen. Madzayo. Next is Sen. Abshiro.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Motion. Sitting and listening to the interventions so far, perhaps, it is my non-legal mind, but I did not see a single reason we should not have continued with this.

Right from the beginning, it looked like very reasonable, practical and administrative Motion that, perhaps, did not have to go so deep. However, as I said, I am not a lawyer.

Reading the prayer ‘that the Senate recommends that the National Treasury and other arms of Government work directly with the county governor while exercising functions of the county governor in order to facilitate effective function of county governments and the efficient delivery of services’, I stand guided. However, I found that to be a very reasonable request and prayer by the Mover to ensure that services to the people are not disrupted.

Mr. Deputy Speaker, Sir, under the Article that gives us the mandate, the point of us protecting counties and their governments is not an end in itself. It is so that services are provided to the counties and the people. If the job of a governor and his deputy is to provide those services, I do not see why we should not give those the responsibilities to the deputy governor, in the spirit of accountability and sharing, having run on the ticket as a team.

Stories are told of spouses of governors standing in for the governors sometimes. In my county, a story was once told of the spouse of a county governor saying that county governor was absent, but since she was there, she told them some of the things he would like them to do. I think it is only fair that the office of deputy governor is also recognized as part of the executive and, therefore, bearing responsibility, as opposed to them having somebody who is absent from office giving orders.

If the people of the county were to hold their leadership accountable, who would that leader be? Even in a court of law, if somebody says that the direction was given to him by somebody who is absent, how would we hold him accountable for whatever is going to happen at the county level? This Motion is timely and seems very reasonable.

This Motion is in line with good governance, especially when you look at our organizations as systems, processes and resources that collectively provide services to our people. I do not see the reason as to why we should create a vacuum just because somebody is absent yet there is a deputy who is paid by the taxpayers. Are we saying that we should hesitate to give him the responsibilities and continue to leave a vacuum when we can actually do something about it?

I do not believe that the focus is on the physical presence, in an office, of an individual who has been barred by a judge from going to that office. I believe that it has everything to do with that office. There is a good reason as to why that person is being barred from going to that office. Probably, the judge does not want that person to tamper with the evidence or he does not want that person to exert undue influence on people who report to him. I do not think that it is the physical aspect. I think that it is the whole functionality, hierarchy and respect that come with the office of the governor that has a bearing on the functions which would then give them undue advantage. The issue of physical presence is neither here nor there. It is about the function that the person is not supposed to continue exercising.

The office of the deputy governor, by extension, does have some responsibilities even though not specifically spelt out in the Constitution hence leaving it in limbo is

disservice to the people in the counties. This Motion is not at variance. Instead, it respects those limitations, but it wants to cure the vacuum that exists.

The Governor of Isiolo County, my County, is not absent, but there is the whole issue of deputy governors that this House needs to deal with. This Motion does not take the continuum of all the issues that face the deputy governors or the county executive, but it takes care of the immediate need that we see happening in some of the counties as a result of what has been given in this Motion.

This Motion has reasonable prayers and it makes us utilize the deputy governors by giving them some responsibilities because they are paid by the tax payers. Article 96 of the Constitution states that the Senate is supposed to protect the county governments and that protection should be looked at from the interest of the public and not just from the government point of view because a government is not an end in itself but it is there to serve the people.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Can we hear from Sen. M. Kajwang'.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I rise to support this Motion.

The long illness of President Garfield in the USA led to much discussion and different shades of opinions on what constitutes a disability in the presidential office which would justify the Vice President to assume the duties of the President. This was a conversation about disability. As we have stated earlier, this Motion is not about disability or inability of a governor to carry out his functions because that is impeachable. Arising from the issue of President Garfield and, later on, there was an American President who died. In 1804, there was the 12<sup>th</sup> Amendment that came up with clear procedures on how assumption of office would be undertaken in the event of a vacancy in the office of the President.

The legislators at that time were asking themselves: "if the Vice President assumed office because of the inability of the President, should the Vice President be called the President, or should he be called the Vice President exercising the powers and duties of a President?" That is a question that we should also ask ourselves. In the case of Kiambu, would the deputy governor go around calling himself the Governor or would he call himself the deputy governor exercising the powers of the Governor?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The last part, is that equivalent to acting governor?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, if you are elected to be deputy governor and then in the absence you act as governor, I do not have the answer. I do not know whether you should call yourself a governor or acting governor, yet the title and mandate that the people gave you was deputy governor.

As you have rightly pointed out, this is an interesting matter that we cannot just debate in one afternoon or two hours and render an opinion on. I welcome your assurance that further thought will be given to this matter so that we are able to provide direction to the country.

As I said earlier, in my county, my governor has had an illness which, because he has admitted it in public, I think I can talk about it now. He has not hidden it. Recently,

when he came back from treatment, he said he had temporary blindness, but he can now see. He had a long period where he was out of the country seeking medical attention. There are those who felt that the deputy governor ought to have taken over while the governor was absent. I think there is need for some restraint. As it is now, a governor can be sick for five years. There is no recourse; we have not made any provisions.

The Governor is a Chief Executive Officer (CEO). He is the only State Officer described as a CEO. Is it feasible for a CEO of an organization to be on sick leave permanently? Definitely not. For public officers, there are clear procedures. If you are unwell - which is human and there is nothing wrong with it, is not a sign of weakness - you will be given medical leave. The duration for medical leave is defined in the public offices human resource manuals.

When you exceed a certain duration, you will be asked to proceed on further medical leave but chances are that you will be on half pay. When you exceed maybe the 100 day mark, you might be asked to step aside.

I am talking about what happens in the corporate world. If you are unwell and unable to exercise your duties in the office, it will not be acceptable that you remain unwell forever and remain on the payroll forever. This is a lacuna and it is upon us to deal with it. I do hope that this Motion will prompt that conversation.

As it is, a governor can be unwell permanently and he can be re-elected while in the hospital bed and be unwell for another five years. As you said, does that constitute incapacity? Incapacity arising out of ill health must be certified by a doctor. The governor must subject himself; he must take himself to the doctor to ask the doctor to certify him whether he is fit to hold public office. Or he must be compelled by the county assembly through the procedures laid out in the Constitution to undertake a medical examination. There is a reason why in the USA, presidential candidates are required to declare their health status so that the nation knows the kind of person they are electing.

I support this Motion because under such circumstances when the governor due to ill health is unable to continue running the county; he could make a determination on his own volition and say "because I will be going to India or Germany for treatment, I hereby appoint my deputy to act as per the provisions of the Constitution."

The other situation is where a governor is jailed for a term of less than 12 months. The 47 governors in this country are a representation of Kenyans. I do not believe that the 47 governors are equal to 47 angels; they are wrong doers; there are those who are currently facing criminal charges; there are those who are facing charges of murder; and some of them are even facing some of the most gross charges that you can ever imagine. What of if they are committed to jail for 10 months? How do we ensure that these counties continue operating? I would shudder at the thought that a governor would be chairing a cabinet session at Kamiti; or signing documents delivered to him at Kamiti. Those are the situations that must prompt the governor to designate the deputy to continue running that office.

Mr. Deputy Speaker, Sir, I believe that we have a duty. I do not know whether it will be the Committee on Devolved Government and Intergovernmental Relations, or whichever Committee it is; but governors, as Chief Executive Officers (CEOs), must be subjected to certain procedures that have been applied in the private sector and in the

public sector. That way, absence as a result of illness is not permanent; absence as a result of a jail term of less than 12 months, there can be clear provisions.

Finally, Mr. Deputy Speaker, Sir, the appeal should not just be to constitutional Commissions. Even in cases where a governor who has been charged – for example, in the case of the Governor for Samburu – the problem is not the Independent and constitutional commissions that are not cooperating. The problem could be the county assembly or the Cabinet.

We were just told a story today of a deputy governor who has attempted to reshuffle his Cabinet. He was not sacking anybody or appointing a new person; he was just saying that; “You have been in sports, now I want you to be in agriculture; you have been in education, now I want you to be in finance.” I do not think that is illegal. Of course, these are matters that are before the courts of law.

Mr. Deputy Speaker, Sir, you will find that the County Executive Committee Members themselves will go to the media and say that they do not recognize the deputy governor. Therefore, on this appeal, yes, constitutional bodies will cooperate and comply. However, if the people around them – who are supposed to exercise and implement the decisions of that deputy governor assuming the duties of a governor – do not recognize the deputy governor for that role, there would then still be a paralysis.

Finally, Mr. Deputy Speaker, Sir, on the issue of impeachment, we have set a very high threshold. We have not successfully impeached anybody, with exception of Governor Wambora, who went to court and got orders. As far as we are concerned, Governor Wambora was impeached. Where there is incapacity, we need to make sure that the procedure for impeachment, by the time that matter comes to the Senate, due process has been followed, and a governor has been given an opportunity to defend himself.

This is why I must call for the fast-tracking of the Impeachment Procedure Bill, which I am told is stuck in the National Assembly. It will provide better clarity and it would help us to deal with such situations. That is so because when a governor is facing certain problems, instead of having someone acting and the problem persists, then the assembly can take decisive action and make sure that someone who does not have such challenges is given the opportunity to run the county.

Mr. Deputy Speaker, Sir, it is embarrassing for a county to have a governor who appears in the dock to answer to charges of murder. I do not think that governor will be protecting the interest of the people living in that county.

I support, but also subject of the clarification that you will be providing, as you have promised.

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

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have less than one minute, but--

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**Sen. Cheruiyot:** I rise to oppose this Motion. I will give the reasons later.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay. Order, Members! When we resume debate on this Motion, Sen. Cheruiyot will have 15 minutes to give the reasons for opposing this Motion.

Secondly, the Mover of this Motion – and I thank you for accommodating the House and the Chair – said that he will not be in tomorrow. I would encourage this Motion to be put on the Order Paper when he is in, on Thursday, to allow him to follow the proceedings.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday 13<sup>th</sup> November, 2019, at 2.30 p.m.

The House rose at 6.30 p.m.