

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 26<sup>th</sup> February, 2020

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

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

### PRAYER

### PETITION

#### COMPENSATION FOR VICTIMS OF HUMAN-WILDLIFE CONFLICT IN LAMU COUNTY

**Sen. Loitip:** Thank you, Mr. Speaker, Sir. I beg to present a Petition in favor of the great people of Lamu.

I beg to report that I have received a Petition from Lamu County concerning the delayed compensation of persons injured or deaths caused by wildlife.

Mr. Speaker, Sir, I wish to draw the attention of the Senate to the following-

THAT, the Kenya Wildlife Services (KWS) has the mandate to conserve and manage Kenya's wildlife for the Kenyan people and the world in general.

THAT, there is an increase of wildlife in some parts of Lamu County

THAT, the increase in wildlife has brought its fair share of challenges to the people of Lamu.

THAT, farmers have found themselves at a loss as crops have been destroyed, people injured and some met their deaths.

THAT, the victims of wildlife are taken through a vicious cycle when making compensation claims; most are left with claim forms and nothing has been compensated.

THAT, we have made the best efforts to have those matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.

THAT, none of these issues raised in this Petition is pending in any court of law, constitutionally or in any other legal body.

THEREFORE, your humble petitioners, the great people of Lamu County and, more so, the Mpeketoni residents, wish and pray that the Senate investigates these matters and-

- (i) Initiates a process to have the victims of wildlife legally compensated.

- (ii) Intervenes in the matter with a view to ensuring that the process of compensation claim is easier and easily accessible; and,
- (iii) Initiates the expedition of payments for those whose compensation claims has been in the custody of the KWS.

To add on that, Mr. Speaker, Sir, with your humble indulgence, I humbly request you to look into this matter, considering that the people killed by wildlife mostly were breadwinners. They basically lived on less than a dollar a day, so their families are destroyed, financially and left astray. Also, 60 per cent of the cases in most of the hospitals in Lamu are either directly or indirectly as a result of the human-wildlife conflict.

As I conclude, as the Vice Chairperson of the Committee on Tourism, Trade and Industrialization Committee, together with my able Chairman, the Senator of Kirinyaga, we wish to humbly ask you to look into this matter. This is because people know Lamu as a marginalized county which is in the border of Kenya and Somalia. The people there are really crying, because lives are being lost. Therefore, if you can consider this matter, the great people of Lamu and Kenya at large will really appreciate.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to make some comments in support of the Petition by Sen. Loitiptip on the issue of human-wildlife conflict.

Mr. Speaker, Sir, this Petition is not something new. We have all discussed about issues regarding our need to preserve human dignity, and also our desire to enjoy the gains that we get from the tourism sector. That is why we have turned everything into a commodity.

Mr. Speaker, Sir, the issue of human-wildlife conflict is something that can easily be resolved. I request the Committee that will be tasked with that issue for the people of Lamu to extend it further to other regions, like in Maasai Land – Narok, Kajiado and Samburu – and also Isiolo, where tourism thrives. At any given time in these places, there is an issue of human-wildlife conflict. However, the biggest question to ask is, “Why do we always have this? Is it the animals to blame; or is it our actions, as human beings?” I dare to say that it is our actions, as human beings, in encroaching into the lands which had been reserved as wildlife corridors.

Therefore, Mr. Speaker, Sir, the only way which I hope this Committee will look into is how they can not only compensate these people, because everybody is talking about compensations. Even today, in our energy sector, everybody was talking about oil spillage compensation. Therefore, compensation is not going to be the solution.

The solution is how to ensure that there is a 10 kilometre wildlife corridor where the wildlife can roam freely without anybody stopping them by constructing a house.

Mr. Speaker, Sir, as you commit this Petition to a Committee, we have to come up with measures to stop the issue of human-wildlife conflict. I fully support it and I hope

that the Committee will extend to Narok and Kajiado counties, where there are similar issues.

Mr. Speaker, Sir, the Attorney-General had been asked to compensate, because there are many cases. Many people have been killed in Narok County. Every so often in Kajiado County, you will hear farmers saying that they will kill all the lions, because they destroy their livelihoods. It is not an issue of compensation, but finding a lasting solution. The Committee should, therefore, look into how certain areas can be reserved as wildlife corridors and no human settlement should be allowed there.

Thank you, Mr. Speaker, Sir.

*(Interruption of debate on the Petition)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM GHANIMA EL-MARZUK  
GIRLS SCHOOL, KAJIADO COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Ghanima El-Marzuk Girls School in Kajiado County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them; and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

*(Applause)*

*(Resumption of debate on the Petition)*

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to support the Petition from my colleague. Before I say anything, I welcome the students from Kajiado County. They need to learn by seeing how their leaders do things. They should dream to be leaders and politicians of tomorrow. Now that they have stepped into this House, they should think like the people in this House. I wish them all the best.

Mr. Speaker, Sir, I support the Petition that was brought by Sen. Loiptip and thank him for highlighting the issues. We have been talking about having animal corridors where human-wildlife conflicts exist. The scenario is no longer the same, because it seems to be shifting.

A few months ago, a lion was roaming in Uasin Gishu County, but lions are rare there. They used to be there during the days of the Nandi rebellion against the construction of the Kenya-Uganda Railway, when we had the man-eaters. We thought that the savanna would be over, until recently when we had a marauding lion that crisscrossed the whole of Uasin Gishu County, attacking livestock. It took about two weeks before it was seized. We have not heard of any compensation for the people who lost their livestock; things just went quiet.

I am raising this because the Ministry in charge of wildlife should have standards and regulations on how to deal with human-wildlife conflicts. There should be a standard way of compensation known to everybody. In this country, wildlife generates income for the nation, and it is one of the leading earners of foreign currency. Therefore, we should have regulations that address such eventualities when they happen.

Better still, the Ministry of Tourism and Wildlife has been doing exhibitions internationally. I keep on wondering why they cannot spend part of that money to fence off the areas where we have wildlife. For many years, we have been told that Maasai Mara National Reserve and the Tsavo National Parks are too large to be fenced. Maybe that is the way to go, because conflicts have not yielded anything. People have lost their loved ones and livestock. Sometimes we hear of elephants clearing a whole field of maize. Therefore, the Ministry should take this issue very seriously; not only to compensate people, but to also ensure that they have ways of protecting the animals, so that animals and human beings stay where they belong.

Now that we have solar electric panels, why can we not have solar fencing around our parks? We know it is done in other parts of the world where they have electric fences and animals remain in the parks. It is important that we contain animals and make sure that we protect our people.

With those remarks, Mr. Speaker, Sir, I beg to support, and hope that the Committee will go deeper when looking at this issue. They should not only look at compensation, but also come up with a way forward that will enable us to protect people before conflicts arise.

**The Speaker** (Hon. Lusaka): I can see a lot of interest; so, I will allow you three minutes each. Let us start with Sen. Pareno.

**Sen. Pareno:** Mr. Speaker, Sir, I join you to welcome the students from Kajiado County. I ask them to take note of what we are doing today, so that they learn how the Senate works. At the end of the day, they will be better citizens. They should feel at home.

Mr. Speaker, Sir, last year, I requested for a Statement on human-wildlife conflicts after four people were killed in Kajiado County. We even made an engagement with the Cabinet Secretary (CS) for Tourism and Wildlife, who is hon. Najib Balala. However, to this moment, we still have problems throughout the country.

Mr. Speaker, Sir, I have had to call the Ministry every week, because elephants are turning wild and the children cannot even go to school. They are destroying all the crops and water points. The wild animals have killed several domestic animals. Just the other day, a young man lost a whole herd of 26 sheep and goats, but there seems to be no intervention. Officers of the Kenya Wildlife Service (KWS) only rush to the ground using helicopters when an elephant has been killed. However, when people are killed in Lamu, Kajiado, Makueni and Narok counties, you do not see those helicopters.

Mr. Speaker, Sir, we are tired of human-wildlife conflicts. If they cannot handle them, they should then let us know how we can chase away these wild animals from our farms. The wild animals feed on our domestic animals and crops, drink our water, and lick salt from our domestic animal troughs.

Sometimes last year, I also requested for a Statement on a disease called malignant catarrhal fever that, to this moment, does not have treatment. We lose animals from February to July because our animals intermingle with the wild animals. However, nobody cares about the losses we get because of the wild animals. I, therefore, support this Petition by my brother from Lamu, because we are all suffering.

Mr. Speaker, Sir, I formally want to report to this House that after I requested for a Statement about a young man who was mauled and killed by the lions, the head is still preserved at a mortuary in Machakos, accruing bills to this moment. The KWS and the concerned Ministry have done nothing about the DNA, but they said that they need to identify that person for purposes of compensation. Therefore, as the Committee goes to work on this issue, I request that we are updated about the insurance, because we were informed that the CS promised that they will come up with an insurance scheme for purpose of compensation.

By the end of last year, they had also promised that they were going to pay all the people that they owed in terms of compensation.

*(Sen. Pareno's microphone went off)*

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, let me also join you in welcoming the students from Ghanima El-Marzuq Girls High School, Kajiado County. It is the only girls' school I know about, and I want to encourage them to take their studies seriously. I welcome them to the Senate of Kenya because they are future leaders in the making. So, take your studies seriously so that you will contribute to the future of this country.

Mr. Speaker, Sir, the issue of human-wildlife conflicts is a serious matter. The KWS has the mandate to take care of the wild animals, which are our heritage. However, we cannot allow them to be roaming around, damaging farms and killing people. Something must be done. I urge the Committee which will deal with this matter, to get to the root cause of this conflict. We must protect the wildlife against human beings and their properties.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for this opportunity. Let me also join you in welcoming the students from Ghanima El-Marzuq Girls High School, Kajiado County into this Senate. I am sure they will learn a lot with regard to how women are active in leadership.

Mr. Speaker, Sir, I truly support Sen. Loitiptip for coming up with this Petition. A Petition of this nature has been brought on the Floor of this House before. At one point, I remember Sen. Mwaruma talking about it. I do not know the action which has been taken since that time. I am happy because all petitions brought here by Senators serve the intended purpose.

Right now, we have been talking about the issues of human-wildlife conflict, but no action has been taken. Some our people have lost their limbs, eyes, heads and other parts of their bodies, but they have never been compensated. They remain with those scars in their lifetime. We know of people who are now living with disability because they were maimed by wildlife.

Mr. Speaker, Sir, there is need for compensation. We, as a country, cannot run away from it. Human life is precious and it cannot be compared to that of wildlife. Why should we continue to protect animals at the expense of our people? There is need for us to fence off forests, where these animals are. Yes, it true that these animals attract tourists to come our country, and we earn foreign exchange. However, if the disadvantages of tourism overrides its advantages, then we need to think about the whole issue of tourism.

Mr. Speaker, Sir, I urge the Committee on Tourism, Trade and Industrialization to take up this matter seriously, and ensure that all key stakeholders appear before it, and we will deliberate and see what has been done. There is need for the Senate to make an intensive follow up for all the Petitions that come on the Floor of this House, so that we serve *wananchi* better. Kenyans are looking at us to see what we are doing, as a Senate. We should not be a toothless bull dog, and watch helpless as *wananchi* continue to suffer.

Thank you, Mr. Speaker, Sir. I beg to support this Petition.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir, for giving me this chance. Let me also join you in welcoming the girls from Ghanima El-Marzuq Girls High School, in Kajiado County. I encourage them to work hard so that in future, they come to this House as Senators.

Mr. Speaker, Sir, I thank the Senator for Lamu County for bringing to the fore the Petition on human-wildlife conflicts. This is a challenge, not only in Lamu County, but also in other counties. It is common to see elephants destroying maize farms in Bomet County. We have had cases of lions mauling and maiming our people and their animals. Recently, 30 sheep were eaten up by hyenas. However, the Ministry concerned takes a long time to compensate victims. When our people kill animals in retaliation, they are arrested. We all know that our animals are a symbol of wealth to our people. Crops provide us with foodstuff, and when they are destroyed by wildlife, our people suffer a lot.

Mr. Speaker, Sir, there are very many ways of ensuring that we prevent this conflict. First of all, we need to fence off the forest areas where these animals are. We can also use electric fences, which will prevent and protect animals from accessing areas with human habitations.

Mr. Speaker, Sir, as I said earlier, the other challenge is that Government takes long time before it compensates people who have been affected by wildlife. Based on the compensation structure, the amount that is used to compensate these people is very low. There is need to address it and enhance it accordingly.

Mr. Speaker, Sir, I would like to encourage the Committee that will look into this particular Petition to seriously address the issue of compensation. Compensation needs to be commensurate with the damage or death caused by wildlife. Currently, the compensation amount is very little. Some people have lost lives and it takes a long time for their next of kin to be compensated. Eventually, when the compensation comes, it is very little.

Mr. Speaker, Sir, this is high time---

*(Sen. Milgo's microphone went off)*

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity. Let me, first of all, join you in welcoming the students from Ghanima El-Marzuq Girls High School, Kajiado County. I must say that they are well groomed and very smart. I know that they are also working very smart so that they can achieve what they went to do in school; and finally join the Senate leadership.

Secondly, I must say that for a long time since I joined the Senate, I have been raising this issue of human-wildlife conflicts. The issue is rampant in most parts in the country. The importance of wildlife cannot be gainsaid, given that Kenya is the home of the Big Five; that is the lion, elephant, rhino, buffalo and giraffe. These animals attracts tourists from all over the world, and they are very important as a tourist attraction.

However, when crops are destroyed by wildlife and people are killed, it takes a long time for them to be compensated. I am, therefore, proposing an amendment to the Wildlife Management Act. The Act envisages compensation for people, crops and animals that are either killed or destroyed by wildlife. However, there is no timeline given for that compensation. It takes a long time for compensation. We want to put a timeline – either three or four months – after you put your claim, so that you are paid. I would like to say that the KWS and the Ministry of Tourism and Wildlife has not done enough in terms of working hard to compensate our people.

At one time, I brought a Statement here asking the Ministry to tell us how much is earned, for example, from the Tsavo National Park. It is sad to say that the answer that I was given is that we earn Kshs50 million from the park. When I asked about how they arrived at that figure of Kshs50 million, I was told that the amount is from the land rates which the hotels pay. I then asked about the bed capacity, the Value Added Tax (VAT) that is charged; and the Pay As You Earn (PAYE) deducted from the employees.

Mr. Speaker, Sir, I know that our Committee on Land, Environment and Natural Resources and the Committee on Tourism, Trade and Industrialization might be involved in this, depending on where the Petition will go. I promise that we will do a lot of work to ensure that the people of Lamu County and other parts of Kenya, like Taita Taveta---

*(Sen. Mwaruma's microphone went off)*

**The Speaker** (Hon. Lusaka): The time for that is over, unfortunately. We have to make progress. Those who have spoken, have spoken on behalf of all of us.

Hon. Senators, pursuant to Standing Order 232(1), the Petition is required to be committed to the relevant Standing Committee for consideration. In this case, I direct that the Petition be committed to the Committee on Land, Environment and Natural Resources. The Committee is required, in not more than 60 calendar days from the time of reading the prayer, to submit a response to the Petitioner by way of a report to the Petitioner, and laid on the table of the Senate pursuant to Standing Order 232(2).

Thank you. Next Order.

**PAPER LAID**

## THE SENATE CALENDAR FOR THE 2020 SESSION

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday 26<sup>th</sup> February, 2020.

The Senate Calendar, Regular Sessions for the Fourth Sessions, February to December, 2020.

Thank you.

*(Sen. Murkomen laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Let us move to the next Order.

**NOTICE OF MOTION**APPROVAL OF THE SENATE  
CALENDAR FOR THE 2020 SESSION

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

THAT, pursuant to Standing Order 29(1), this House approves the Senate Calendar Regular Sessions for the Fourth Session – February to December, 2020, laid on the Table of the House on Wednesday, 26<sup>th</sup> February, 2020.

Thank you.

**The Speaker** (Hon. Lusaka): Yes, Senate Majority Leader. Next one.

**NOTICE OF MOTION OF ADJOURNMENT UNDER  
STANDING ORDER NO.34**TRANSFER OF FUNCTIONS FROM THE NAIROBI CITY COUNTY  
GOVERNMENT TO THE NATIONAL GOVERNMENT

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

THAT, pursuant to Standing Order 34, the Senate adjourns to discuss a definite matter of urgent national importance; namely, the transfer of functions from Nairobi City County Government to the national Government.

*(Several Senators stood up in their places)*

**The Speaker** (Hon. Lusaka): Okay. I notice there is enough quorum for that. So, this Motion will come up at 3.30 p.m.

Let us move to the next Order.

Proceed, Sen. Sakaja.

## STATEMENTS

### TRANSFER OF FUNCTIONS FROM NAIROBI CITY COUNTY TO THE NATIONAL GOVERNMENT

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 47(1), I wish to make a Statement on the transfer of functions from the Nairobi City County Government to the national Government.

Yesterday, the national Government announced that an agreement had been reached between itself and the Nairobi City County on the transfer of certain functions from the Nairobi City County Government to the national Government, pursuant to Article 187 of the Constitution of Kenya. Since this announcement was made, there have been several reactions by leaders, political pundits and residents of Nairobi City County.

Mr. Speaker, Sir, I wish to state that I have on several---

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

**The Speaker** (Hon. Lusaka): What is your point of Order?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, this is just for orderliness, because you have approved a Motion by the Senate Majority Leader on issues raised by Sen. Sakaja on Nairobi City County. I am just wondering whether for 30 minutes, Sen. Sakaja will take the Floor and then Sen. Murkomen will do another at 3.30 p.m. I thought you would guide us, on that so that we do not repeat ourselves.

**The Speaker** (Hon. Lusaka): He requested for a Statement; so I have just allowed him to read through the Statement. However, comments will be made during the Motion. So, there will be no comments at this stage.

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

**The Speaker** (Hon. Lusaka): What is your point of Order?

**Sen. Khaniri:** Mr. Speaker, Sir, I support the point raised by the Chief Whip, Sen. Mutula Kilonzo Jnr. You have just approved debate on the Motion on the same matter that the Senator is raising.

Mr. Speaker, Sir, I will need your attention so that you can make a ruling. I am just wondering if what Sen. Sakaja is doing is not a violation of the provisions of our Standing Order 94. I want you to just go through that Standing Order, and then you can advise the House. To me, what he is doing amounts to anticipating debate, which is prohibited by our Standing Orders. It will be wrong for him to continue with that Statement.

**Sen. Sakaja:** Mr. Speaker, Sir, before you make your ruling---

**The Speaker** (Hon. Lusaka): I can also see Sen. Halake with a point of Order.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, Standing Order 94 is about Members speaking on or debating something that is going to come to the Floor of the House by way of a Motion or a Bill.

I am using Standing Order 47(1) to make a Statement on a matter of countrywide and, in fact, international concern, as the Senator for Nairobi City County. I am not debating and I do not know what Motion is coming, but I am making a Statement as a Senator; it is not anticipating. I even requested to make this Statement before I knew there was an Adjournment Motion.

Mr. Speaker, Sir, when the Adjournment Motion comes to the Floor of the House, I will then debate, just like any other Members. However now, I need to make my Statement as the Senator for Nairobi City County, because the residents of Nairobi City County also want to hear my voice substantially. Also, for the record of the House so that in future, it will be known that when such an issue came to the House, the Senator for Nairobi City County must have spoken to it substantively. That is a right that I do not wish to leave out or abscond from, because I am the Senator of this County. So, I must make my Statement and my position known on this matter.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Halake.

**Sen. Halake:** On a point of order, Mr. Speaker, Sir. Would it be in order for the Senator for Nairobi City County to be given a chance just before the Adjournment Motion? That way, there will be a flow to it as well, but he still gets a chance to speak to this substantially, as he has requested. I believe that maybe his Statement was requested before the Adjournment Motion. Therefore, we can have a real deal that does not disrupt and then other items come in between.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, even before I refer to the Standing Orders, there should be some rationality in debate; and that is why we have Standing Orders. I had thought of another way of dealing with this matter, because there is a substantial question. So, it cannot be dealt with piecemeal by the Senator for Nairobi City County, and piecemeal by the Senate Majority Leader. In fact, this matter required a substantive Motion. It is not a Nairobi City County matter.

I am very glad about Sen. Khaniri's knowledge of the Standing Orders. I think he is a true heir to the late hon. Martin Shikuku.

Mr. Speaker Sir, a notice of a Substantive Motion has already been given. Although it is a Motion on an urgent matter of national importance, but it is still a Substantive Motion.

*(Sen. (Prof.) Kindiki consulted the Speaker)*

I would like the Deputy Speaker to allow me to make my point.

Mr. Speaker Sir, Standing Orders 94(1) and 94(2), are very relevant. Looking at Standing Order 94(3), it states-

“In determining whether a debate is out of order on the grounds of anticipation, regard shall be had to the probability of the matter being brought before the Senate within a reasonable time”.

That reasonable time is 3.30 p.m. What I plead is that we roll this into a debate on the Substantive Motion, and that Sen. Sakaja is given prime time – just like I was consulting with the Clerks to be given prime time – because this matter is so crucial that we cannot handle it piecemeal.

Although somebody makes a Statement under Standing Order 47, the moment he starts reading that Statement, it becomes the property of the House. We must comment by the tradition of the House. Therefore, I urge that you give him more time to discuss this issue of Nairobi City County, and that each member gets at least 10 minutes. This is because it is so critical, and it is beyond Nairobi and Africa. This is an international issue that we have to deal with.

*(Applause)*

**The Speaker** (Hon. Lusaka): Order, Members! Having gone through the Standing Orders, and listening to the views of the House, I direct that Sen. Sakaja will be given the first priority when debate starts on the Motion.

Next Statement. Proceed, Sen. Halake.

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

**The Speaker** (Hon. Lusaka): What is your point of order? I have made a ruling on that.

**Sen. Sakaja:** Mr. Speaker Sir, I seek further guidance. Of course, the Speaker can never be out of order. Your ruling is as it is, but when the Motion comes, will I read my Statement or debate? This is because I have a Statement, but I would also want to debate based on the discussion that goes on – as has been the tradition – as the Senator of the primarily affected county. Sen. Orengo has said that it is an international issue.

I would also want to speak last to respond to some of the questions asked, or to give clarity to what I might know is going on in Nairobi City County. Will I be allowed to do both? I know that the Standing Orders say that you cannot speak twice on debate. If we follow the strict reading of Standing Order 47(1), a Statement is not a debate. I am not trying to debate; I am just giving a Statement.

That notwithstanding, seeing that you have already given a ruling, will I be allowed to give my Statement under Standing Order 47(1), even if I read it tomorrow? This is because I need to give this Statement for the record of the House and for posterity. Even as we debate later, I must give this Statement on the Floor of the House, as the Senator of Nairobi.

**The Speaker** (Hon. Lusaka): When the debate starts, you can debate, then you can give your Statement tomorrow or any other time. You will be heard.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker Sir.

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

**The Senate Minority Leader** (Sen. Orengo): I agree with the position that the Senator for Nairobi City County has taken. This is because there will be no resolution for the debate that we are going to have on this urgent matter of national importance. We will debate and talk, but there will be no resolution. However, out of his Statement, there can

emerge a way forward, subject to your direction. I think that, that will be a better avenue to follow, for some order in the House.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, you will make your Statement tomorrow, but you will just contribute to the debate today.

Proceed, Sen. Halake.

STATUS OF IMPLEMENTATION OF AMENDMENTS TO  
THE MARRIAGE ACT 2014

**Sen. Halake:** Mr. Speaker, Sir, pursuant to Standing Order 47(1), I rise to make a Statement on an issue of a general topical concern; namely the status of implementation of an Amendment to the Marriage Act, 2014, with specific reference to the revision that required Muslim brides to declare their virginity, or lack of it thereof, on the marriage certificate.

Mr. Speaker, Sir, Article 27 of the Constitution states that every person is equal before the law; has the right to equal protection and equal benefit of the law. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.

Mr. Speaker Sir, the amendments to the Marriage Act, 2014, in December 2017 called for the publication of a new Islamic Marriage Certificate to protect Muslim brides from discrimination, indignity and embarrassment of having to publicly declare their virginity status on a legal document used in seeking citizenry services.

It is of great concern that several years since the amendments were made to the Marriage Act 2014, specifically to the Islamic Marriage Laws abolishing the virginity declaration requirement for Muslim brides on the marriage certificate; there has still been a continued use of the old marriage certificate. This is a clear breach of law, and it is inconsistent with our Constitution.

Mr. Speaker Sir, many Kenyan women of Islamic faith have expressed concern on why the new changes have not taken effect to reflect on the marriage certificate. Given the discrimination, indignity and denial of rights arising from the matters I have raised, I wish to request this House, if it sees it fit, to-

- (1) Investigate the issue and establish the reasons for the delay and once established, hold to account the person(s) responsible;
- (2) inquire from the Chief Justice, whose office the Chief Kadhi's Court falls under, on the reasons why the changes have not been effected years on, and when the new certificate is expected to be published; and,
- (3) call upon the Attorney-General and every other concerned authority to publish the new certificate in the shortest time possible.

Mr. Speaker Sir, it has been three years so far, and nothing has been implemented. Three years is far too long to not have implemented a change that protects Muslim brides' right to equality and privacy. Parliament should not legislate in vain. The laws of

the land should be adhered to and be fully implemented. Therefore, the requirement of requiring Muslim brides to declare their virginity on their marriage certificates, and use those certificates to go for different offices is discriminatory and should end.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker Sir, I must confess that it is the first time for a long time – and it is good to be alive at this time – to hear that there is a certificate that exists in Kenya that requires a lady to show whether she is a virgin or not. It is truly a good time to be alive.

If that is a tradition, that tradition is unconstitutional by virtue of the 2010 Constitution. That requirement is a violation of the right to privacy under this Constitution, and it should be declared as such. I am not even sure why you require three years – a declaration and a Statement from his House is enough to say that one cannot ask--- In any event, I do not know whether the registrar has any mechanism of proving that, that fact is existing or not.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATIONS OF TEACHERS AND STUDENTS FROM VARIOUS SCHOOLS

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students from Tangaza University College, Nairobi County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I would also like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Discover Lifespring Chapel School, Machakos County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

*(Resumption of debate on Statement)*

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I thank you for giving me the opportunity to add my voice to the statement by Sen. Halake. It is a sorry state that women and girls need to declare their virginity publicly before they are married. There are many ways in which girls can lose virginity. Some of the ways include sporting, accident, rape and many other ways. We cannot blame someone for rape. No one chooses to be raped. Rape victims should not be hindered from getting married. This clause is discriminatory. I urge the Senate to interrogate it because we do not want our young girls to fail getting married because of such clauses.

There is danger in people feigning virginity by undergoing reconstructive surgery. By the time---

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

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

**Sen. Kinyua:** Mr. Speaker, Sir, there are many Somalis in Laikipia County. Last time I attended a Muslim wedding, I understood that the virginity they refer to here is not biological, but that a woman should not have been married before.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, Sen. Halake is a Muslim woman and has clearly described the virginity.

I am of the opinion that men should also declare their virginity. Men should declare publicly that they are virgins and that they have never tasted anyone.

*(Laughter)*

This clause is discriminatory and it should not be accepted anywhere in this Republic. The marginalized community are marginalizing the women further

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

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

**Sen. Sakaja:** Mr. Speaker, Sir, for the benefit of the House and this debate, Sen. Mutula Kilonzo Jnr. and Sen. Kinyua has spoken on their very little capacity on issues of virginity, I request that we give this debate to the ladies first before men have their say. As you heard, the comments from Sen. Kinyua are completely off the mark. He is making Sen. (Dr.) Musuruve talk of things such as testing virginity yet that is unparliamentarily. The people who have capacity to understand this issue should be allowed to speak first. The rest of us who are the cause of lack of virginity can speak later.

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

**The Speaker** (Hon. Lusaka): What is your point of order Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Speaker, Sir, Sen. Mutula Kilonzo Jnr. is a chairman of a very important SACCO in this House. We had sent him to speak on our behalf.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Musuruve, kindly conclude.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, as I had mentioned earlier, testing has an inferential and not just the connotative meaning. This clause needs to be rethought. We must work with speed to ensure that this clause is either removed or inserted another clause to state that men should also declare their virginity publicly.

**The Speaker** (Hon. Lusaka): Your point is noted. You do not need to belabor it. Kindly proceed, Sen. Orenge.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, I will not declare my status because it is presumed. If there is anybody who can throw a stone, let him rise up. This is a serious issue.

I like what Sen. Sakaja has said in relation to some of the comments that have been made. This is a very serious issue in a modern, democratic and civilized nation that

we can still have in a statutory form which is part of the law of the land requiring a declaration of this nature to be made. It is a shame. I wonder why the registrar of marriages would want to know the status of a lady who is duly married; this is something out of character in the modern society.

I am fortified that in the general interpretation of the law, anything that is repugnant to morality or justice is normally interpreted as null and void. I hope this matter will require the registrar of marriages to be brought before the Committee on Justice, Legal Affairs and Human Rights to tell us why that requirement is still in those statutory reforms. If it is, it should be revised---

**Sen. (Eng.) Mahamud:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. (Eng.) Mahamud?

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, while I appreciate the Statement request by Sen Halake, who I respect so much, some things are personal. A lady is either a virgin or a widow.

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

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

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I am on a point of order.

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

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, the Senate has better things to discuss instead of discussing personal choices. Even though people have rights, the choices of a society must be respected. We cannot discuss something that a large section of the society subscribes to. Let us not trivialize the issue on virginity in this Chamber.

**Sen. Were:** On a point of order, Mr. Speaker. I would like to tell Sen. (Eng.) Mahamud that virginity is not a personal choice because it is in the law. Muslim women have no choice because it is in the law. Sen. Halake is seeking to have that clause changed.

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

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

Mr. Deputy Speaker, Sir, it is sad to learn that our girls of Muslim faith are required to get a certificate of virginity before marriage. It is a retrogressive practice and it is surprising that it has been allowed to go on for such a long time. I thank Sen. Halake for opening the eyes of those of us who have no idea what happens with the Chief Kadhi. The Muslim girl in this country should be very proud of Sen. Halake.

As Sen. (Dr.) Musuruve stated, virginity can be lost through various ways. You can never remember how exactly you lost virginity. Therefore, for one to be required to put on record, it is absurd, weird and animalistic. No human being should be subjected to such a practice. We all have a right to privacy and this law is an invasion to that privacy.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, that is the end of that particular matter.

I will defer the request of statement by Sen. Loitiptip and Sen. (Dr.) Musuruve because I want us to move to the Adjournment Motion.

STATUS OF THE LAPPSET PRESIDENTIAL  
SCHOLARSHIP PROGRAMME IN LAMU COUNTY

ESTABLISHMENT OF YOUTH DEVELOPMENT  
CENTERS IN THE 47 COUNTIES

*(Statements deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, before we go to the Adjournment Motion, I will allow the Senator for Taita Taveta County, Sen. Mwaruma, to read out his statement in one minute and there will be no observations on his statement.

LAND ADJUDICATION AND ALLOCATION IN  
MWAKINGALI A, TAITA TAVETA COUNTY

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir. I stand pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding land adjudication and allocation in Mwakingali A in Voi Sub-County, Taita Taveta County.

In the Statement, the Committee should:-

1. Explain the cause for the delay in surveying and titling parcels of land in Mwakingali A.
2. State the commencement and completion dates for the survey of parcels of land in Mwakingali A.
3. State when residents of Mwakingali A will be issued with title deeds.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Many thanks. Chairperson of Land, Environment and Natural Resources, take notes and liaise with the Senator.

Next Order.

It is now approximately 3.30 p.m. This is the time allocated for the Adjournment Motion. Therefore, I call upon the Mover of the Motion, the Senate Majority Leader to move the Motion.

**MOTION FOR ADJOURNMENT  
UNDER STANDING ORDER NO.34**

TRANSFER OF FUNCTIONS FROM THE NAIROBI CITY COUNTY  
GOVERNMENT TO THE NATIONAL GOVERNMENT

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to move this Motion.

I beg to move the following Motion:-

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THAT, pursuant to Standing Order 34, the Senate do adjourn to discuss a definite matter of urgent national importance, namely transfer of functions from the Nairobi City County Government to the National Government.

I know the Standing Orders are clear about moving Motions and debates. In this very exceptional situation, I would like to ask for your indulgence under Standing Order No.1 for me to be able to reflect on my notes while moving this Motion because I spent some time doing some research on this issue. That will save me the time considering we have only 10 minutes and reading will make it very fast for me to move this Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Speaker has discretion to allow the Mover to read. In the circumstances you have explained, I will exercise that discretion in your favour.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I appreciate.

As hon. Senators are aware, yesterday, Tuesday---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Have you moved the Motion?

**The Senate Majority Leader** (Sen. Murkomen): I have, Mr. Deputy Speaker, Sir.

As hon. Senators are aware, yesterday, 25<sup>th</sup> February 2020, in the afternoon, the nation was informed through a Press Statement by the Office of the Spokesperson, State House, Nairobi; that in an agreement signed in State House on 25<sup>th</sup> February 2020, by Governor Mike Mbuvi Sonko and Devolution Cabinet Secretary, Eugene Wamalwa, with the concurrence of His Excellency the President, certain functions of Nairobi County Government had been transferred to the national Government, pursuant to Article 187 of the Constitution.

The Press Statement further indicated that the national Government would take over the following functions of the Nairobi City County Government -

- (1) County health services;
- (2) County transport services;
- (3) County public works, utilities and ancillary services; and,
- (4) County planning and development.

The Press Statement said that it was intended that Nairobi County residents received efficient services and it came as a breakthrough in running of county services that had ground to a halt.

As hon. Senators are also aware, Gazette Notice No.1609 dated 25<sup>th</sup> February 2020 was published seeking to give effect to the transfer of functions of Nairobi City County Government to the national Government. The gazette notice notifies the public to Article 187 of the Constitution as read with Section 26 of the Inter-governmental Relations Act, the Nairobi City County Government has transferred certain functions to the national Government via the agreement set out in Schedule to the gazette notice. The Schedule set out the deed of transfer of functions from Nairobi City County Government to the national Government.

It will be noted that the gazette notice was published in record time; only beaten by the gazette notice that removed Governor Waititu from office.

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

I am sure you have not researched on all gazette notices to know which one was the quickest.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the one for Governor Waititu, we finished here by 8.00 p.m. and before 10.00 p.m. the gazette notice was out.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But there is no time given by which--

**The Senate Majority Leader** (Sen. Murkomen): Absolutely, that is why I was hoping that His Excellency the President, during the Head of State commendation should give an award to the Government Printer for efficiency and the fast way of performing his duties.

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

**The Senate Majority Leader** (Sen. Murkomen): I am saying this because I know many county governments are still queueing at the Government Printer waiting for their gazette notices to be published.

The gazette notice communicating the purported transfer of functions of the Nairobi City County Government to the national Government raises weighty and grave questions of a constitutional and legal nature, particularly in the context of devolved system of government that is a key cornerstone of our Constitution.

Hon. Senators are aware that in the short time since the issuance of the Press Statement, Kenyans have raised many questions on the constitutionality, legality and effect of the purported transfer of the functions of Nairobi City County Government to the national Government.

As the House of Parliament that is charged with the constitutional mandate of securing and safeguarding the devolved system of government, representing the counties and protecting interests of the counties and their governments, this is a matter that falls squarely within our mandate. The Senate needs to move with haste in order to give clear direction on the matter.

The Constitution in Article 186 as read together with the Fourth Schedule, sets out respective functions and powers of the national and county governments. Article 187 of the Constitution contemplates a situation where a function or a power at one level may be transferred to a government at the other level by agreement between the governments.

This Article and part three of the Inter-Governmental Relations Act, 2012 provides detail on, amongst others, the conditions to be met before such transfer, criteria for such transfer and the procedure that is to be followed in the processing of the transfer.

Mr. Deputy Speaker, Sir, I feel extremely nostalgic and I have said this over and over again and I want to repeat that I was a member of the Taskforce on Devolved Government. I also participated in the drafting of the Inter-Governmental Relations Act to give effect to Article 187 of the Constitution. At that point in time, I must acknowledge that Sen. Orenge played a role in my being in that Committee because he was looking at me sharply.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Did he appoint you?

*(Laughter)*

It is noted. I can see the Senate Leader of Minority does not want the details to come out.

**The Senate Majority Leader** (Sen. Murkomen): He is a modest person. In the past, he has wanted to give more credit to others than himself.

I must say on record that in that Committee because I work diligently and I remember clearly if you read the taskforce report, you will find that the transfer of functions under Article 187, we only gave it two paragraphs.

No one expected that there was going to be a serious issue that would involve a function being moved from counties to national Government. In fact, it was presupposed that the functions would be moving from the national Government to county governments for effective delivery at the local level; not the other way round. However, I find myself in a situation, and I am glad I live at such a time of witnessing the implementation this article in the manner in which we saw yesterday.

It is important that we understand the effect of the purported transfer of the four functions from the Nairobi City County Government to the national Government. It is basically that the national Government will take over, in my estimation over 80 per cent of functions of the Nairobi City County Government. I will explain this; that a closer scrutiny and unbundling of each function clearly reveals this.

For example, in the case of county health services, the transfer would include; county health facilities and pharmacies, ambulance services, promotion of primary healthcare, licensing and undertaking veterinary services, cemeteries, funeral parlors and crematoria and refuse removal, refuse dumps and solid waste disposal.

When it comes to the case of transport services, it will involve: county roads, street lighting, traffic and parking, public roads transport, ferries and harbours. In this case, ferries are not under Nairobi City County Government.

When it comes to county planning and development services, it will include statistics, land survey and mapping, boundaries and fencing, housing, electricity and gas reticulation and energy regulation.

The fourth function that is purported to be transferred is county public works, utilities and ancillary services. It extends to storm water management systems in buildup areas and water sanitation services.

The specifics of each of these functions illustrates the full extent and magnitude of the purported transfer of the functions of Nairobi City County Government. It is clear that should the transfer take effect in the manner anticipated in the Deed, the Nairobi City County Government shall remain a shell with minimal functions to perform.

Mr. Deputy Speaker, Sir, allow me at this juncture to highlight some of the questions that arise in respect of the purported transfer of functions from Nairobi City County Government to the national Government, in light of these provisions of the law that require the attention of the Senate:-

The first relates to public participation. Public participation is a key pillar and a recurring theme in our Constitution. Article 10(2) of the Constitution provides various

values and principles of governance that speak to the matter of public participation, including participation of the people, transparency and accountability.

Article 10(1) further provides that these values and principles of governance bind all State organs, State officers and all persons whenever any of them applies, interprets the Constitution or makes or implements public policy decisions. On account of these provisions of the Constitution which have time and again been reinforced through court decisions, public participation has become pivotal in the execution of public decisions and functions.

Mr. Deputy Speaker, Sir, it is, therefore, completely baffling and unfathomable that despite the express requirements of the Constitution, the purported transfer of functions from Nairobi City County Government to the national Government was conducted in an entirely opaque manner, with no reference whatsoever to the public, generally, and in particular, to the people of Nairobi City County.

This is a complete claw back on the principle of public participation that is so dearly held by Kenyans at large. Even more worrying is the total lack of observance of Section 29 of the Intergovernmental Relations Act, 2012, which specifically provides for public participation in the process of transfer of functions or powers from one level of government to the other.

The Deed of transfer of functions under Articles 10.1 and 10.2 makes a rather interesting, passing and casual reference to public participation. Article 10.1 provides that the Deed of transfer of functions shall be notified to the Nairobi City County Assembly pursuant to Section 26(6) of the Intergovernmental Relations Act, 2012, and shall in the meantime be subjected to public participation.

Article 10.2 then provides that the Deed together with other amendments as may be necessitated by public participation, constitute the entire agreement between the parties. Pursuant to Section 29 of the Intergovernmental Relations Act, 2012, it would have been expected that public participation would have been carried out prior to the execution of the agreement. However, this was not the case.

Article 10.1 and 10.2 of the agreement appear to attempt, on the part of the parties, to sanitize an already flawed process. These provisions are a total affront to the people of Kenya. The Deed was executed yesterday, 25 February, 2020. The views of the public are now sought on the Deed that has already been executed. In effect the people of Kenya have been denied the opportunity to decide at the outset whether or not the functions of the county government should be transferred to the national Government.

Mr. Deputy Speaker, Sir, a reading of Article 10.2 of the Deed indicates that that decision in this regard has already been made on behalf of the people and all they can hope to do is to propose amendments to an existing agreement.

The people of Kenya were further denied the opportunity to determine at the outset, amongst other things, the scope of the functions to be transferred the duration of the transfer and the financing framework. To say that the agreement contravenes the provisions of the Constitution and the law with respect to public participation is an understatement. It is a total ambush on the people of Kenya and, in particular, the residents of Nairobi City County who, as is required by the Constitution and the law,

should be at the centre of determining questions relating to proposed transfer of functions from level of government to the other.

The second issue of concern is the processing and the transfer of the Deed of Transfer of Functions. The Deed indicates that it was executed by Mr. Eugene Wamalwa, duly authorized as the CS, Ministry of Devolution and Arid and Semi-arid Areas. Mike Mbuvi Sonko and Justus Kathenge are duly authorized signatories of Nairobi City County Government.

A fundamental question arises concerning the process and the execution of the Deed at both the national and county governments. The transfer of functions and powers contemplated under Article 187 of the Constitution and Part 3 of the Intergovernmental Relations Act, 2012, is one between the National government and the county government. Accordingly, before the execution of the Deed seeking to give effect to such transfer, the approval of the county government would be required. The question that arises is: what is a county government? Is the unilateral approval and execution of a Deed by a governor sufficient to constitute the approval of a county government? This cannot be the case.

Under Article 176 of the Constitution, a county government consists of its county assembly and its county executive. Consequently, before a decision as serious as the transferring of functions of a county government to the national Government is taken, it would be expected that the proposed transfer of functions would be processed and approved through county government organs.

It is through such process that the requirement of public engagement and public participation would be met as the processing would be conducted in an open, transparent manner particularly through a duly elected representative of the people sitting in the county assembly.

Mr. Deputy Speaker, Sir, what we witnessed yesterday is that the form of the Deed executed by Governor Sonko does not in any way comply with Article 187 and part 3 of the Intergovernmental Relations Act. The execution of the Deed was a unilateral decision that does not appear to have been taken by the county government. The purported execution of the Deed by Governor Sonko is therefore, not an act that speaks for and represents the wishes of the people of Nairobi City County. In this regard it is therefore, unconstitutional and illegal for non-compliance with the law.

The same threshold for the processing of the proposed transfer of functions with equal measure applies to the national government level. It cannot be that the CS for Devolution and ASALs would sign a Deed of Transfer of Functions without a similar process through the Executive and legislative branches of the national Government.

While still on the question of the process followed in the processing of the Deed for the Transfer of Functions, allow me to pose some critical questions which are yet to be addressed: One, who were the negotiators involved in the process from both the national and county government? Two, how long did the negotiators take in the negotiation process?

Three, was the public at any point made aware of these negotiations and of the plans towards transfer of functions? Four, did the Cabinet approve the transfer of

functions? Five, did the County Executive Committee similarly approve the transfer of functions?

Mr. Deputy Speaker, Sir, the third issue that I wish to raise relates to the conditions and criteria for transfer of functions from one level of government to another. Article 187 of the Constitution requires that a function of power may be transferred from one level of government to another if the function of power would be effectively performed or exercised by the receiving government.

In other words, there requires to be sufficient justification for the transfer of each function or power from one level of government to another, including a detailed and bundled definition of those functions and an explanation as to why it is justifiable for that particular function to be properly delivered in which level of government.

I had found earlier that the Deed transfers the four functions cited as a block without regard to the specific functions and powers under each of the four major Heads which are set out in the Fifth Schedule of the Constitution and which are 19 in total. The Deed, in total disregard to Article 187 of the Constitution, does not provide specific justification for the transfer of each of the 19 functions and powers.

The fourth issue that requires the attention of the Senate relates to the oversight mandate of both the Nairobi City County Government which is in this case the County Assembly and the Senate with regard to the functions that are purported to have been transferred. More so, in light of the fact that in my opinion, regarding the more than 80 per cent of the functions are sought to be transferred, several question arise: One, what is the role of the Nairobi City County Assembly in overseeing functions that have been transferred to the national Government?

Number two, and related to the same; what is the role of the Senate in overseeing a function that is now already transferred to the national Government? Number three, who is the accounting officer responsible for the execution of the functions sought to be transferred?

In effect, Mr. Deputy Speaker, Sir, having transferred a large majority of the functions of the Nairobi City County Government, do we need a Governor for the county?

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

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, while I may not have much to say about the content about what the Senate Majority Leader is saying yet, because he is citing a lot of interesting issues, I have an issue which needs your determination as the Speaker. Earlier on, Sen. Khaniri said that we need to follow our Standing Orders strictly.

Mr. Deputy Speaker, Sir, Standing Order 99 is very clear about declaration of interest. It says that-

“A Senator who wishes to speak on any matter in which the Senator has a pecuniary or proprietary interest shall first declare that interest.”

It is in public record and even on the record of this House that the Senate Majority Leader has acted as counsel to the Governor of Nairobi City County – whom we are talking about – in a court of law under the laws of Kenya in the land of Kenya. Pecuniary interest is a matter where one may have any direct or indirect conflict in relation to a

matter under consideration, where there is a reasonable likelihood or expectation of appreciable financial loss or gain to the person, whether or not he was paid.

For the record of the House, that Standing Order needs to be followed and the declaration made; then the Senate Majority Leader can go on with his presentation. The presentation is also quite useful to the determination of this matter. I do not want to anticipate whether his other lawyers will speak as well, but we will ask at that point.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! That is not your job.

*(Laughter)*

**Sen. Sakaja:** We will ask at that point.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your job is finished. You have raised the point of order.

Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, since I have only one page to finish, can you allow me with your permission---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Wait a minute. The point of order raised by Sen. Sakaja is an important matter, on conflict of interest, and I want to dispose of it right away. Yes, it is true that Standing Order 99 provides that where a Senator has an interest in a matter before the House, he should declare it; and it ends there. It just says that you should declare it, and that is the end of the matter.

The question is; in light of what was raised by the Senator for Nairobi City County – the Senate Majority Leader, having acted as counsel for the Governor of Nairobi City County – does that constitute interest? If you juxtapose that with his moving the Motion before us, I do not think so, and for the following reasons. The matter at hand is about the transfer of functions from the Nairobi City County to the national Government. If the Senate Majority Leader had acted as counsel for either the Governor or the Nairobi City County Assembly in a matter before the House – not in another arm of Government – then his bringing this Motion would raise issues of conflict of interest.

Mr. Deputy Speaker, Sir, the issues raised is an important area which we must progressively look at, to make sure that the House remains beyond reproach on all matters. Therefore, given the gravity, solemnity and seriousness of the matter before us this afternoon, I would rather we stop it at that. What I have given is an interim ruling. If you want to pursue that matter, Sen. Sakaja or any other Senator, in a more substantive manner, I invite you to approach the Chair for guidance. That can be canvassed perhaps in another sitting.

It is so ordered. Thank you.

*(Applause)*

Senate Majority Leader, as you conclude, please, note that we want to give this matter a lot of seriousness. I would like as many Senators, if not all of them, to speak. You have ample time. Please, remember you had ten minutes.

**The Senate Majority Leader** (Sen. Murkomen): You indulged me, Mr. Deputy Speaker, Sir; considering the gravity of this matter.

I was asking whether, having transferred a large majority of functions of the Nairobi City County Government, we need a governor for the county. Do we require a County Executive Committee (CEC)? Significantly, what is the fate of the CEC Members and the staff responsible for the functions that have sought to be transferred? Do we need a county assembly, considering now that the oversight function or most of the issues that they are supposed to oversight have been transferred? What role remains for the county assembly to perform? These are important questions that require to be addressed.

Mr. Deputy Speaker, Sir, the fifth issue that I wish to raise relates to revenue collection. The Deed under Article 5.5 provides for the purpose of general coordination of revenue collection. The Nairobi City County Government appoints the Kenya Revenue Authority (KRA) as the principal agent for overall revenue collection. Article 187 of the Constitution, Part 3 of the Intergovernmental Relations Act contemplates that the matters contained in the Deed relate to the transfer of functions between levels of Government. It is not clear why the matter of revenue collection has been provided for in the Deed, more so because this is not a function that is sought to be transferred. This is an arrangement that the Nairobi City County Government should put in place, outside the ambit of the deed of transfer of functions.

Mr. Deputy Speaker, Sir, the sixth and final issue relates to dispute resolution, which is provided for under Article 11 of the Deed. Article 11.2, in particular, provides that where a dispute arising cannot be resolved amicably through negotiations, the party shall refer the dispute to the National and County Government Coordinating Summit. It is doubtful that the Summit would be an appropriate forum for resolution of such a dispute, as parties to the dispute are already members of the Summit. There would be a need to have a dispute resolution framework that ensures that any emerging disputes are conclusively addressed.

As I conclude, Mr. Deputy Speaker, Sir, allow me to make the final observations. There is an emerging pattern where county governors are arrested, charged in court for various offenses and barred from office.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope you are not referring to the Governor of Nairobi City County.

**The Senate Majority Leader** (Sen. Murkomen): No, Mr. Deputy Speaker, Sir. It is not him.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I have just made a favourable ruling to you, which you now want to trample.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. No; I am not referring to him.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You cannot discuss the issue of the arrest of the Governor of Nairobi City County, because you are one of the counsels for the Governor. You cannot use the Floor of this House to have that discussion.

**The Senate Majority Leader** (Sen. Murkomen): I am not, Mr. Deputy Speaker, Sir. I will not.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, as I move to the various offences, it is now evident that---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. (Dr.) Kabaka from Machakos County?

**The Senate Majority Leader** (Sen. Murkomen): I am concluding---

**Sen. (Dr.) Kabaka:** Mr. Deputy Speaker, Sir, with due respect to the Senate Majority Leader, we are also lawyers and we have practiced law for a long time. The language he is trying to coach, having cautioned him not to mention the issue of the charges, even without mentioning governors, he brings, “some charges are being faced---” the *sui generis* interpretation aspect goes with that. Please, save yourself the face. The presentation is excellent. Otherwise, you will succumb to Sen. Sakaja’s trap.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. You have actually done very well.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the issue that the House must determine is what happens, now that there is an emerging pattern that functions of county governments are either being transferred to the national level; or impeachments that ensue as a result of frustration of county governments; and the effect of this on winding up of county governments.

This is a situation that the framers of our Constitution could not have envisaged. Two years ago, we would not have imagined that today, we will be faced with a serious matter as this. The future of devolution is in jeopardy. Therefore, it is time for the Senate to take leadership of this matter.

I urge that in considering this matter, we do not think of those presently holding the various offices, including governors and the President. Let us deal with the matter with a focus on our primary objective which is to safeguard the devolved system of Government.

Mr. Deputy Speaker, Sir, I request this House and the country to not look at this issue of devolution and transfer of functions with President Uhuru Kenyatta in the face of it. If we do so, we will fall into a trap of saying that we support him or not. We should also not look at it with the Governor of Nairobi City County or the Governor of Elgeyo-Marakwet in mind. I would rather we look at this issue dispassionately and away from our personal and political relationships with governors who are holding office. Let us look at it objectively on how best we can safeguard devolution in situations that may come up.

President Uhuru Kenyatta is a wonderful man whom I voted for him. He might have had the best intention in this situation. We cannot discuss him, but he might have had the best intentions in doing the agreement with the county government.

Our evaluation of this agreement should go beyond focusing on the President or future President and look at the issues. We should sometimes imagine that the worst people are the ones holding office.

Finally, this is the time for action and vigilance by the Senate.

I call upon you to urgently refer this matter to the Committee on Devolved Government and Intergovernmental Relations and the Committee on Justice, Legal Affairs and Human Rights for an urgent consideration and reporting back to this House within 10 days.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that procedural?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, this is not expressly permitted in a Motion of Adjournment. However, considering the gravity of this issue, I beg you to use your---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should have finished moving the Motion and then, at some point, raise a point of order because you are not in a procedural issue.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am properly guided.

I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is seconding? We have to second and propose the Motion. However, there will be no putting of question.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I ask the Senate Minority Leader---

*(Sen. Orenge consulted loudly)*

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

The Motion must be seconded and the question must be proposed. However, there is no putting of the question.

It is so ordered.

You can now canvass because I do not know whether Sen. Orenge wants to second your Motion or not.

For guidance, this matter is at the core of our being here. So, I will be lenient to Senators who want to speak. I am here as long as you want to speak. I will stay here even if it is up to midnight on one condition; I will not entertain small political battles. I will be harsh. This has to do with legal issues and transfer of functions. So, leave politics out of this.

It is so ordered. You are free to discuss. However, if you bring small political games or introduce politics on a purely legal issue, you will have the wrath of the Chair. I will be lenient. I will hesitate to stop anybody from talking this afternoon.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Murkomen, you have moved the Motion. Do you have a Secunder before I listen to the point of order?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move and invite the Senate Minority Leader, Sen. Orenge, to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Before he rises, I have noticed the point of order from Sen. Sakaja.

Please, let us make progress.

**Sen. Sakaja**: Thank you, Mr. Deputy Speaker, Sir. You have given direction on the matter of conflict of interest. You have asked that if we want to pursue it further we come to you. This is not the only situation that will come up. So, I ask that you give us a substantive ruling. There was a ruling that was issued by our sister House on 9<sup>th</sup> May, 2019 on the matter of conflict of interest that is extremely wide. It is a comprehensive ruling including from similar jurisdictions---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you saying that there is another ruling which has been given?

**Sen. Sakaja:** Yes, Mr. Deputy Speaker, Sir. It was given by the Parliament of Kenya through the National Assembly. For the benefit of us moving forward---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When was that?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, it was on 9<sup>th</sup> May, 2019. I have just gone through it and some of the things that we have said might look a bit different. So, I urge--

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**The Deputy Speaker** (Sen. (Prof.) Kindiki): They do not have to be the same.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, You have given us a brief direction. However, I urge that you similarly give a comprehensive ruling that will guide us on that matter of past, future expected interest, *et cetera*. That is my humble plea to you.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. Let us deal with first things first.

Thank you, Sen. Sakaja for the professionalism of sticking to what I had directed. The risk of veering off in an emotive issue like this one is high. I have heard you. We need some reflection on this important issue. This is because the nation is also talking about this issue of conflict of interest. Therefore, I will issue a comprehensive ruling on the issue of conflict of interest next week on Wednesday.

What is it, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, Sen. Sakaja has repeated this issue and it is on record.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which issue is that?

**The Senate Majority Leader** (Sen. Murkomen): The issue of conflict of interest.

I would like to state that under Standing Order No.99, I have no pecuniary interest on this matter. I have never received any payment from the County Government of Nairobi or the governor in the past. I also do not intend to be paid by the County Government of Nairobi in the future.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): There are so many points of order. What is it, Sen. Mugo?

**Sen. Mugo:** Thank you, Mr. Deputy Speaker, Sir. You have made a ruling that debate will purely be on legal matters. That surprises me because the debate is much wider. Some of us are residents of Nairobi and we have suffered.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): If you want to do Nairobi politics, you will have to go for a political rally. You will not do them here this afternoon.

**Sen. Mugo:** Mr. Deputy Speaker, Sir, it is not about politics, but services.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well, when you make your contribution, we shall listen to you.

Proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir. I rise to second this Motion on the question that it is an urgent matter of national

importance. At the end, we do not have to necessarily resolve it either way. So, the arguments that I will present in terms of this particular Motion are my strong views.

The first point of consideration is not to make these arguments in the abstract. Legally, a person cannot make arguments in the abstract. We must deal with the concrete situation. I would like to ask a concrete question: What is the status of Nairobi City County Government? Was it not dysfunctional right from the beginning? How did we get there? This is the only county that does not have a deputy governor. In the constitutional arrangement and the structure of devolution, that position is a constitutional requirement. In fact, the Constitution states that, the deputy governor is the deputy Chief Executive Officer (CEO) of the county government.

Mr. Deputy Speaker, Sir, we are talking about a situation where there is no County Executive Committee (CEC). You cannot talk about them because they come and go. As I speak, there is no substantive officer in charge of finance because he is going through vetting. That is the status of Nairobi City County.

Talking about Nairobi City County, what has been the status of the county assembly for the past two or three years? For a long time, we did not have a substantive Speaker in the county assembly until about two months ago. This is the status of a city that is not just a regional hub. In fact, the shame of it is that, Nairobi used to compete with Johannesburg, Cairo and Lagos. Now, in the region, Dar es Salaam is catching up. There is a hub coming up in Kigali and of course, Ethiopia is surpassing us.

Nairobi is a city that has attracted international interest. Outside the international territory in New York where the United Nations (UN) has its headquarters, there are only four other UN headquarters. These are Geneva, Vienna, The Hague and Nairobi. Nairobi is not just an ordinary city. I do not want us to trivialise this issue that we are asking a lot of questions which are neither here nor there because those questions can be answered by looking at the critical situation in Nairobi.

There are three options that we have that are provided in the Constitution and the County Governments Act. One of them is to dissolve the Nairobi City County Government. That is another possibility in dealing with the problems in Nairobi but will you ask the people from Makueni how long that process takes? It can be challenged in court. Even when the Governor was willing to have Makueni County Government dissolved, it did not work.

The other process is impeachment which can take another two years. Nobody has the certainty that that will resolve the problem. The problem with impeachment is that it comes as a political concern more than the question about governance and provision of services.

The Constitution addresses this question very clearly. One of the things that you cannot amend in the Constitution is the principles, aims and structure of devolved units without a popular initiative.

*(There was a technical hitch)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You now have the microphone.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, there is a particular Article in the Constitution which is very interesting, which I think we should think about. If you read the recitals in the Gazette Notice, they referred to Article 187.

Article 187(2) of the Constitution states that-

“If a function or power is transferred from a government at one level to a government at the other level—

- (a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and
- (b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.”

So, whether there is transfer of powers or not, the constitutional responsibility remains with the county government.

Mr. Deputy Speaker, Sir, there are fault lines in the Intergovernmental Relations Act. There is a big flaw and that is where the problem is. It is difficult to go through the provisions and claim that anything has been done unlawfully. You cannot prove it. The law can always be interpreted either way. You can read this together with the County Governments Act. When it comes to decisions, for example, who is the authorised person to sign?

Under the Intergovernmental Relations Act, it is described as either the “person” or “officer”. If you look at the County Governments Act, it is the “authorised officer”. I will refer you to Section 30 of the County Governments Act which talks about the functions and responsibilities of a county governor.

Section 30(2) (1) provides that the governor shall sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.

There lies another problem. If you look at the Constitution, in regard to the powers of the President in exercising executive authority, it is required that he works with CSs and the Deputy President. However, if you read the roles of CEC members in the County Governments Act, it is not as clear like we have the presidential authority to make decisions, because he has to make decisions in a Cabinet which consist of the Deputy President and the CSs.

Mr. Deputy Speaker, Sir, having made those points, although I am one of the persons who is not happy with what has happened in Nairobi, if my opinion was sought, I would have done it just a little differently, especially on the area of public participation which should have come before. The fault line is that reading this Act, it does not say so.

In fact, Section 29 that my learned friend, Sen. Murkomen, referred to comes after the substantive Section 26. Of course the law must be read holistically. In fact, it says that public participation under this Part shall be provided by the regulations. I do not think those regulations are in place. That is another fault line.

The other fault line is that when there is transfer of power from the national Government to a county government, it is the National Assembly which is informed. When it is from the county government to the national Government, again it is the National Assembly which is informed. There is nothing about the Senate. So, there are

three Articles of the Constitution which seem not to be in consistence because if the President was exercising powers for the suspension of the county government, the role of the Senate is set out clearly in that regard. Even during impeachment, the role of the Senate is set out clearly. In this regard, the role is not properly set out in this Act.

If this matter is taken before a committee, my view is that, looking at this Act, the Committee should juxtapose it with the County Governments Act, which requires the Senate to play an important role. When the Senate is involved, the decision of the President can be vetoed any time. Under these provisions, we do not have those powers. So, it is the fault line in this legislation that we should look at.

Having said that, my last point would be for the future and the public out there. Being the Governor of Nairobi, a Governor of a City like New York, the Mayor of Johannesburg, Cape Town, or London. We are not so far from London. Our population in our cities is catching up.

We have to think very carefully next time when electing people to head these county entities. I am saying this---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senate Leader of Minority. You have made very important points. It is good to have a quality Governor in a City like Nairobi. That is the point?

**The Senate Minority Leader** (Sen. Orengo): I am not commenting about the person who is there. I am talking about the City.

*(Laughter)*

Any country can make a choice. In Ukraine, we have a comedian who won the election. Probably I do not have the proper word.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He is a comedian. The DJ (Disc Jockey) is in Madagascar.

**The Senate Minority Leader** (Sen. Orengo): They come in every way.

Mr. Deputy Speaker, Sir, what choice would you have in dealing with the question we have in Nairobi if you had to exercise the law? Would you rather suspend the entire county government, impeach the Governor or keep quiet and say let Nairobi County burn? In this circumstances, anybody who was acting rationally had to look for a manner or a way of dealing with the problems in Nairobi so that people can get services. Part of the difficulty that created this problem, and you made a very comprehensive ruling here was people trying to run away from it. I was countermanded at one time, but I supported your ruling. The courts also have found it difficult to run away from your ruling.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): They have more or less agreed with us.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I like people who, even if not well informed, when you get well informed, then you do the right thing. People are getting more informed because when addressing issues about the problems and when a vacancy arises---

Part of the problem is what we are dealing with now. We are dealing with it by verbalizing our frustrations. The courts could have made a proper ruling. There are things sometimes which happen that they go a bit out of the way and not like fully as you did.

For the Nairobi County Government case, I fully support this agreement. Both the Senate Speaker and the President were passengers who were just watching. The partners there were the Governor, one of his Member of the County Executive Committee, the Cabinet Secretary for Devolution and Arid and Semi-Arid Lands (ASALs) and the Attorney- General. Those were the substantive parties. When we have issues, those are the ones we are going to call here.

Mr. Deputy Speaker, Sir, since there are so many people who want to speak to this matter, I support the Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Orenge, except for one little thing which you might reflect on later. The small point you made - while in the national Government the President works with the Deputy President and the Cabinet - I think it is not entirely true to say that it is not the case in the County Government because of Article 179 of the Constitution.

I am glad you referred to my ruling because Article 179 talks about where the County Executive authority is vested, with whom and how it is exercised. It is the Governor, the Deputy Governor and the County Executive. We will propose the question in a while.

*(The Deputy Speaker (Sen. (Prof.) Kindiki)  
consulted with the Clerk-at-the-Table)*

Sen. Orenge, you did not second the Motion. You said you support. I am advised by the Clerk that you need to second, so that the HANSARD reflects because you just said you support the Motion.

**The Senate Minority Leader** (Sen. Orenge): I second the Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Orenge, Article 179 (1) of the Constitution says:

“(1) The executive authority of the county is vested in, and exercised by, a county executive committee.

(2) The county executive committee consists of-

(a) The county governor and the deputy governor

(b) Members appointed by the county governor, with the approval of the assembly, from among persons who are not Members of the assembly.”

You have made extremely important remarks and that is the direction we want to take. Just a small clarification: When I said that we will not have politics, I did not say you do not discuss the context. What Sen. Mugo said is valid and you can discuss the Nairobi County issue. What we cannot allow as a House is attacks of a political nature, especially involving Members because it will turn the House into political games. However, discussing political issues out there and how this is juxtaposed by the happenings, is quite in order.

*(Question proposed)*

Sen. Sakaja, you have the Floor.

We need to agree on the minutes, how many minutes will be yielded to each Senator? Is it five minutes or 10 minutes?

**Hon. Senators:** Five.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that the mood? We will vote. The Senator for Nairobi can have 10 minutes and all the other Senators five minutes. Is that the mood?

**Hon. Senators:** Yes.

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, thank you for giving me what I do not know whether it is the third or the first bite at the cherry.

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I will quickly go, but I would like to seek your discretion just as the Senate Majority Leader sought to make reference to written materials.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do you want to refer to your notes?

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is fine; you can go on.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. This is a matter, as colleagues have said, that is of great importance. I will not overstate what Sen. Orengo has said. Nairobi is seen as the global hub; the hub of the Global South. As it is today, the capacity in Nigeria has reached its limit; South Africa is almost imploding, Cairo is in another world and everybody you speak to is looking at Nairobi as the next frontier and gateway for this continent. These matters we are discussing are of an extremely important nature for our country and our continent.

Mr. Deputy Speaker, Sir, we cannot absolve ourselves as the Senate because we exist to protect the interest of the counties and their governments. I have severally brought this matter to this House. I have brought interventions in the form of statements for responses from different Standing Committees as well as Statements pursuant to Standing Order No.47(1) where you as the Chair has directed that relevant Committees undertake certain actions swiftly in the interest of the great people of Nairobi. According to the last census, Nairobi has a population of 4.7 million.

On 2nd April, 2019, I sought a statement on the proper constitution of Nairobi County Government. A county government that has no deputy Governor or a substantive Speaker, you noted that, indeed, the county is operating in an unconstitutional manner yet there had been a declaration by the Supreme Court and was in violation of an Act of Parliament. You directed that the Committee on Devolution and Intergovernmental Relations moves swiftly to address this matter. The Chairperson of the Committee then committed to provide an answer in two weeks, failure to which he would seek more time, if need be.

The governor was invited and I think everyone saw how that hearing turned out to be. At the end of it, the governor was being congratulated by Members. In fact, in the

words of the Speaker, seating on that Chair, you said that he came and lectured Senators. Those are your words and not my words, Mr. Deputy Speaker, Sir. To date, this report has not been issued to the House.

Mr. Deputy Speaker, Sir, on the 21<sup>st</sup> of November, after meeting with 17 elected Members from Nairobi, I came and sought another Statement on the state of the county. I passionately sought urgent help from this House on behalf of the people of Nairobi in dealing with the malaise facing them due to a non-functional executive in Nairobi County. I drew the attention of the House to the plight of the people of Nairobi who are suffering due to lack of service delivery in health, infrastructure, road, sewerage, water and sanitation, security, as well as physical planning. I pointed out that at that point, no approvals had been done for more than nine months in the area of physical planning.

I told them that as the Senator of Nairobi, with the help of the Senate having ensured that Nairobi got Kshs15.8 billion in the first year and Kshs15.9 billion the next year, there had been a significant reduction in revenue. We raised that issue and we debated it. Many Members spoke. In fact, I have the whole list of Members who spoke passionately.

Mr. Deputy Speaker, Sir, you directed that - I quote:

“The relevant committee must put its foot down and come up with a way forward which should be reported to this House. Hon. Senators, let us be careful about how we approach some of the issues. Let us not come up with solutions that are not practical. We should remember that all committees sit on behalf of the Senate. If one committee is embarrassed or belittled like the other time when the governor came and lectured Senators, it is the whole Senate that is in disrepute. We must, therefore, be careful and come up with practical solutions”.

That is your ruling, not mine.

I have raised six other Statements.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you quoting my ruling?

**Sen. Sakaja:** Yes, Sir.

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

**Sen. Sakaja:** Your ruling; what better source to quote.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): While we are at it, because we may not revisit, the Chairperson of the Committee on Devolution and Intergovernmental Relations, what Sen. Sakaja is saying is extremely important. There are many committees which we have asked to do certain urgent national important issues. They will all come back to this House. We will be very keen on that.

Secondly, how you treat the witnesses and the people you summon is extremely important. You can either dignify the House or make the House look bad. So, Sen. Sakaja, you are right and thank you for referring to my previous ruling.

**Sen. Sakaja:** I will continue.

Mr. Deputy Speaker, Sir, this is not to say that there is a committee that is not doing its work, but as the Senator for Nairobi, my oversight role is played in the Senate; I have nowhere else to go. I cannot go to punch walls or roll on the street or just do press conferences. I must bring them here. The people of Nairobi had a lot of hope and trust that this Senate could have resolved these matters.

I brought six other Statements in this House; on 17<sup>th</sup> May, 2018, 5<sup>th</sup> of July, 2018, 13<sup>th</sup> of November, 2018, 5<sup>th</sup> of December 2018 and the 3<sup>rd</sup> of December, 2018. I am just giving the context.

Following the charging of the governor on corruption related charges and a similar ruling that inhibited the proper performance of his tasks during this period, I urgently sought a Special Sitting of the Senate on the 13<sup>th</sup> of December 2019. In a letter addressed to you, I pointed out that the exceptional situation that had arisen, affects Nairobi City County and creates an unprecedented state of affairs that requires the urgent attention of the Senate.

I urged you to exercise your jurisdiction and call for an urgent Special Sitting of the Senate to discuss the exceptional circumstances prevailing in Nairobi with the aim of the Senate giving direction and dissolving to take legal or legislative action in the interest of the 4.7 million people of Nairobi.

Mr. Deputy Speaker, Sir, as we all know, this did not happen. Meanwhile, the state of affairs in Nairobi has continued to deteriorate. The residents have continued to suffer. The governor has been unable to perform his duties because of the charges against him. There is no deputy governor. The vetting of the nominee for the position of deputy governor was stopped by the court a few weeks ago. In my opinion, there are very few options left for consideration.

As Sen. Orenge has said, there are certain quarters that had proposed suspension of Nairobi City County government. Under exceptional circumstances which was a route through the Summit, a suspension of the Nairobi County Government would have led to a by-election of all the 85 Members of County Assembly (MCAs), the Governor and the Deputy Governor of Nairobi. Were we prepared, are we prepared for this? Not in this day and age.

Mr. Deputy Speaker, Sir, there are those, too, who have proposed impeachment. There is an impeachment Motion at the county assembly. As a politician, I have said it in public, based on what is happening in Nairobi, I would have been the first to support an impeachment of the Governor of Nairobi. Politically, I would want him as far away from the county government as possible, but as a leader, the stability and continuity of this county, the delivery of services to the people who voted for me is more important. That is why I felt that impeachment is also not a viable option.

I have urged the MCAs who might know political issues out there, that no matter what they may think, I will not support them impeaching the governor right now. There is no deputy governor and we do not want an election in Nairobi for the office of the Governor.

The third option which is not the best option, as has been said by The Senate Majority Leader and the Senate Minority Leader, was to make sure that the people of Nairobi continue receiving critical functions by way of transfer through agreement, pursuant to Article 187 of the Constitution.

I wish to confirm to this House in full disclosure, as the Senator who took oath of office to protect the interest of counties, this particular county and its government, that indeed, I was consulted by both levels of government on these three options.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who was consulted?

**Sen. Sakaja:** The Senator for Nairobi.

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the Senator for Nairobi was consulted by both levels of government on these three options. I gave them the following considerations:

Number one, I told them that the basis for considering these options must be the political and economic stability of Nairobi City County and must be in the best interest of the people first, and for them being able to receive services. The people first and politics later. That was the first condition I gave.

The second one condition - when they were considering transfer, I said, that any such action in as much as it is anticipated by the Constitution, must not in any way undermine devolution and must strictly be within the law.

Thirdly, I told both levels of government that the voice of the people of Nairobi expressed directly through public participation and indirectly through their elected representatives, the Senator, Members of Parliament (MPs), and the Governor included, must be considered and consulted and be part of any arrangement so ensuing, such that if we go ahead with transfer, this House must demand that within those structures, the Senate is represented, and the Members of Parliament are represented for accountability and for continuous oversight. I said that the right of the people of Nairobi to have services delivered must be upheld.

Fifth, the staff working in Nairobi City County must be assured of their job security and a clear capacity building framework be established. I am glad that when I saw the gazette notice, it had a provision for the capacity building framework to be put in place.

Finally, that any such arrangement be time bound with options for review. I have seen an annual review and a 24 month time period. I say that because there have been several quarters who have been very keen to say that because Nairobi is the capital City of the country, it must revert back to the national Government.

In fact, not just several quarters who include the Senator for Murang'a in the last Senate, and Sen. Cheruiyot, the Commissioner, had such a proposal or that was interpreted as such.

Mr. Deputy Speaker, Sir, even in the Building Bridges Initiative (BBI), as elected leaders in Nairobi, we have met and we have said that because two consecutive governors or administrations have failed to deliver, does not mean that you deny 10 per cent of the residents of Kenya - Kenya has a population 47 million and Nairobi has 4.7 million people - devolution. We can get it right the third time round. It is possible to get it right. There are states like Lagos in Nigeria which have been much worse than Nairobi. With more than 10 times of our population, the former governor Fashola did an amazing job and transformed Lagos.

It can be done with the requisite support and proper review. Even to that Building Bridges Initiative (BBI), we are presenting a middle ground of how Nairobi City County and the national Government can work together while maintaining devolution.

Mr. Deputy Speaker, Sir, I know that some people came to Nairobi City County to look for jobs or education. Some of us were born here and we do not know any other

county. For some of us, our parents have lived here almost all their lives. So, we also need to have devolution like the people in Kathwana in Tharaka-Nithi County or those in Sega in Siaya County. We also deserve devolution in Nairobi City County. We, therefore, do not accept the scrapping of Nairobi as a county, but remedial measures are needed urgently within that period.

If I look at the agreement that has been reached between the two levels, and at the lacunas in the law, where the role of the Senate is silent and the procedure, whether public participation is required before or after, they have asked for it to be done within 21 days and the agreement is amended. For me, that is technical.

There are four functions that are trying to be reverted to the national Government. Today, we are dealing with a broken down referral system in the health system in Nairobi City County. There are no drugs in hospitals. We can wax lyrical about devolution, but my people are dying. It is very easy for us to say this is right or wrong, but today, that lady in Mbagathi Hospital or Mama Lucy Kibaki Hospital does not care who is providing drugs, so long as she gets treated and gets better.

Mr. Deputy Speaker, Sir, people are dying because ambulances are not functional. We need a provision that health services, transport, planning and development---. In the Planning Department of Nairobi City County, planning approvals worth more than Kshs615 billion have not been done in the last 10 months. Sen. Kasanga can tell you that. Every building site employs more than 200 youth and they have been jobless for all these months. These are critical services. As we sort out the bigger issues as to when the court case will end and how we should do it, my residents need services in those areas.

Nairobi City County remains with agriculture, control of pollution, outdoor advertising, cultural activities, public entertainment amenities, animal control, welfare, trade developments, markets and regulation, pre-primary education and polytechnics. Other services that remain with the county government are firefighting and disaster management.

How many minutes do I have?

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

I was not asking Sen. Mutula Kilonzo Jnr.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should utilise the Speaker.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is fine.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, as you and others have said, let us not just think about the politics. As we consider this move - a move of last resort to say the least - the situation is dire than you will imagine. I urge that as we consider the details of the agreement of transfer, which seems to be the one option that serves the best interests of Nairobi City County, let us consider the people and be guided by the considerations I have given.

With those many remarks, I do not know if I support the Motion for Adjournment---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can support or whatever, but there will be no question put anyway.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, with those many remarks, I reiterate those many remarks.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, I know your predicament. Let me assist you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When you say that you support, you are not supporting the sentiments of either the Mover or the Seconder. You are supporting that the Senate adjourns to discuss this matter of Nairobi City County, as we are doing now.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I strongly support that the Senate adjourns to discuss this matter so that Members take into consideration the interests of the people in this dire time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you. It will be five minutes going forward.

Sen. Mutula Kilonzo Jnr., proceed.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I rise to give my views about this proposal.

I read this *Gazette* Notice last night. Sen. Orengo has said it very clearly that the illegalities will not help. I am satisfied from reading this, that when you exercise discretion in a manner that it has been exercised, it is possible for a governor, somewhere in the rural areas, to assign his functions to the national Government whimsically. It is such discretion that I think we, as the Senate – because our work is to protect counties – should speak about, and not the politics. I am satisfied that this was a political and not a legal decision.

Secondly, I am satisfied that this Senate will soon or has lost its shame and has no place in devolution. We must accept that our work is to escort devolution and agree when we need to. If the authorities thought that consulting my good brother, Sen. Sakaja, is consulting the Senate, so be it, but it is a tragedy.

Mr. Deputy Speaker, Sir, I carry the doctor's famous case here. I disagree with Sen. Orengo about public participation. You cannot do it after the fact; you have to do it before the fact. If the public of Nairobi City County work around between national Government and county government, it can only be to say that Nairobi City County has failed the people of Nairobi City County. It can only be given grade E for not working.

I will say this again; we have no county government. There is no reason to pay salaries to Members of County Assembly (MCAs) and the governor. It is a joke because there is no work that they will be doing. They should go home.

**An hon. Senator:** What about the Senator?

**Sen. Mutula Kilonzo Jnr.:** I do not know about the Senator. Maybe he will sit with us, and I can invite him to---

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

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, we had this crisis in Makueni and the President made a political decision. At that time, I thought that the report should be brought so that we do not get counties entangled with this sort of things. That did not come. I have attempted to amend the law so that it is done when the reports come, but that has not happened.

This is a not a deed of transfer; I call it a deed of surrender. The governor has surrendered his work and should go home. He should be impeached. It is a fact.

*(Applause)*

Sen. Sakaja, do not sugarcoat issues. His work is over and done. For the next 24 months he will be holding brief for the next governor. However, the next governor will have a similar challenge. He is going to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., I hear the Chairperson of the Council of Governors (CoG) say that the governor is one without portfolio. Are you supporting that?

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Deputy Speaker, Sir. I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that your view?

**Sen. Mutula Kilonzo Jnr.:** It is my view, Mr. Deputy Speaker, Sir. He will be like the majority of the deputy governors in Kenya whose work is to read newspapers. So, he can continue to read newspapers, and we can send him magazines. He has no work to do.

Let me say this about the functions - I want Sen. Sakaja to listen very carefully because he might want to be a governor - if the national Government takes over the functions of health and roads, what makes you think that in two years, you will persuade the people of Nairobi City County that another governor can do the work?

Mr. Deputy Speaker, Sir, Sen. Murkomen argued here in the last Senate that we give governors these functions and people have gone to court to give governors the function of roads. There was a reason. There was contemplation that this would slide the other way and not upwards. The minute it goes upwards, we will not reverse it. It is like toothpaste; the minute you squeeze it out, you cannot squeeze it back in.

The obituary of Nairobi City County has been written. Sen. Sakaja, you participated and must be prepared. It is gone; forget it! So, let us agree with Cheruiyot and---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you referring to Senators?

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Deputy Speaker, Sir. It is Sen. Cheruiyot.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I have heard you severally talk about names.

**Sen. Mutula Kilonzo Jnr.:** Sen. Cheruiyot, Sen. Murkomen, Sen. Sakaja and Sen. Kembi-Gitura.

Mr. Deputy Speaker, Sir, let us agree. Let us transform Nairobi City County if that is what we want, like the City of Delhi, Washington D.C or Australia. Do not pussyfoot around these issues. If you give the function of collection of revenue---

Ladies and gentlemen, hon. Senators, if you have not paid your rates, start paying them. The Kenya Revenue Authority (KRA) will not forgive you for not paying your rates. This County has been collecting over Kshs10 billion. Now, I am persuaded that there was good reason to fine Nairobi City County because the Geographic Information System (GIS) mapping that was done by His Excellency the President, through the Committee on Information Communication Technology (ICT) shows that they can actually generate Kshs40 billion. Let us exclude them from the County Allocation of Revenue Act (CARA).

I am just wondering when the Chairperson of the Committee on Finance and Budget will stand here to produce CARA, whether we will include Nairobi City County. I am also wondering when the function of health is held by Hon. Mutahi Kagwe, who will do oversight? Will they ask him to go to the National Assembly or will he come here? Those are the issues.

Senators, let us agree, Nairobi County has failed to function, and it is ruled by the ruling party. The ruling party rules Nairobi.

I said here before, that under the Urban Areas and Cities Act - which is here, and which Sen. Murkomen is a champion of - Nairobi is recognized as the seat of Government and the seat of power. I have said before that some of the functions like collecting garbage and security should have been shared between the Nairobi County Government and the Government of Kenya. They did not do it.

Both the national and the county government have allowed this to fail. I am just wondering what the deal was. Somebody said that this was a deal. What is the consideration for the Governor of Nairobi surrendering all his functions? Do not answer me. I possibly know the answer.

**The Deputy Speaker** (Sen. Prof. Kindiki): Thank you, Sen. Mutula Kilonzo Jnr.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker Sir. This is a very interesting afternoon. When such matters are being considered, it is one of the best days to be in the House.

You will recall that at the beginning of this Session of the Senate, I brought a constitutional amendment - after six months of watching the performance of my good friend and our former colleague, the Governor of Nairobi City County - of course, many things were said at that time but it was informed by very simple reasoning.

From 2013 to 2017, we tried a technocrat. From 2017 onwards, we said that it was not working, we should try a government led by a street-smart person. We thought that perhaps, this is will bring a solution to the citizens of Nairobi. If one was to pursue the line of argument by Sen. Mutula Kilonzo Jnr., we tried the opposition and this time we wanted to try a government that is lead by the ruling party. Both of them have not worked for this city.

Mr. Deputy Speaker Sir, therefore, in adding my voice to this debate, I am challenged by the words of Jesus. If you read the Gospels, in Matthew Chapter 12, you will read about---

*(Loud consultations)*

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

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. In Mathew Chapter 12, you will read of a time when Jesus walked into the synagogue and the Sanhedrin were keen to set a trap for him. It was on a Sabbath, and you know the rules of that particular time. One was not supposed to work on the Sabbath.

Jesus saw a man who had a deformed hand. He went ahead and healed him, to the protestation of the Sanhedrin. This is because in their consideration, it was better to see a man suffer but observe the law. That is the challenge that we have in Nairobi. There will be a good debate about what should have been done and what procedure should have been followed; but as we speak about all those things, the citizens of this city continue to suffer.

I think that there is no right or wrong to this particular debate. Later on, I will come to my understanding of what I thought should have been done differently in this particular exercise. However, I support the spirit of this decision. I support the thinking that it is better for the national Government to do whatever it takes to try - at least between now and 2022, before we reach a decision or perhaps enrich it during this BBI season - to see what we can do with the City of Nairobi.

Nairobi is not a county. Please, let us stop fooling ourselves. This is a city with unique needs and challenges. You cannot propose the same solutions that you are proposing for rural counties to be the same for Nairobi City County. We have to engage our minds and think of how we can run our City better. Perhaps, we can do the same for Mombasa, Kisumu, and I see that there is a proposal for Nakuru as well. We need to see what it is that we can do, because there are unique challenges to this setting.

Mr. Deputy Speaker Sir, I am aware that as legislators, we are duty bound to defend the rule of law. Therefore, I move on to the second segment of the argument on what would have been done differently. Article 187 of the Constitution, in speaking to the transfer of functions, speaks of a government. Therefore, you ask yourself, what is a government?

Article 176 of this Constitution says that a county government consists of a county executive and the county assembly. A further reading of the Intergovernmental Relations Act keeps on referring to the county government. Therefore, a sitting with the governor alone cannot amount to a sitting with the county government of Nairobi City County.

In that regard, I felt that the drafters of this Motion should have given better advice on the architecture of the transfer of functions from Nairobi City County to the national Government until the County Assembly of Nairobi City County gives its verdict on these issues. I agree with those who are arguing that Section 29 of the Intergovernmental Relations Act speaks of public participation. What are you asking the public to participate in? I saw on the Twitter handle of ---

**The Deputy Speaker** (Sen. Prof. Kindiki): You have run out of time, but I will give you one more minute.

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**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker Sir. I saw Cabinet Secretary (CS) Eugene Wamalwa saying on his Twitter handle that he wants Nairobi citizens to take part in public participation. What are they participating in, yet the decision has already been made?

We may agree with the spirit of the particular decision, but there are things that should have been done differently. I feel that, as a House, this discussion will help us to perhaps reflect and see what it is. It appears that during this season of the Building Bridges Initiative (BBI) and the handshake, I do not know which part of the Constitution we will not put to the test. Therefore, the best thing to do is to draft legislation that will guide such a process as this one.

Thank you for being generous.

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

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

**Sen. Shiyonga:** Mr. Deputy Speaker Sir, I might not have gone to a school of law, but I know that you pronounced yourself very clearly that we should not bring politics in this issue. Why is Sen. Cheruiyot drawing us back to the issue of BBI? That one falls squarely on him.

**The Deputy Speaker** (Sen. Prof. Kindiki): What did he say about BBI? There is nothing bad with BBI. What did he say in particular? Did he disparage any Senator? What did he say about BBI?

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, he said that we should not bring in the issue BBI and the handshake at this time. That is politics. Let him leave that to the public out there. He is completely out of order.

**The Deputy Speaker** (Sen. Prof. Kindiki): Let the matter die there.

Order, Members!

Thank you, Sen. Cheruiyot.

Sen. Omogeni is not here, so the position will be taken by his neighbour, the Senator of Kisii.

**Sen. (Prof.) Onger:** Thank you, Mr. Deputy Speaker Sir---

**The Deputy Speaker** (Sen. Prof. Kindiki): The Chair has to balance so many things; political parties, gender and regional balance. Not the neighbour in the House, the territorial neighbour.

Sen. (Prof.) Onger.

**Sen. (Prof.) Onger:** Thank you, Mr. Deputy Speaker Sir. This is a very important Motion. It is talking about the functions of a county government. The issue here is whether there was an agreement, and if there was one, whether it was in accordance with the Constitution.

I dare say that, yes, it was in accordance to Article 187 of the Constitution. In fact, in Section 1 of the preamble, it says by agreement between the two governments; the national Government and the county government.

The second issue that we must determine is whether the governor is a Chief Executive to sign on behalf of the Nairobi City County Government. The answer is, yes, because Article 179 of the Constitution--- In fact, when we look at the Public Finance Management (PFM) Act, the Chief Executive on matters of finance is the governor. He

appoints the County Executive Committee members (CECs) to act on his behalf. It was, therefore, right for the Governor of Nairobi, hon. Mike Sonko, to append his signature on this agreement. The next question is: what happens? Is there any legislative framework that has been violated? The answer is no. Looking at the Constitution---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, that is Sen. (Prof.) Ongeru's opinion and he is entitled to it.

Kindly proceed, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Mr. Deputy Speaker, Sir, I would like to disabuse the feeling that is developing here. Let us not get into micromanagement of the legal process because that is where we go wrong. This is a political decision and so, we must give our views in accordance with the political climate prevailing within a given situation, in this case, the situation in Nairobi City County.

My argument is that Article 187 was voted for by Kenyans in the Constitution. The Article was not put there for fun. If there is a lacuna in law, which seems to have appeared, the people who should have brought about legislation to fill up that lacuna is the Senate. However, we have failed to fill the lacuna and should not fowl any decision that had been made.

Mr. Deputy Speaker, Sir, I heard some arguments being developed here as to why the revenue department should not be transferred to the national Government. All that is provided for in Article 187(2) (a) of the Constitution as follows:-

'If a function or power is transferred from a government at one level to a government at the other level—

(a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and'---

There is nothing wrong in this agreement reflecting the transfer of resources to be managed by the national Government because the functions that have been transferred require resources to run the Nairobi City County Government.

I take the consolation that performance of the functions or exercise of the power shall remain with the Government, which it is assigned by the Fourth Schedule. We are arguing over something that had been overtaken by events. I have been in Government before and know the position of Nairobi City County in the region. I negotiated for Nairobi to host the United Nations agency. Nairobi hosts one of the established centres of the United Nations Headquarters among the four that are in the world.

Mr. Deputy Speaker, Sir, this City controls 60 per cent of Kenya's Gross Domestic Product (GDP). That point is sometimes overlooked. That GDP can only come about if we have an orderly system running the Government. I, therefore, support the transfer of functions to the national Government---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Sen. (Prof.) Ongeru. Kindly proceed, Sen. Farhiya. You have five minutes.

**Sen. Farhiya:** Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to contribute. I am not a lawyer but in some situations, it is clear to everybody what is right or wrong. I sit in the Committee on Finance and Budget and I am aware that the revenue generated by this country, both the national Government and county governments, has been dwindling. The graph has been downtrend. The former county councils collected more revenue compared to the current county governments.

The growth of our GDP and revenue do not match, and I am convinced that the hidden cause is corruption. The national Government has taken over the running of the County Government of Nairobi due to corruption. If we do not speak out clearly on issues of corruption, as a country, we will fail. Whether we take a tribal or political position, the leadership of this country has spoken on corruption. Things will go right when everybody is focused on saving this country from the jaws of corruption.

Mr. Deputy Speaker, Sir, I am speaking on corruption because Nairobi City County is unable to run as a result of the corrupt practices, coupled with mismanagement that are ongoing in this county. When Sen. Sonko was asked by the courts to step aside due to corruption, the county was at a limbo due to lack of a deputy governor, which he should have addressed when he was still in office. Further, half of the County Executive Committee (CEC) members were also not in office. If those issues had been addressed earlier, Nairobi would not have experienced the challenges it is faced with.

If this House is serious about protecting devolution, we have to deal with corrupt governors. We should not confuse protection of devolution with protection of governors. The truth of the matter is that we have to fight corruption. This House must pronounce itself on whether or not it supports corruption. We should avoid the argument that an individual is being targeted due to their political inclination. This House should act on corrupt governors regardless of their political inclination. The corrupt individuals who we presume are protected can also be stopped if we are serious about the fight against corruption.

Mr. Deputy Speaker, Sir, Nairobi City County is paramount. Although we are from other counties, we spend most of our time in Nairobi City County because we work and live here. Therefore, whatever happens here affects all of us. We cannot allow services in Nairobi City County to come to a halt--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Sen. Farhiya. Kindly proceed, Senator for Migori County.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I thank you for giving me an opportunity to speak to this Motion for Adjournment. From the outset, I would like to state that the public in Nairobi City County require services. The decision to hand over functions of the County Government of Nairobi is a popular and politically convenient decision. However, as a practising lawyer for many years, I must not just speak to the popularity of the decision. I would like to state that the process is wrong.

What disappoints me is that the Senator and the Governor of Nairobi City County have surrendered to that process.

I want to urge the House that as we support this very popular decision by the people of Nairobi and Kenyans, we should restrict it as a one-off for Nairobi. I do not want this process to be visited on the people of Migori. I am sure the people of Kisumu,

Kiambu and other Kenyans do not want authority to be exercised by fear to dissolve functions of their counties.

However, in Nairobi we have a challenge. We know that this governor should have left because there are matters that he has failed to perform. We know that if the law does not provide for a way out, convenience and politics may provide for it.

Mr. Deputy Speaker, Sir, as I conclude because I do not want to speak much, I want to say that we should support this process, but let us leave it as a precedent set for Nairobi. We should not allow this precedent to be visited on other counties because it is a recipe for chaos and is something that should not form precedence in this country.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you very much. I think if all Senators emulate Sen. Ochillo-Ayacko, we can make a lot of progress.

**Sen. Kinyua**: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

From outset, I have listened to Sen. Sakaja keenly and he insinuated that when we invited the Governor of Nairobi, all he did was to lecture us.

On the contrary, when we invited the governor, we invited Sen. Sakaja as well and he told us at that particular meeting that he was satisfied with the way the governor had answered questions. The governor said that he was waiting for a Bill that was in this House, The County Governments Act, to be passed so that he could appoint his deputy. I remember the Deputy Majority Whip supporting the governor. He said the governor had done nothing wrong by not having a deputy governor.

The Senator came here and said that he has not seen any report. I remember the Chair ruled in this House that if you invite a Member and he is contented with the investigation at the Committee level, then there is no need of writing a report. Therefore, I am being pulled backwards to start thinking whether Sen. Sakaja was honest in his statement when he was saying that.

Having said that, on this issue, I want to go straight to the point by saying that what was done is popular with many Kenyans because they are saying the health sector has failed in Nairobi. It is not only in Nairobi; it has failed in many other counties. We have problems in counties like Kirinyaga and Laikipia. If every service that fails is taken back to the national Government, it means that every other service will be taken back to the national Government.

When I look at the procedure that was used, Article 10 of the Constitution on public participation was not followed. Public participation is supposed to be done in an open place, not consulting Sen. Sakaja in the boardroom. It is supposed to be done in an open place. That is the only contentious issue with me because as the Chairman of the Committee on Devolved Government and Intergovernmental Relations, if the procedure is not followed, I will stand up and say that the procedure was not followed, and stick by it.

Mr. Deputy Speaker, Sir, I would recommend for the purpose of continuity, if allowed, that we invite Gov. Sonko and the Cabinet Secretary---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You will discuss that in your Committee. You are not transacting Committee business here. Are you?

**Sen. Kinyua:** I am not supposed to transact that business here.

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

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. First, I rise to oppose this Motion. I oppose this Motion in the sense that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! If you oppose the Motion, you are opposing a Motion which was approved a long time ago. The Motion was whether the Senate should adjourn, and we adjourned.

*(Sen. Were spoke off record)*

Order! There is no question of supporting or opposing here because the Motion was approved and it is not now in your stay to oppose anything. What are you opposing; that we do not adjourn? That is the Motion. The Motion before us is that the Senate adjourns to discuss the issue of Nairobi City County.

Just make your observations, Senator.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. What I opposed must have gone beyond me. However, I wanted to say that the horse has already bolted. The decision has already been made and our talk here will do very little to change the circumstances that have happened.

The presence of the Speaker of the Senate and the Speaker of the County Assembly gave this process a sense of finality. Whatever we say here indicates that it has already happened, and all we can do is talk to ourselves.

My second issue is that devolution is under attack. The ability of Sonko to run this City---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is Sonko?

**Sen. Were:** Sorry, Mr. Deputy Speaker, Sir. Gov. Sonko's ability to run this City, which is the economic hub of East and Central Africa, was known from the word go. Therefore, if the ruling party gave Gov. Sonko a party ticket to vie, they should also take some blame---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Just discuss the issues of Nairobi; do not discuss political parties. Wait for the next political rally, and I am told there is one on Saturday. I do not know where it is.

Proceed, Sen. Were.

**Sen. Were:** Thank you Mr. Deputy Speaker, Sir. I will remove the politics.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): These are the proceedings of the Senate and not a political rally. You cannot discuss the merits of a political party handing a ticket to one or the other one. This is not the right place. However, you can discuss the performance of the governor and say that it is bad or good.

**Sen. Were:** Thank you Mr. Deputy Speaker, Sir. I will not go into the choice of the governor because that is already water under the bridge.

I would also like to say that the national Government had other options in trying to strengthen the county government. Instead of taking back those functions, they would have, for example, seconded technical staff to the county government to strengthen it,

other than setting this precedent that every besieged governor right now can be called upon to give away certain functions. We have already heard that at least 40 counties have given away the function within the health sector and that the national Government should buy drugs for them.

Therefore, little by little, functions of counties are being chipped. This precedent that is being set now that I am opposed to should not happen. The national Government can help by strengthening these counties in other ways because devolution in this country is still young. We are still going to see more of non-working processes within the counties. Will we keep taking away functions?

Mr. Deputy Speaker, Sir, it should also be noted that most of these devolved functions are not working properly because we have not devolved funds. The flow of funds is inadequate. Therefore, at the counties it looks like some of these functions are not being undertaken properly, yet the key problem is funds from the national Government that is salivating for these functions from counties.

With those few remarks, I beg to contribute.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): By default, you support the adjournment.

Proceed, Sen. Mugo.

**Sen. Mugo:** Thank you, Mr. Deputy Speaker, Sir, for giving me the chance to contribute to this Motion on the Floor. As a Nairobiian, and a Nairobiian leader, I would like from the outset to say that I am very happy with what happened yesterday.

I think it was long overdue; they should have done it much earlier and saved the people of Nairobi from suffering.

Mr. Deputy Speaker, Sir, the essence of devolution was to bring services closer to the people. However, what has ended up happening in our City of Nairobi is that there have been no services at all because nothing – absolutely no functions – were happening. That has been in the Press and everywhere else; everybody knows that. We, who live completely in Nairobi, know the situation and how much Nairobi has changed.

Mr. Deputy Speaker, Sir, Nairobi, as has been said by many people, is not any other city, but the capital City and pride of Kenya. We now have so many guests; I do not know whether the President of Germany has left. We have guests of such stature coming to Nairobi and they witness heaps of garbage and everything that should not be in a city, especially in the health sector.

Our Press is very open – and we commend it for informing us – although sometimes they go overboard just showing how bad and dirty everything is. They write stories about Cholera, which we had eliminated especially in the City, and now it is back. We host international bodies such as the United Nations (UN) – as was articulated earlier – and many others. International health regulations now require that people coming into a county where there is Cholera should be inoculated.

Consequently, we have been put in a different category, which endangers our standing. Therefore, these international bodies can even claim that they cannot be in a city where their health is not assured.

Mr. Deputy Speaker, Sir, what the national Government has done, although it might have some legal loopholes where people--- I am not a lawyer, and I do not want to say it is okay if it is not. What I know is that laws are made for the comfort of the people and not for the people to suffer. What has happened now is good for the Nairobians, our international friends and for investments.

Since we do not have enough jobs for our young people, we need investors to come in, so that we can create job opportunities. We cannot have our cake and eat it. Yes, Nairobi had been mismanaged. If I am asked, I would say that maybe we should be like Washington DC and other cities like that. But if we can get a good manager to manage a county, it can run. The question is that we find out too late and do not have much time to gamble with.

Mr. Deputy Speaker, Sir, let us always first look for the welfare of the people, because the people want to have medicines and not heaps of garbage. They want a clean City, water, sewerage and everything done to perfection, because Nairobi is not one of those cities that we do not want to mention. Nairobi is a City where we are trying to get international companies and agencies to make it their hub. Kenyans are trying very hard, but then somebody somewhere is not delivering. We must refuse corruption.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I think we are doing very well.

Proceed, Sen. Pareno.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. What happened yesterday was a total violation of Articles 187 and 10(2) of the Constitution of Kenya. Article 187 provides for governments to enter into an agreement. For me, Gov. Sonko alone did not constitute a government; he should have involved the county assembly. He should have probably even gotten a resolution by the county assembly, because Article 187 talks of 'government.' When we look at how we describe the government in this Constitution, a county government is both the governor, representing the executive, and the county assembly.

Therefore, without all these people, Gov. Sonko alone could not execute on behalf of the county government. He should have had a resolution or involved the county assembly as well. It, therefore, fell short of the description of what a county government is. To me, that signature should just be ignored as a personal signature, because it does not represent the county government, as envisaged by the Constitution.

Mr. Deputy Speaker, Sir, Article 10 of the Constitution talks about public participation. Kenyans wanted to have a say in the way they are governed. Therefore, you cannot execute an agreement and, within a few hours of the agreement, do a *Kenya Gazette* notice transferring functions without involving the people of Nairobi City County. In fact, maybe they just saw it through the 411 news phone alerts, as we saw it as a Senate. You cannot, therefore, do it the other way round.

You cannot make decisions and then go for public participation. To me, they should have started with public participation, and then a decision is reached; and the

people of Nairobi have a say in. So, that is contradictory to the provisions of Article 10 of the Constitution. Therefore, the Constitution has been violated.

Mr. Deputy Speaker, Sir, the conclusion I would to make is that they were probably trying to forestall an impeachment and a by-election. But we have done several by-elections and impeachments in this country. We did one just the other day. The county assembly could have as well gone for impeachment, if they deemed it fit. This Senate would still have gone for it, if they deemed it fit. To me, this was not the best decision. They should have followed the law. It was probably well-intentioned, but then the way it has been executed is a violation of the law.

Mr. Deputy Speaker, Sir, from the clip that was shared, I saw our Speaker witnessing the signing of that agreement. That just took me aback as to what happens when this matter has to be discussed by this Senate, and our Speaker is sitting---

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

**Sen. Pareno:** At the end of the day, I was wondering about conflict of interest.

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

**Sen. Pareno:** I stand to be guided, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Resume your seat.

*(Sen. Pareno resumed her seat)*

Sen. Pareno, I thought that you sit in the Speaker's Panel. The directions I gave at the beginning was for the sake of our House and its dignity, which I protect with all my might. I cannot sit here and listen to you trying to say whether the Speaker ought to have been somewhere or not; that is completely out of order.

The Speaker carries the authority of the House, and that is why he is the Right Honourable Speaker. He is right; period. Please, let us not go there. If you want to raise an issue in the Speaker's *Kamukunji*, that is fine, but not in Plenary, for heaven's sake. The whole world is watching, and you are trying to ask whether I do not know what--- Let us not go there or even discuss it again.

Please, just proceed and conclude you remarks.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, again, I stand to be guided. I should probably raise that matter in another forum; probably at the Speaker's Panel meeting.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Or you pay him a courtesy call in the office!

**Sen. Pareno:** Mr. Deputy Speaker, Sir, finally, this is an affront on devolution. Today it is Nairobi City County, but tomorrow it will be another county. What will happen if counties begin to transfer their functions because of being unable to perform? If we allow this to happen, then we will be killing devolution. This Senate should stand firm in as far as protecting the Constitution and say no to some of these things. The Senate should guide the country in as far as protecting devolution is concerned.

I support the Motion for Adjournment because this is a pertinent issue that touches on the core mandate of this Senate in as far as devolution is concerned. If we allow this to go on, it will be a loss and we will go down in history as having killed devolution.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you so much. Proceed, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, let me also add my voice to the Motion on Adjournment, which has come at an important time. There is nothing more important this afternoon than discussing what has happened in Nairobi City County.

I feel that Nairobians have been let down by the very government that they elected. The situation in Nairobi is unique because it has never happened in any other county. Nairobi City is a county that belongs to all of us; it is our Capital City.

I remember when we were young, Nairobi had a city council. However, more often than not, it would be dissolved and we had a commission because of the inept leaders in the City Council then. Today, we are witnessing a situation where under the current Constitution, Article 187 has been evoked to transfer functions from the county government. In fact, if you look at the Fourth Schedule, the county is left with agriculture only. Of course, there is no agriculture that is done in Nairobi City County. There is pollution---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But I was told that there are locusts in Nairobi.

*(Laughter)*

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, they have not come here. I think they avoided Nairobi. Animal welfare---

**Sen. Sakaja:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senator for Mandera County to claim that there is no agriculture, while in essence there is more agriculture in Nairobi City County than in Mandera County? We have a lot of rural constituencies in Nairobi City County including Dagoretti South and Uthiru/Ruthimitu in Waithaka. We have urban agriculture even in our slums in guinea bags. We have agriculture in Ruai.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But you do not keep camels. They have millions in Mandera County. That is also agriculture; is it not?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, he needs to compare the extent, but not to say that there is no agriculture in Nairobi City County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Alright, maybe he meant crops. Proceed, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, in terms of tracts of lands, Nairobi City County has no farms. That is what I meant.

As it is now, with those functions transferred, the Nairobi City County Government is a shell. As the Senate, we must understand the implication of Article 187 (2) (b) that transferred functions still become the constitutional responsibility of the devolved government. I do not know how they will manage that. Going forward, even if Nairobi City County Government transferred functions to the national Government, this Senate should ensure that the county government has the responsibility.

According to Article 187, the transfer should have been between the two levels of government. Maybe the governor was totally incapacitated. Sorry to use the wrong word. They were obliged to do what they did. That is good for Nairobi City County.

Mr. Deputy Speaker, Sir, Article 189 of the Constitution requires a lot of cooperation between the two levels of government. I think that was lacking, just the way the Senate was not involved. The national Government should have advised on what needs to be done in Nairobi City County Government, but that did not happen.

If you look at Article 192 of the Constitution, what happened yesterday is tantamount to suspension of a county government. It could have even better if it was a suspension. Nairobi City County Government being a shell, there is reason for it to be suspended, so that we have proper elections.

Mr. Deputy Speaker, Sir, we are looking at the Budget Policy Statement (BPS), and I am sure money will be allocated to Nairobi City County. Who will manage those funds? That is a question that needs to be answered.

The implication of the transfer needs to be weighed against many constitutional provisions and The Intergovernmental Relations Act. Whatever is in the deed, its implication for the future must be addressed, so that we know whether Nairobi City County will be under a commission like we used to have. What is the future of Nairobi? We should have foreseen that suspension under Article 189 of the Constitution.

We were in a catch-22 situation. On one hand, the governor was barred from going to office, and on the other hand, he had no deputy and the executive. Nairobi City County was in bad circumstances. What happened yesterday was inevitable.

Having said that, we do not want---

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

*(Sen. Sakaja spoke off record)*

Sen. Sakaja, you are not on record.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, as he finishes, I would like to give him some information.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Eng.) Mahamud, would you like to be informed by Sen. Sakaja.

**Sen. (Eng.) Mahamud:** Yes, Mr. Deputy Speaker, Sir, but you will have to add me time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No problem, we will add your time.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I will give quick information on the last point he has made concerning funding. As the Chairperson of the Committee on Finance and Budget, it is important for him to note that constitutional responsibility remains with Nairobi City County. Therefore, those amounts will still need to be appropriated. The Controller of Budget (CoB) should give those amounts for functions taken by the national Government. The level of funding cannot be below the last appropriated amount in the last financial year.

The second information I want to give him is on agriculture. He mentioned livestock, camels and others. The function of agriculture, on top of crop, animal

husbandry and livestock sale yards according to the Constitution, includes county abattoirs. All of their livestock are slaughtered in Kiamaiko and Dagoretti. These are the largest abattoirs in the country. That is a huge function that remains with the county government.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I thank the Senator for Nairobi City County for that information. It is well taken.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will add Sen. (Eng.) Mahamud an extra minute.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, while accepting the transfer the way it was done because, as I said, it was inevitable, I also fear transferring functions from a county to the national Government. The Constitution foresees the transfer from the national Government to county governments, but this is upward.

I hope that the circumstance in Nairobi City County will not be precedent setting because it is dangerous. We will witness the clawing back of devolution. Devolution must be respected, but where there is a problem, it must be provided for in the law.

If the Governor of Nairobi City County was allowed to convene a special sitting with the county assembly and a resolution was passed, that would have been a neater way of doing it. Going forward, we need to respect the law. As the Senate, we should not be going back because we are also fading away. Our mandate is found in Article 192. We should have tried to see whether it was necessary to suspend Nairobi City County Government.

Mr. Deputy Speaker, Sir, the situation was bad in Nairobi as I mentioned. The Governor had been barred from accessing his office. There was also no deputy governor and the executive. That should have been initiated.

Going forward, I urge the Senate to stand to be counted and leave some history. Devolution is at risk because of rogue governors and the national Government, which also wants to claw back the gains made. Therefore, we need to be careful. The case of Nairobi City County should be a lesson for us to see what needs to be done.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): As I said in the beginning, I would like every Senator to speak. The requests I have here vis-à-vis the remaining time to 6.30 p.m. may not allow us to do that. There are two options; either we reduce the speaking time to three minutes or you cause the House to extend business until this matter is disposed of. As I said, I am ready.

Senate Majority Leader, do we go for three minutes or we extend? We have to do it before 6.00 p.m. Do we go for three minutes?

**Several Senators:** Yes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will now put the question.

*(Question, that the time allocated to each Member be reduced to three minutes, put and agreed to)*

There was only one 'Nay' from a Senator who cannot be named. So, three minutes start now.

Sen. Nyamunga.

**Sen. Nyamunga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. First of all, whenever a woman is in labour, the child has to be delivered; it does not matter by what means. It can be through normal delivery or C-section. Nairobi County Government was in labour and the best had to be done to save the people of Nairobi from poor services.

Mr. Deputy Speaker, Sir, now that we have an opportunity to amend the Constitution, we should think about the appointments of county governors. From what we have seen, it is important to get the right people to govern our counties. Nairobi County Government has been an isolated case. Nobody is fighting devolution, and it is not under trial. The most important thing that we should do is to make sure that we get the right people to govern us. It is wrong for us to play with the lives of the people. Nairobi is a major City in the region and Africa. The way it has been governed for the last few years has been a shame to us, as a people and nation.

Mr. Deputy Speaker, Sir, the delivery of services has been wanting. We were going back to the days of 1980s and 1990s when there were potholes instead of roads. I remember one foreigner saying that there are many potholes on the roads. So, we must provide good governance to our people. We must also have the right leaders who will provide services to them even if it means changing the ways. It should not be political. We should go for technocrats who have been tested. This is not about wanting young or old people. We need people who will deliver. If a young or older person can do it, well and good.

Mr. Deputy Speaker, Sir, in my view, devolution is not under trial. I believe that there must have been a lot of consultations that were done before the decision was made. I believe that all the questions that we have raised here will be addressed. I am sure that the issues of budgeting and oversight will be taken care of. So, first things must be done first. We must provide good governance to the people of Nairobi, I being one of them.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I will be fast. First, devolution is at crossroads in this country. The signing of the transfer of functions of Nairobi City County was unprocedural, in haste and politically motivated.

Secondly, we have heard time and time again that there are *mafias* in this City. There are land and business cartels that are fighting the governor. The document was crafted fast, and as a lawyer there is what we call vitiating factors. Even if a contract has been made, there comes a time when certain factors or variables may occur to nullify it. If this matter will go to court, this transfer would fall on its face. Examples of vitiating factors are duress, cohesion, influence, illegality, capacity and so forth.

We saw His Excellency the President and others, and to my understanding, he ought not to have been there. If this deal was clear, it would have been between the county assembly, the executive and the Cabinet Secretary (CS) for Devolution and ASALs. For the President to be there, yet he is the party leader of Gov. Sonko, is influence and nothing else.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought the Governor of Nairobi City County was there as the governor and the President in his capacity as the President.

**Sen. (Dr.) Kabaka:** Mr. Deputy Speaker, Sir, I am coming to that point. Sen. Cheruiyot clearly said that---

*(The red timer went off)*

I am giving salient points, which will help this nation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will add you two more minutes.

**Sen. (Dr.) Kabaka:** Mr. Deputy Speaker, Sir, Sen. Cheruiyot brought an interesting point; that Gov. Sonko is not a government by himself. Therefore, that supports what I am saying that such an arrangement does not have capacity. Therefore, that agreement is null and void.

Sen. Mutula Kilonzo Jnr. also clearly asked what the consideration in law was and what Gov. Sonko benefitted with. These are the ping-pong games of politics. Gov. Sonko was bound to be impeached if the impeachment Motion was to be brought to this House. So, that is what he got in exchange. This has been supported by none other than the Senator for Nairobi City County who said that looking at the cost-benefit analysis, it is expensive and because of the importance of the lives of the people of Nairobi, it is unreasonable to impeach Gov. Sonko.

Mr. Deputy Speaker, Sir, I support the Motion for Adjournment, but my points stands that devolution is at crossroads.

**Sen. Poghiso:** Thank you, Mr. Deputy Speaker, Sir. Let me also join colleagues in supporting this Motion for Adjournment in the sense that Nairobi is being transformed. What happened yesterday should not be condemned. This is because desperate situations sometimes require desperate moves. For example, the streets in Nairobi have been taken over by *boda bodas* which crisscross the roads and one cannot drive comfortably anymore. The services have almost collapsed.

Mr. Deputy Speaker, Sir, we had reached a point where we would have to find a way to sort out Nairobi. The Constitution supports it and by extension the Senate was represented. So, I knew everything is okay.

Mr. Deputy Speaker, Sir, in the case of health services, if it were not for the many private hospitals in the City, we would have problems. When a governor has no deputy and has a heavy load on his shoulders, it is easier to help him or her out the way this was done.

This also sends a warning to my own County of West Pokot. Some of the functions in the counties should be taken back to the national Government, for example, health services.

Mr. Deputy Speaker, Sir, we will defend devolution. However, in situations where devolution brings shame and we are not running the counties well, there is nothing to defend. We will defend it if it is done correctly. So, we must choose. Our people must understand whom they should vote for to run the counties. We now know what it takes to run a county. This is an example for the people to see whom to elect or not.

Any governor who thinks that they can run a place by themselves and in their strength, will make mistakes. Therefore, I hope that the national Government will help Nairobi. We want to see changes and ensure that Nairobi moves in a direction that can be salvaged. We want to see the National Youth Service (NYS) cleaning this City.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Senator.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir. At times, desperate situations require desperate measures as long as they are done within the confines of the Constitution and the rule of law. So, for me, as a lawyer, if what was done yesterday is supported by our Constitution and by our laws, I am in full support.

Let us not trivialize a very important article in our Constitution. Article 187 has a rider. Discretion is given to the two levels of Government. There are functions that can be transferred to another level of government if the other level of government can perform them more effectively.

We live in this country and we know what has been happening in the County Government of Nairobi. I sit in the Committee on Health; we know what was happening at Pumwani Maternity Hospital. We know the state of county planning; it has reached a level where high-rise buildings are being approved in estates that are zoned for single dwelling units. That is something that we should not take lightly. We are here as the people's representatives. We are here to ensure that services are delivered to the people that we represent and serve.

The case that we have seen from the County Government of Nairobi is a situation where even the professionals working in the Planning Department have not been able to approve plans. The economy of this county is coming to a halt. It does not serve public interest if we allow that situation to persist in the name of defending devolution. There are two sides to a coin; we must support governors who are able to deliver and those who are not able to deliver should take a break.

I support this move. Let this be as a study case for all of us. If, indeed, the transfer of functions can give solutions to the problems that the people of Nairobi are facing, so be it. I state here without any fear of contradiction that if health services can be delivered better by the national Government to the people of Nyamira, I will support it any day.

This is a matter that is supported by our Constitution. The County Government Act Section 26(5) merely states that once the memorandum is signed, the county assembly should be notified. There is no obligation for prior approval by the County Assembly of Nairobi. I am fully in support of what happened yesterday and I hope that the people----

*(Sen. Omogeni's cell phone rang)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Okong'o Omogeni! You are completely out of order! Next time your cell phone disrupts the House, the consequences will follow you.

**Sen. Omogeni:** Noted, Mr. Deputy Speaker, Sir.

As Senators, as long as we have not breached the Constitution or statute and as long as what has been done is in the best interest of the people of Nairobi, we should support.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir. I stand to support that Senate do adjourn to discuss this very important matter.

As we all know and as my colleagues have already said, this is our capital city and we have already seen for the last six months and even before, people of this county have not been receiving services. Therefore, I support this move.

I am not a lawyer to really debate hard on that and say whether it is legally right or not. However, the action that happened yesterday took us by surprise. We did not expect it to move that fast, but I feel that it is a lesser evil. If the county has been suffering and Nairobians have not been receiving services, it is justifiable. This is our capital city which is a home for many people. If the County Government of Nairobi City is not doing well, then it has some negative impact on the national Government.

I support the Motion but the question is; what do we learn from this? There are many other counties that have similar challenges. Will the national Government do the same thing to these counties? If yes, then what is the role of the Senate and how will we help the situation?

The Governor is facing an impeachment Motion and he has not been going to his office because of the court cases. I would want to know what is happening. My recommendation is that, let the Governor be impeached. If we have a strong case---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! This is not the forum.

**Sen. (Rev.) Waqo:** I am sorry. I apologize.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Once you leave the Chamber you can go and propose what you want to be done to the Governor.

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, I am sorry.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No problem.

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, if that is to be done, then this House is ready for the process. For the time being, what can we do?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We are ready for all the 47 counties.

**Sen. (Rev.) Waqo:** Yes, we are, including my county.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senators. We must remain true to the dignity and impartiality of our House on such matters.

Sen. Kwamboka, you have the Floor. You are part of the Nairobi delegation.

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir. Indeed, I am one of the happiest ladies as a Senator in this county. I am very happy that yesterday Governor Sonko proved to the whole country that he does not have the capacity to lead the County of Nairobi by surrendering the functions---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! We are discussing the transfer of functions.

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir. At least sanity has been brought back to Nairobi. What *Nairobians* were going through is very sad because everything was at a standstill and there were no services. Nairobi was in a blackout with no street lights, water and sanitation.

Members of the County Assembly failed to do their oversight job a long time ago. They have a lot of work. I do not know whether it is the end of Governor Sonko but the Members of the County Assembly have time to exercise their mandate.

Mr. Deputy Speaker, Sir, staff of the Nairobi County Government work in very fearful working conditions. They fear working and are traumatized because they can be

sacked through a text message. What happened yesterday is good because it is better to prevent than cure. Nairobians are not receiving any services, but I am sure by transferring these services to the national Government, things will start working.

Nairobi City County cannot be run by only one person. I do not know why it took so long for Governor Sonko to nominate a deputy governor. There was something hidden in his mind.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kwamboka, I want to refer you to Standing Order No.34 under which this Motion has been brought. The short of it, is that a debate or a discussion on the Adjournment Motion shall be strictly on the subject matter which is the transfer of functions. Just conclude your remarks.

I know that it is so tempting, because this is an opportunity to discuss your Nairobi politics, but, unfortunately, I cannot provide the forum. Go and look for the forum in Dandora, Kayole, and Dagoreti Corner. You have seven days a week; 365 days a year. So, talk about the transfer of functions; whether it was right or it should it be done.

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir, I think those are the repercussions of being a politician. All in all, I am happy because there is sobriety and sanity in Nairobi City County. I thank the President for being there and watching the agreement being signed.

Thank you.

*(Laughter)*

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

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. Based on your guidance, I had listed quite a bit of the laws that were to operationalize devolution, justification, relationships between governments, suspension of governments and all sorts of things. Let me give up on those because there is no time.

I stand to support what was done. There were headlines on social and mainstream media about the filth. We also live in this county and know the failures and dysfunctions of this county; the filthy, crowded, unsafe places, the evictions and violence. There was one headline by Mr. Were that said: “A city in which contempt for the residents is apparently everywhere.” For me, this speaks to the heart of what happened yesterday; a failed city that is now bordering on contempt for its residents who pay taxes and deserve better.

The fact that our capital city has failed under the leadership of the governor is not in question, but the process matters too. I have an issue with the process through which this happened. This is because devolution has listed processes that would govern what should happen even in the transfer of functions or the interrelationships between counties.

There is The County Governments Act, 2012, Intergovernmental Relationships Act, 2012, Transition to Devolved Government Act, 2012, Urban Areas and Cities Act, 2011, The Public Finance Management Act, The National Government Coordination Act and The Transition County Appropriation Act, 2013. All these provide for what should be done. This is a country that should be governed by rule of law and the laws we make.

The fact that in some of the things that were done, we are not sure of the extent to which the provisions under all these robust laws were employed, is of course of concern. That said, let me speak to the failure of our House. I know that you are sitting on the Seat and are there to protect this House, but, please, allow us to also to look at our role in what happened.

Did we, as the people mandated under Article 96 to protect counties, do what we should have done? Sen. Sakaja has come before us severally complaining about the state of this county. Other Senators have come with issues in their respective counties, including Sen. Dullo who has been complaining about Isiolo County. I have observed that you are on your own, as a Senator; if you are from that county, you are required to sort yourself out.

Mr. Deputy Speaker, Sir, it is about time that this House looked at its role in the failures we observe and the things that are happening. In our own rights, we are leaders. I wish the leadership or all of us as leaders took steps. What if we were the ones who occasioned the suspension of Nairobi City County Government under Article 192? What would this House look like if we took that bold step that we did not take? What if it was this House that actually initiated or acted when the Senator for Nairobi came with a long list of things that were ailing our city? We did not act.

Very efficiently, we have allocated the afternoon to lamenting and talking about what should have happened. Leadership is about action.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! We are not lamenting but discussing a matter of national importance.

**Sen. Halake:** Okay, Mr. Deputy Speaker, Sir. I retract. Now, we are discussing the whole afternoon. Yes, we are supposed to be a House of Debate but we should be congratulating the President. This is because leadership is not just about lofty ideas and visions; it is about action.

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

**Sen. Halake:** Therefore, Mr. Deputy Speaker, Sir, he took action and we should congratulate him---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Your time is up. You can congratulate the President on *Twitter*.

Now, you are right, Sen. Halake, to the extent that our committees need to be more proactive but you cannot blame the House. I will not sit here and listen to you blaming the House. This House works through committees. So, our Committee should perhaps do a little more.

Sen. Shiyonga, proceed.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support the Adjournment Motion on the transfer of functions from Nairobi City County to the national Government. Let me state that it was the right thing, the right time and done with the right people and leadership.

Most of us get day-to-day running services in this city. Nairobi City is the gateway to the region and East Africa hence the services that have stalled have hit hard and of a great challenge not only to the country but the region at large.

I support the transfer of functions because we need to continue serving Kenyans. Nairobi City needs to serve its population. If we have stalled basic services like the ones that were transferred yesterday--- Health is a basic need and transport is what facilitates our movement every day. As for revenue collection, funds are needed to run these services. I feel the right thing was done yesterday.

Mr. Deputy Speaker, Sir, I urge other county governments to come and benchmark with Nairobi City County. If Gov. Sonko surrendered yesterday--- I am not here to talk about a particular character but if he surrendered, he did the right thing. Hence, let the services be taken away. We support devolution and I do so 100 per cent. I do not support anything that comes across watering down the gains that we have made so far. However, if Nairobi City County with the status that it had, then I do not support it completely.

Nairobi City County holds international functions including conferences and service delivery programmes have stalled for quite some time. My colleagues have talked about potholes and the challenges we are facing in transport. Why not transfer the functions? Why are we fighting, quarrelling or getting stuck? Why do we get so much hurt when we hear about functions being transferred?

Article 187 of the Constitution needs to be supported by us, leaders. When people make choices of a leader, they subscribe to their manifesto.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Time is up but I can add you one or even two minutes.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker Sir. In conclusion, I just want to say that we want to see where the utilities, services, programs and the functions that had stalled in Nairobi City County have been transferred to. We want to see them working. We expect the national Government that has taken over these functions, to start working hand in hand with the people in charge so that we get the services. We are here to receive the services and support the people of Nairobi. The people of Nairobi need devolved functions to continue working.

I conclude by saying that the rate at which the staff of Nairobi City County Government were being sacked was alarming. No one needs to be sacked. That was one of the indicators that showed that there were wrong people in the wrong place. Therefore, I support this Adjournment Motion and say: let the functions go to the right place and to the right people.

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

Proceed, Sen. (Dr.) Milgo.

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

I stand to support this Motion about Nairobi City County. This county was already dysfunctional because the Governor was facing charges of alleged corruption and therefore, he could not perform his functions, leave alone access his office.

More than two years down the line, this county does not have a deputy governor. We had cases of County Executive Committee members (CECs) being appointed in a very erratic manner. In most cases, they were in and out of office because of being asked to leave office for some investigation to take place; which investigation was not bearing any fruits.

In addition to that, looking at the functions around the city - which is the city in the sun - they were already very minimal. There are a lot of potholes; a lot of garbage all around; and the people of Nairobi have already suffered. In this case, I think that this action was long overdue. Article 187 of the Constitution allows the national and county governments to make a decision on which functions can be transferred to either of them to ensure efficiency.

Mr. Deputy Speaker Sir, what has happened begs the question, what will happen to the leadership of the county government? It already looks like Nairobi City County is almost like a shell despite the few remaining functions. In this case, what will happen to the committees that were oversighting the various key functions that have been taken back to the national Government?

This is already a pointer that there is still a lot to be done to the Constitution to ensure that we make the counties fully functional. While Article 187 allows for the transfer of these functions, this went ahead to violate Article 10 which provides for public participation; but the Super Senator said he was consulted about this. I think that we needed to have---

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

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

*(Sen. (Dr.) Milgo took her seat)*

**The Deputy Speaker** (Sen. Prof. Kindiki): No, you still have time. Can you refer to people using their right titles?

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker Sir. I am guided. The Senator for Nairobi City County said that he was consulted---

**The Deputy Speaker** (Sen. Prof. Kindiki): Sen. Sakaja, I have realized that you relish and cherish when Standing Orders are being violated in your favour. You must demonstrate disdain.

**Sen. (Dr. Milgo):** Mr. Deputy Speaker Sir, there was a violation under Article 10 that provides for public participation. I think that there should have been better consultation and more participation by the county government and the people of Nairobi. Maybe they would have provided a better way forward.

In addition to that, we must make provision to ensure that people receive self-governance and, in this case, make decisions about what affects them. I hope that the other counties will not also transfer functions to the national Government thus killing devolution. Devolution has been cherished all over the world as one of the most progressive activities that Kenya has undertaken.

Mr. Deputy Speaker, Sir, we do not cherish issues of mismanagement, corruption or laziness that was witnessed in this county---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Sen. (Dr.) Milgo but since you are the last speaker, I can give you a minute to summarize.

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, I would like to point out the violation of the law. More consultations should have been done before surrendering functions of the Nairobi City County to the national Government. I hope that other counties will not

be rolled up in the same way. The national Government should assist county governments that are experiencing challenges by provision of technocrats. This is also a wakeup call that in future, we should identify and stipulate the requirements for holders of the position of county governor

Mr. Deputy Speaker, Sir, I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have tried to honour my commitment to give every Senator an opportunity to contribute to this important matter except for the four colleagues who must have had other commitments and left early. As you know, all of us cannot speak at the same time. Senators can only speak one at a time so constrain of time is a challenge but we have tried. Apart from the four colleagues that left earlier, everybody else has had their say on this matter.

Secondly, before we adjourn, the Speaker gave direction that the Senator for Nairobi City County, Sen. Sakaja, is entitled to prosecute his request for statement which he attempted to prosecute earlier today. I therefore direct that Sen. Sakaja's request for statement be put in tomorrow's Order Paper. I believe that Sen. Sakaja's request for the Statement is important, and if time allows, I will give a few Senators who did not get an opportunity to speak on the matter today to make their observations at that time.

Finally, the Standing Orders provide that an Adjournment Motion does not lead to a resolution. We are supposed to discuss the issue at hand and when the time is up, that is the end of the matter. However, as I have directed before, I have encouraged this House to apply Standing Order 1, which I am about to invoke right now in making certain directives so that we just do not discuss and go. This discussion including Sen. Sakaja's statement and observations made tomorrow should lead us somewhere.

We cannot just discuss and say that the Standing Orders say that you discuss and go. There is Standing Order 1, which we can apply, and I have given a ruling before on Standing Order 1. I hope that an opportunity will arise again in the near future. This is because I have reflected since my last ruling, and I believe that I have a few more thoughts or views to add on the interpretation of this Standing Order. I will, therefore, invoke Standing Order 1 and give the following directives.

### CONSIDERED RULING

#### TRANSFER OF FUNCTIONS FROM ONE LEVEL OF GOVERNMENT TO ANOTHER

Following the Adjournment Motion this afternoon, a number of important issues have been raised pertaining to the matter of the Adjournment Motion; and that is the issue of the transfer of functions from the county government to the national Government. As it was stated yesterday in the news dispatch, this is not a light matter. The news dispatch itself from the national Government said that this is an unprecedented matter and, indeed, it is. I, therefore, want to agree with the Senators who said that this is an important matter, and that it is unprecedented.

For that reason, the Senate must take cue from what has happened, and perhaps move the country forward. This is so that going forward, the country is prepared when an

issue like this arises again, and we do not, for example, have the kind of legal gaps that some of the legal minds in the Senate have identified. Those can be cured. We cannot just say that because of an Adjournment Motion, we have finished discussing; let us go and wait until there will be another transfer, then we talk about it.

In that connection, I believe that the Mover, Seconder, and many of those who contributed to the Motion raised very important legal and constitutional issues in terms of substance and procedure. These are questions on constitutionality, legality as well as issues about procedure. Issues to do with public participation, as provided for in section 29 of the Inter-Governmental Relations Act, on whether the public participation should be prior or *ipso facto* – after the fact – which, again, is not clear from the law.

There are issues to do with the role of the Senate in the whole question of the transfer of functions under the existing laws. But also, we would also like to investigate whether there are other proposals on amending the law for the future, to ensure that, for example, there is a role for the Senate and the county assembly before and after. These are questions that have been brought to the Floor. That is why I advised that we should forget about the politics, which we can do out there. This House must help the country so that in the future, we tidy up the process; and that is why we are here.

That being the case or so, because I believe there are quite a number of issues; for the avoidance of doubt, including the constitutionality, legality and procedure followed yesterday. The fact that it happened does not mean that the Senate cannot look at it and perhaps advise and make recommendations for the future. That is why we are here. We will look very bad if we just keep quiet, just do the politics and say that it was good, wonderful or congratulate without scrutinising and saying, “This ought to have been done, and it was done; this ought to have been done, but it was not done; and it has to be done in the future.” That way, even the national Government, county governments, the Attorney-General and the country in general will be guided in the future.

Having said so, Hon. Senators, I want to give the following directive. This directive will also apply to the extra Statement that will come and the observations thereunder; as I have said, this is work in progress.

I now direct the Senate Committee on Devolution and Intergovernmental Relations jointly with the Senate Committee on Justice, Legal Affairs and Human Rights to immediately convene and take hearings from the following public officers:

- (1) The CS for Devolution and ASALs.
- (2) The Chairperson of the Council of Governors (CoG) or his representative.
- (3) The Attorney-General of the Republic of Kenya.
- (4) Any other person or authority that may assist the Committee in making proposals as I am going to direct.

In doing so, the two committees shall work closely with Sen. Sakaja, Senator for Nairobi City County and any other senator who has an interest in this matter.

After doing the hearings and receiving recommendations and submissions, the two committees shall file a joint report in this House. That shall be an interim report 21 days from today, whereby the committees shall look at what happened yesterday regarding the legal, constitutional and procedural issues and advise on whether there are legal, statutory or constitutional gaps and so on and so forth.

After the interim report is tabled within 21 days from today, I direct the two committees to hold further public participation on this issue because it is an important one. They should avoid too much expenditure because Nairobi has provided the case study and specimen for this process. It is the same for every other county because it is about transfer of functions from one level of government to another.

The public participation shall be conducted within Nairobi City County for purposes of this directive. Thereafter, the two committees shall provide a detailed report to this House within 60 days. That report must include proposed legislative amendments to clarify further and improve the existing legal framework on the transfer of functions from the national Government to a county government.

It is so ordered.

*(Applause)*

Senate Majority Leader, are you on a point of order? You and the Senator for Nairobi City County have one minute each.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank you for granting the latitude to debate in the manner in which we did. I also appreciate the issues that have been raised by everybody. I urge everyone to accept the fact that we are here to make things work better. Even for the things that have already been done, it is our responsibility to make them better.

It is understood that there were options. One of them is what the Constitution provides. Our main concern was how it can be done in a manner that will not undermine Article 6(2) of the Constitution about the respect of the two levels of government but at the same time without perpetuating an interest that will undermine devolution in future. That is the concern.

As we continue scrutinizing these issues, let us keep in mind that nobody is opposed to application of a constitutional procedure. It is the protection of the Constitution itself.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We are running out of time. Proceed, Sen. Sakaja in less than a minute.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, similarly, I thank you for having conducted this session in that manner. Every Senator who wanted to speak has spoken to it. We have noted the concerns and the sentiments of Senators.

Mr. Deputy Speaker, Sir, I also congratulate you for the continuous and developing--- I do not want to call it jurisprudence or precedence.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is parliamentary jurisprudence.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I congratulate you for parliamentary jurisprudence on the use of Standing Order No.1. This could be the first time that an Adjournment Motion has led to such a resolution. I think it will be better for us as a House and as a country moving forward. I will fully participate in the interventions that you have ordered to be done.

I thank you.

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

**ADJOURNMENT**

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we have concluded the business for today. Therefore, it is now time to adjourn the House. The Senate stands adjourned until tomorrow, Thursday, 27<sup>th</sup> February, 2020, at 2.30 p.m.

The Senate rose at 6.30 p.m.