

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Friday, 22nd May, 2020

Special Sitting

*(Convened via Kenya Gazette
Notice No.3649 of 20th May, 2020)*

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING TO CONSIDER MOTION ON PROPOSED REMOVAL OF SEN. (PROF.) KINDIKI FROM OFFICE OF DEPUTY SPEAKER, SENATE

The Speaker (Hon. Lusaka): Hon. Senators, you will recall that during the Afternoon Sitting of the Senate held on Tuesday, 19th May 2020, the Senate Majority Whip, Sen. Irungu Kang'ata, MP, gave a Notice of Motion for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate.

Subsequently, by a letter dated 19th May 2020, the Senate Majority Leader requested the Speaker to convene a Special Sitting of the Senate pursuant to Standing Order 30(1), to consider the Motion filed by the Senate Majority Whip for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate. The request by the Senate Majority Leader, was supported by the requisite number of Senators (15 Senators) as required by Standing Order 30 (1).

Hon. Senators, following consideration of the request by the Senate Majority Leader, I was satisfied that the request met the requirements of Standing Order 30 (2). Accordingly, and pursuant to Standing Order 30 (3), I issued a Gazette Notice No.3649 of 20th May 2020 in respect of this Special Sitting, which was circulated to all Hon. Senators.

As required by Standing Order 30(5), the Gazette Notice specified the business to be transacted at this Sitting being the consideration of a Motion for the removal of Sen.

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(Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate as indicated in today's Order Paper. Pursuant to the said Standing Order, the business listed in the Order Paper shall be the only business before the Senate. After which, the Senate shall adjourn to Tuesday, 26th May 2020 at 10.00 a.m., as per the Calendar.

Hon. Senators, having set the context of today's Special Sitting, I wish to inform the House that a Motion on the removal of a Speaker or Deputy Speaker is a constitutional matter that is both rare and extremely unique, especially when it finds its way into the Floor of the House as parliamentary business.

Speakership in the Senate and in similar jurisdictions in the Commonwealth embodies the power, dignity and honour of the House. The main features attached to the Office of the Speaker are authority and impartiality. Members aggrieved by the conduct of the Speaker or Deputy Speaker can only discuss his or her conduct by way of a specific substantive Motion or a Motion on the removal from office such as the one which is before the Senate today.

As you all know, the essential ingredient of the Speakership is founded on the status of the Speaker as the servant of the House. It is on this basis that Motions of removal or censure of the Speaker are very rare. Indeed, the Motion such as the one before us today is the first of its kind in the history of the Senate of Kenya.

Hon. Senators, Article 106 (2) of the Constitution of Kenya states as follows-

The office of Speaker or Deputy Speaker shall become vacant -

(a) When a new House of Parliament first meets after an election;

(b) If the office holder, as a member of the relevant House vacates office under Article 103;

(c) If the relevant House so resolves by resolution supported by at least two-thirds of its members; or

(d) If the office holder resigns from office in a letter addressed to the relevant House.

Hon. Senators, the Motion before the House this afternoon is a Special Motion and shall be prosecuted in the manner prescribed in Standing Order No.69, read together with the provisions of Part 12 (Motions) and Part 17 (Rules of Debate) of the Standing Orders.

Standing Order 69 (2) provides that:

“Unless the Constitution, any written law or these Standing Orders specify a lesser or further period, a Special Motion shall be-

(a) disposed of by the Speaker in accordance with Standing Order No. 55 (*Notices of Motions*) within seven days of receipt by the Speaker of notice by a Senator; and

(b) disposed of by the Senate within fourteen calendar days upon notice being given under Standing Order No.55 (*Notices of Motions*) and if not, such Motion shall be deemed to have been withdrawn and shall not be moved again in the same Session, except with the consent of the Speaker.”

Hon. Senators, in light of the COVID-19 pandemic situation in the country, and; in line with the health and social distancing protocols as contained in the Guidelines that I issued on 31st March and 17th April 2020, and; following a resolution by the Senate

Business Committee (SBC) on 20th May 2020, arrangements have been made to ensure that all Senators have an opportunity to access the Chamber and participate in this debate while in the precincts of the Main Parliament Buildings.

To achieve this, and in consultation with the Senate Business Committee, I wish to inform that-

(i) A maximum of 28 Senators have been allowed to sit inside the Chamber on a first-come-first-sit basis with seats reserved for the Senate Leadership.

(ii) The New Wing Lounge of the Parliament Restaurant has been designated as part of the Senate Chamber to accommodate the other Senators who have missed seats in the main Chamber.

(iii) Appropriate measures have been put in place to facilitate all Senators in the lounge area in the New Wing to follow proceedings, taking into account the necessary social distancing guidelines.

(iv) A Senator seated in the Lounge area in the New Wing wishing to make a contribution in the debate will be required to record his or her name with the Clerks.

(v) The list of Senators wishing to contribute to the debate will be handed to the Speaker who may call out the Senators to speak.

(vi) A Senator whose name has been called out to contribute to the debate shall walk into the Chamber, bow at the Bar and proceed to make his or her contribution from the Dispatch Table. Upon conclusion, the Senator will withdraw from the main Chamber and resume his or her seat in the Lounge area in the New Wing.

Hon. Senators, at the conclusion of debate, a Division Bell shall be rung for 10 minutes. The Clerk of the Senate shall then determine the number of Senators present in the Chamber, including the extended Chamber. If the number of Senators present is 45 or more, being two-thirds of all Senators, I shall proceed to put the question and direct that a Roll Call vote be undertaken. However, if the number of Senators present is less than 45, I will decline to put the question and declare the Motion to have been lost.

If we ascertain that the requisite threshold for voting has been achieved, the following procedure will be deployed -

(1) The Speaker shall request for the submission of the Teller for the 'Ayes' and the 'Noes,' who shall remain seated at their seats.

(2) The Speaker shall put the question and direct the Clerk of the Senate to call out the names of Senators in the Chamber, including the extended Chamber. When called out, each Senator shall declare assent or dissent to the question in the following manner-

"I vote yes" or "I vote no" or "I abstain," pursuant to Standing Order No.83 (5).

(3) When called out the Senators in the extended Chamber will walk into the main Chamber and cast their vote from the Dispatch Table in the manner set out in Standing Order No.83(5) and, thereafter, withdraw from the Chamber to their respective seats in the Lounge.

(4) After the Clerk has read the last name in the Division list, the Tellers shall present the results of the Roll Call vote to the Clerk, who shall hand them to the Speaker to announce the results of the division.

Hon. Senators, to contextualize Article 106(2)(c) of the Constitution of Kenya, if the Senate so resolves to remove Sen. (Prof.) Kithure Kindiki as the Deputy Speaker of the Senate, such resolution must be supported by the votes of at least two-thirds of all Senators, this being at least 45 Senators.

I wish to appeal to all Senators to observe decorum and courtesy during the debate. The expected standards of debate must be strictly observed to ensure that we listen to one another without unnecessary interruptions.

It will be out of order to use offensive or insulting language in respect of the Deputy Speaker, who is our colleague, or other Senators or persons, or to make claims without substantiation as required under Standing Order No.100.

Hon. Senators, a cardinal principle of our Constitution and legal system is that a person against whom assertions have been made, shall be given an opportunity to defend himself or herself, to rebut allegations against him or her. In the context of such Motions as the one about to be debated, the Deputy Speaker, Sen.(Prof.) Kithure Kindiki, M.P., will be given a chance at the end of the debate to accordingly make his contribution to the Motion, if he so wishes.

Hon. Senators, as I conclude, I would like to say the following: It should not matter and, indeed, it must not matter which side of the political aisle you are sitting on, but no doubt, every of the actions, deliberations and decisions or determinations reached on the Floor of this House, will form the basis of rulings in the future; and that future must, of necessity, be informed by the circumstances of the present.

This present as currently established, does not provide adequate mechanism for undertakings such as we are going through today, including making provisions for due process, in line with known policy, legislative and constitutional architecture. I call on the House to consider the introduction of these mechanisms into our Standing Orders so as to guide future processes.

The House is guided accordingly.

I thank you.

Next Order.

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

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

Sen. Kwamboka: Thank you, Mr. Speaker, Sir. According to your Communication, it is well known even in the Ministry of Health that the Members who are supposed to be here are 28 because of the COVID-19 pandemic. COVID-19 is real and from what I see, where Sen. Omanga, Sen. Linturi and Sen. Kihika are seated is not marked to be sat on.

Kindly, give us guidance.

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

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

Sen. Murkomen: My name is Sen. Murkomen, in case you forgot, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I cannot forget my Senators.

Sen. Murkomen: Mr. Speaker, Sir, on a more serious point of order, you have outlined a very serious process that is required to deal with a Motion of this magnitude.

You have even gone ahead to indicate that this is a historic moment because there has never been another Deputy Speaker who has been removed from office or such a debate of removal of the Deputy Speaker. What befalls the Deputy Speaker, under the Standing Orders and the Constitution, befalls the Speaker. It may not be the current Speaker, but any other.

I would like to know from your office: Was the Deputy Speaker served with the charges for his removal? Was he also notified of this Sitting? Was he given the opportunity to know the charges against him? I would have wished to hear from your Communication that there was a notice of Motion given by the Senator for Murang'a County and that pursuant to that Motion some charges were provided and your office facilitated the Deputy Speaker to be notified of these charges. This would have enabled him to prepare himself so that when we go to the Motion itself, the foundation of it would have been achieved.

The Speaker (Hon. Lusaka): Let me make the following ruling: First, we want to be sure we have the numbers that are required to be here because it is supposed to be 28 according to the health protocols. Maybe it can be checked so that we are not breaching the protocols.

Secondly, with regard to what Sen. Murkomen is asking, the notice of Motion was given and the Motion approved. Therefore, I would like us to proceed. Let the Motion be moved, and thereafter, we will look at whether--- Some of the issues you are raising could be easily addressed in the Motion.

Sen. Murkomen: Mr. Speaker, Sir, I am not satisfied. It is only your office that can satisfy me because the country is watching and we all want to know what happened. As the Deputy Speaker is being prosecuted in this House, did he receive any specific charges from your office? Were there charges from the Mover of the Motion that were sent to your office? Did your office facilitate him to receive the charges, so that we do not turn our Senate into a kangaroo court?

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

The Speaker (Hon. Lusaka): Yes, Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, since Sen. Murkomen is insisting on this question, let him cite the constitutional provisions that require that in such a Motion---

(Sen. Murkomen remained standing in his place)

Sit down. You do not even know the Standing Orders. Do you see what he is doing?

The Speaker (Hon. Lusaka): Order, Sen. Murkomen!

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, he should specify the provisions of the Constitution that require that charges be made available to any Speaker or Deputy Speaker on whom a Motion for removal has been tabled in the House. He should cite the Standing Orders, which state clearly that charges are supposed to be given to the Deputy Speaker or the Speaker when such a Motion is tabled.

In reference to the removal of the President or the Deputy President, the Constitution is very clear. It is very clear in the Constitution and the Standing Orders that the charges must be laid before a debate can take place.

Mr. Speaker, Sir, without further ado, it is a simple question. We have not come to the Motion itself. Let him read the Standing Orders since he rose on a point of order. Read to the Speaker what that Standing Order says and the requirement under it. Read to the Speaker the Constitution and its requirements.

Finally, a Motion to remove a Speaker or Deputy Speaker is not a trial or an impeachment. We are not going to call witnesses as in the case of an impeachment Motion. No lawyers are allowed in the Chamber for purposes of prosecuting an impeachment trial. There is no impeachment. Sen. (Prof.) Kithure Kindiki is not under trial. This is simply a Motion for removal.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! We want to make progress. If you listened to what I said, this Motion is the first of its kind. We are talking about the Office of the Speaker; my office and Sen. (Prof.) Kindiki is my deputy. Just like the Senate Minority Leader has said, in the case of removal of a governor, the President or the Deputy President in an impeachment Motion, witnesses will be called to give evidence, or he will defend himself. However, this is a Motion.

I rule that we move to the Motion. Once the Motion has been moved, those issues will be raised during the debate. It will go on record on what you have said.

Sen. Murkomen: Mr. Speaker, Sir, I have been challenged to substantiate

The Speaker (Hon. Lusaka): Order, Sen. Murkomen! I have not given you an opportunity.

Sen. Murkomen: Mr. Speaker, Sir, I have been challenged and it is on the record. I need to substantiate the basis of my argument because it was my point of order.

The Speaker (Hon. Lusaka): Okay, take your seat. I will give you an opportunity. Let us just cool down and prosecute.

Yes, Sen. Murkomen.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. It is deplorable and laughable that human rights defenders of yesterdays are presiding over a process---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members!

Sen. Murkomen: Mr. Speaker, Sir, I am reading the section of the Constitution.

The Speaker (Hon. Lusaka): Okay. Order, Sen. Murkomen! Please, we are hon. Members. The world is watching. Go back to what I said in my Communication. Let us use decorum, respect each other and let us not insinuate. Let us not use language that demeans or casts aspersions against your colleagues. It is so directed.

Sen. Murkomen: Mr. Speaker, Sir, I have not mentioned any name. Although, they say, like Chinua Achebe said, that if you mention dry bones, it is old women who

get uncomfortable. The Constitution is very clear in Article 47. It says every person, including Sen. (Prof.) Kithure Kindiki, has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. If a right of a fundamental freedom of a person has been or is likely to be adversely affected by the administrative action, the person has a right to be given written reasons for the action.

In line with this Article 47, the National Assembly, in its Standing Orders, provided a long procedure of how to notify the Deputy Speaker and the Speaker if you want to remove them. You cannot say and it is not legally sound to argue that you are going to engage in a serious constitutional process to remove a constitutional office holder and pretend to say that the other Articles of the Constitution are not going to apply.

Mr. Speaker, Sir, this is a House of record. The process we are going through will be in history for the next a 100 or 200 years. This House led by its Majority Leader then, Sen. Kipchumba Murkomen went to the High Court to challenge procedures that have been flouted by the Executive and the National Assembly. This House has just got a ruling from the Supreme Court on laws that had been flouted. This House cannot continue calling itself the 'Upper' House and run a removal of its Deputy Speaker in a kangaroo manner. You must point that out.

The Speaker (Hon. Lusaka): Order, Sen. Murkomen!

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.? I will come to Sen. Linturi.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, unfortunately for Sen. Murkomen, he read the Constitution and left out some sections which he should have read so that he can educate us as to what he means in terms of fair administrative action. For the record, Article 47 (3) which Sen. Murkomen, obviously, did not want to read states as follows for the avoidance of doubt:

“Parliament shall enact legislation to give effect to the rights in clause (1) and the legislation shall-

- (a) provide for the review of administrative action by a court or, if appropriate in independent impartial tribunal; and
- (b) promote efficient administration.”

In support of that objection which is not even an objection, the Senator for Elgeyo-Marakwet should, first of all, demonstrate that we are sitting in a court. Secondly, we are not a tribunal, and thirdly which is even more important, is that the Act arising out of this section, which is called the Fair Administrative Action Act---. Sen. Murkomen as a member of the Committee on Justice, Legal Affairs and Human Rights participated in its enactment. He should show how that Article 106 on the removal of a Speaker applies.

Mr. Speaker, Sir, since he does not know, Article 106 has no reference in the Fair Administrative Action Act. We passed that law here. The objection raised by Sen. Orengo must be answered. What section of the Constitution is he referring to specifically so that we can get on to this matter?

(Sen. Orengo spoke off record)

The Speaker (Hon. Lusaka): Just a minute, Sen. Orengo.

Sen. Murkomen: Mr. Speaker, Sir, I do not want to belabour the point. The question was directed to the Speaker. It was clear; could we know whether a process took place between the Notice of Motion and whether the Deputy Speaker was notified of any charges or reasons that support the Motion. That is the briefest Motion I have ever seen to say that we just want to remove the Deputy Speaker.

For the Article 47, I do not know that Sen. Mutula Kilonzo Jnr., the Senator for Makueni County has his moments of brilliance when he wants to cover the truth. However, he cannot hide the truth in Article 47 (3).

Article 47 (3) says that beyond the administrative procedure that is required, the law also must provide that any person that is not going to be happy with that procedure must have a process of going to a tribunal or a court. That is very clear. You cannot lie to me that in any---

Mr. Speaker, Sir, if you read the whole of Chapter 4 of the Constitution, we are about to walk on a very dangerous path. I have told you it will be Sen. (Prof.) Kithure Kindiki today. It will be another person in a different forum. We cannot as a Senate pretend to push for processes elsewhere and come here to run a kangaroo process.

The Speaker (Hon. Lusaka): Order!

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, you have heard Sen. Murkomen referring to the Senate as a kangaroo court continuously. He should not be addressing us if he thinks we are a kangaroo court.

Secondly, he wants to mislead the House that on the case that was filed in the High Court, he led the Senators in that case. In fact, he did not utter a word in that case. It was Sen. (Prof.) Kindiki and I, who led in that case. I was the senior counsel in that case. He is a very junior person when we come to matters of law. He should not be preaching as if he knows the law. Can he mention even one case he has prosecuted in the Supreme Court?

Mr. Speaker, Sir, the point is that there is a decision of the High Court sitting in Machakos where a similar case was taken before the High Court. The county assembly in Machakos removed the Deputy Speaker. The court considered what is fair hearing and what is a notice. That court ruled that hearing does not mean that you address that tribunal. It does not mean that you are even present in that tribunal.

It is just like when you say public participation in Parliament in the committees, people can undertake public participation even by sending their suggestions digitally and so on. There is a more important question which I want to be addressed if this matter can be dealt with fully. In relation to the removal of the President and the Deputy President, there are specific provisions, which say you must spell out the charges.

The process is clearly set out. When it comes to the removal of the governor and the deputy governor, the process is set out because that is a trial.

The other thing that the junior counsel is not considering in trying to construct Article 47 is whether an action by Parliament is an administration action. It is not an administrative action.

As a legislature, we are exercising our legislative authority under the Standing Orders. If he wants me to give him judicial decisions on what is administrative action, let

him go and read Prof. Wade. If he has not read that book, then I would understand why he does not appear in constitutional and administrative division---

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

The Senate Minority Leader (Sen. Orengo): You started it.

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

Sen. Murkomen: Mr. Speaker Sir, Sen. Orengo has over and over again insulted me and insulted my education, but you have kept quiet.

The Speaker (Hon. Lusaka): Order!

Sen. Murkomen: No, let me raise my point of order.

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

Sen. Murkomen: Mr. Speaker Sir, Sen. Orengo is, over and over again, repeating and doubting my practice and my knowledge of law. Sen. Orengo and I went to the same university, even if the difference was 26 years. I got a Second Upper Class Division. Sen. Orengo got a Second Lower Class Division. I have two Master's Degrees, he has none. I have taught two students---

The Speaker (Hon. Lusaka): Order!

Sen. Murkomen: Who is he to lecture me?

The Speaker (Hon. Lusaka): Order, Sen. Murkomen.

Hon. Senators, I want to urge you to look at my Communication. Let us respect each other. Let us discuss with decorum.

Sen. Cheruiyot, you have a point of order? Okay, as Sen. Cheruiyot comes, let the two Senate Leaders decide. We have three extra Members in the Chamber, so both sides will have to decide on the three who go out.

Sen. Ochillo-Ayako: On a point of order, Mr. Speaker, Sir.

(Loud consultations)

Sen. Ochillo-Ayako: Mr. Speaker, Sir, this is very simple. By your own rules, you have designated where people sit. Those who are sitting in places that are not designated should not burden the leadership to evict them. I think that it is visible. If it is me, the Serjeant-at-Arms can come, talk to me, and I will leave.

The Speaker (Hon. Lusaka): I think that we have designated where people can sit. So, if you are sitting in a place where we have not said, "Sit," please get out of the Chamber and join the other Members.

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

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

(An hon. Senator spoke off record)

Sen. Kihika: Calm down, you are not the Speaker.

Mr. Speaker, Sir, my question is; as we walk out of the Chambers, since we may not be in a favourable position, at what point are we able to make our contributions from the other side? On top of the contributions, will we be able to make timely points of order from the other side?

The Speaker (Hon. Lusaka): Yes. You can see that Sen. Cheruiyot is here. We have made a mechanism of how you will approach and make your contribution. It was in my Communication. Those who are sitting in places that are not designated for sitting, please let us observe the health protocols. So, you get out and then I give Sen. Cheruiyot an opportunity to contribute.

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

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

(Loud consultations)

Sen. Linturi, let the three Senators, first of all, move out.

Let us have order.

Sen. Linturi: Mr. Speaker, Sir, if that is the case, then I think it is---

The Speaker (Hon. Lusaka): Order, Sen. Linturi! I have made a ruling. I have said that if you are sitting in a place that is not designated for sitting, leave the Chamber. I will give you an opportunity to contribute from where the other Senators are sitting. Let us make progress.

It is so ordered, so that we give Sen. Cheruiyot and opportunity.

(Loud consultations)

No, but Sen. Cheruiyot is already on the Floor. Sen. Linturi.

Sen. Linturi: Mr. Speaker, Sir, before I leave---

The Speaker (Hon. Lusaka): Order, Senator. I will give you an opportunity from where you are going. You will be the next one.

Sen. Linturi: Mr. Speaker, Sir, you never know where I am going.

The Speaker (Hon. Lusaka): No, I know.

(Laughter)

Sen. Linturi: Mr. Speaker, Sir, addressing the House and the Republic this afternoon depends on the---

The Speaker (Hon. Lusaka): Order! I will give you---

Sen. Linturi: Mr. Speaker, Sir, I want to secure my position before I get out because why you find us seated here this afternoon is because---

The Speaker (Hon. Lusaka): Order, Senator! I am on my feet. You are the next one I will give an opportunity after Sen. Cheruiyot. Both of you cannot be on your feet. Let us respect that I am going to give you an opportunity to make your contribution.

Serjeant-at-Arms, can you make sure that those who are sitting in places that are not designated leave the Chamber so that we make progress.

As they leave, Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Do I proceed, Mr. Speaker, Sir?

(An hon. Member spoke off record)

Sen. Cheruiyot: I am addressing the Speaker, not you.

The Speaker (Hon. Lusaka): Hon. Senators, make our work easier.

(Sen. Kwamboka spoke off record.)

The Speaker (Hon. Lusaka): Sen. Kwamboka, be orderly.

(Loud consultations)

Sen. Omanga, please, we want to make progress. Sen. Linturi, we want to make progress. That was not part of our proceedings.

Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. Before I continue, let me first notify you that it is an extremely long journey from the lounge, where you have kept us. I am the youngest and the fittest in this House, but I struggled to get here. Would it be better if you revise your orders, that after one hour of sitting inside, those who are inside also enjoy the breeze at the lounge and others come in.

The Speaker (Hon. Lusaka): Because of the health protocols, that will not be possible.

Sen. Cheruiyot: Mr. Speaker, Sir, I was saying on the other side of the lounge, there are people who are twice my age. You can imagine the struggle they will go through to get here.

Anyway, I want to support the point of order that has been raised by Sen. Murkomen that somehow seems to have been lost in all this debate about who is more learned than the other, or who went to school earlier.

It is a very simple point. This House refers to three things in terms of procedure. One is the Constitution, two is our Standing Orders, and three is the traditions. The traditions of this House are such that any time a Motion is presented before us, number one; you are furnished with the details of the Motion.

Secondly, the question that is being put before you, which in my own humble consideration, consider to be a yes or no answer is: Was Sen. (Prof.) Kindiki, the Deputy Speaker, presented with the charges that are being brought against him by Sen. Kang'ata before today's Sitting? If the answer is, yes, we would appreciate to know. If the answer is no, you do not even have to explain why you made that decision. This is just for the record because traditions of this House are important. Let it be known by the entire country that on such and such a day, a Senator was moved from his position without being presented with any charges, and no justification was given. We will live with that, please guide us.

The Speaker (Hon. Lusaka): Sen. Kang'ata, you can respond to---

(Sen. Cheruiyot spoke off-record)

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. The reason why I did not do that is because I look at the law as it is and not as it ought to be. The Constitution and the

Standing Orders do not provide the procedure to give reasons. Therefore, if I did that, it could have been illegal, null and void.

In the Standing Orders, there are no rules that we should give reasons for removing a Deputy Speaker or a Speaker. Going forward, this Senate or the new Parliament may consider to provide a procedure for giving reasons. Otherwise, there is nothing in the law as it is.

The Speaker (Hon. Lusaka): I alluded to that in my Communication, if you listened carefully. We are in uncharted waters. In my conclusion, I said that in future, we need to look at how to deal with that.

Like you have rightly said, today is the Deputy Speaker, tomorrow it will be the Speaker or somebody else. So, that will be taken care of in the Standing Orders going forward. That is in my ruling. Let us make progress.

We move on to the next Order.

MOTION

REMOVAL OF SEN. (PROF.) KINDIKI FROM THE OFFICE OF THE DEPUTY SPEAKER, SENATE

Sen. Kang'ata: Mr. Speaker, Sir, under Article 106(2) (c) of the Constitution of Kenya, 2010 and also Standing Order No. 69(1) (b) (2), this is a Special Motion for the removal of the Deputy Speaker, Sen. (Prof.) Kindiki.

I beg to move the following Motion:

THAT, this House resolves that Sen. (Prof.) Kindiki be removed from the Office of the Deputy Speaker of the Senate.

Mr. Speaker, Sir, as you have correctly ruled, the Standing Orders do not give any reasons for this kind of ---

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

The Speaker (Hon. Lusaka): Sen. Murkomen, why not give him an opportunity to make progress? Let him move the Motion. As I mentioned, let us avoid many interruptions.

Sen. Murkomen: Mr. Speaker, Sir, we have just said that we will abide by our Standing Orders and so a point of order will be raised at any point. However, this one has nothing to do with the Senator for Murang'a; it has to do with the microphone that was used by Sen. Cheruiyot.

It has been widely reported that all that he was saying did not go to any record and the public could not follow. So, it should be dealt with for the sake of those who will come and make the same presentations. Many people have said that when Sen. Cheruiyot was raising his point of order, it was muted. It was heard in the House and not to the public.

The Speaker (Hon. Lusaka): It is noted.

Proceed, Sen. Kang'ata.

Sen. Kang'ata: Mr. Speaker, Sir, as you correctly ruled, I do not have to give any reason as to why I brought this Motion.

The Speaker (Hon. Lusaka): You have already addressed that. Proceed with the Motion.

Sen. Kang'ata: Mr. Speaker, Sir, allow me to explain. I have already moved the Motion. I am now canvassing it.

Notwithstanding that ruling, I hereby give the reasons as to why the Jubilee Party gave me these instructions. I am doing this for the benefit of my brother, Sen. (Prof.) Kindiki and the public who are watching us.

The reasons are: One, there was a meeting that was scheduled on 11th May, 2020 at State House. It was called by the Jubilee party which sent a notice to various Senators who belong to the coalition. However, Sen. (Prof.) Kindiki did not attend the meeting.

We sent notices *via* short messages services and we used his last known mobile contact. In the event he did not receive that message, he ought to have updated his records with the party.

After failing to attend that meeting, no apology was rendered to our party. We have minutes which were signed by myself and His Excellency President Uhuru Kenyatta, the party leader of Jubilee Coalition.

Mr. Speaker, Sir, we serve in these positions having been given them by parties. Therefore, when a party loses confidence in you, it has every right to withdraw the support.

When Jubilee party supported Sen. (Prof.) Kindiki to be in that position, there were no reasons given. So, in the same manner, when the party does not have confidence in the Deputy Speaker, it should be allowed to do the same.

Mr. Speaker, Sir, one may argue that Sen. (Prof.) Kindiki did not receive the message for the parliamentary meeting. That is possible. However, under Section 29 of the Evidence Act, there is a concept called judicial notice which also applies in parliamentary practice. The matter was well known and publicized by the media. Therefore, it is a fact that everyone knew that there was a meeting on Monday 11th May, 2020. However, for whatever reasons, Sen. (Prof.) Kindiki failed to attend the meeting. Therefore, the party lost confidence in him. The importance of parliamentary group meetings cannot be belaboured. This is because they have effects of constituting or toppling governments.

Whereas I agree that Kenya is a presidential and not a parliamentary system, for example, the United Kingdom (UK), Canada and other Commonwealth jurisdictions, we often draw lessons from Commonwealth countries.

Mr. Speaker, Sir, I bring your attention to South Africa where a parliamentary group meeting recalled President Thabo Mbeki. Theresa May was also kicked out of Government by a parliamentary group meeting. President Trump, who is the President of a country that practices the presidential system, was saved in an impeachment process by a parliamentary group meeting. Therefore, when parliamentarians meet as political parties, it is sovereignty.

Article 1 of the Constitution says that people can exercise sovereignty themselves or through their elected representatives. Therefore, the meeting at State House was crucial to this party and when Sen. (Pro.) Kindiki failed to attend, the party was not happy.

Mr. Speaker, Sir, another reason why the party does not have confidence with Sen. (Prof.) Kindiki is because of the events that happened in this House on 26th February, 2020. On that day, a Motion of Adjournment was brought by the then Senate Majority, Sen. Murkomen. It discussed the transfer of functions from Nairobi City County to the national Government. After the debate, a ruling was rendered by Sen. (Prof.) Kindiki that a certain Committee should proceed to investigate that matter.

The problem with the ruling was one; under the Standing Orders of this House, Motions of Adjournment do not crystalize into resolutions. Two, the debate should have been about ventilation. In fact, the following day, the Senate Minority Leader raised a point of order and the substantive Speaker vacated that ruling.

Mr. Speaker, Sir, the reason why the President has been in the top front pushing for certain functions from Nairobi City County to go to the national Government is because he wants to ensure his manifesto is implemented---

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, beyond the Senate Majority Whip trying to go round issues, he has made it clear that, indeed - which is what we all believe in - if there was no reason for your appointment, there should be no reason for your disappointment. However, we can see him going round in circles, trying to look for reasons as to why this removal is being done.

Mr. Speaker, Sir, would it be in order for me to urge him to summarize, move the Motion, let it be seconded and we will be done with it? Otherwise, the danger is that he will start getting into rulings of the Speaker and start going into issues that have no bearing as to why this move is being made. The more he goes into those reasons, many Members who have different reasons for supporting or not supporting this Motion, will definitely hold a different view. So, to save time, because it is COVID-19 season, this is not about Nairobi. This is not about anything the Deputy Speaker, Sen. (Prof.) Kindiki, has done on the Chair. The same way we appointed the Deputy Speaker, Sen. (Prof.) Kindiki, without reason is the same way he can be removed, or not removed without reason. Majority Whip, kindly summarize and let it be seconded.

The Speaker (Hon. Lusaka): I think you have been guided. Do not get into dangerous---

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

Sen. Kang'ata: Mr. Speaker, Sir, I stand guided.

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

Sen. Kang'ata: Mr. Speaker, Sir, allow me to finish.

Sen. Murkomen: Mr. Speaker, Sir, the chief accuser, the Senator of Murang'a, Sen. Kang'ata, was a former student of the Sen. (Prof.) Kindiki. I like what Sen. Kang'ata is doing. This is because the country has been waiting with bated breath to know the big mistake the son of the Ameru Community has done.

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

Sen. Murkomen: Mr. Speaker, Sir, it will be wrong for us to rush. I do not agree with Sen. Sakaja that we must rush and just vote. This is because, perhaps we are haunted by our conscience and the shame that comes with the things we are about to do.

Mr. Speaker, Sir, allow the Mover---

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

Sen. Murkomen: Mr. Speaker, Sir, I am of the opinion that we allow the Mover to parade his evidence before the public. This is because even though we are in this Chamber, the Senate itself is on trial. Let the people know. Later, when the three Senior Counsels in this House and the people who call themselves fighters of democracy---

The Speaker (Hon. Lusaka): Order, Sen. Murkomen!

Sen. Murkomen: When they finally vote, let Kenyans know they are voting because a Senator failed to attend a meeting that has not been substantiated.

The Speaker (Hon. Lusaka): Sen. Murkomen, you are making provocative statements and when they respond, you say they are being abusive. Please let us respect each other. When you say those words, who call themselves--- and the so called--- Let us avoid that kind of language.

Sen. Murkomen: Mr. Speaker, Sir, I did not. I am very careful. I heard your Communication. I am very careful not to mention any person's name.

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

The Speaker (Hon. Lusaka): Just a minute, Sen. Orengo.

Sen. Murkomen, I want to assure you that I also went to school properly. So, I can also be able to know---

Sen. Murkomen: Mr. Speaker, Sir, I have heard you.

The Speaker (Hon. Lusaka): Okay.

Sen. Murkomen: Mr. Speaker, Sir, I am still waiting for your ruling over the last one week despite the assurance you have given me in the Chamber.

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, let us have an orderly debate. It would appear that the Senate is going to be confined to contribution of one Senator. If you look at the time we have taken and assign who has spoken, if we go that route, we will not be able to deal with the substance.

I appeal to you that let other Senators have a chance. If there is a point of order, let somebody cite the particular point of order that has been breached so that it is specific. I think we are raising points which are not necessarily points of order.

Sen. M. Kajwang': Mr. Speaker, Sir, would it be in order to rule both Sen. Sakaja and Sen. Murkomen out of order? This is because it is upon the Mover of the Motion to define how convincing it can be. What Sen. Kang'ata is doing is to convince us as Members of the Senate to agree or disagree with his Motion. A call for him to truncate or elongate is completely out of order. It is for Sen. Kang'ata to determine the most convincing tone and approach.

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

The Speaker (Hon. Lusaka): Order, Sen. Sakaja!

Sen. Kang'ata, kindly proceed.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. I am about to conclude. I will just say two things. Number one, we hold several positions in this Senate pursuant to the confidence of the party. The leader of the party that I belong to, the Jubilee Coalition,

wants the best for this country. I am not doing this Motion because I have a personal issue with my brother Sen. (Prof.) Kindiki. I do not have any personal issue with him.

Mr. Speaker, Sir, in fact, when I got the instructions from the party to withdraw the confidence from Sen. (Prof.) Kindiki, I sent emissaries to him. I told him; is there a way you can try to talk with the party, to restore their confidence in you? After those emissaries got back to me, we had an engagement with Sen. (Prof.) Kindiki. We talked with him for almost one hour. I told him, "Sen. (Prof.) Kindiki, you are my teacher, I am not tabling this Motion as Kang'ata." However, I am bringing it as the Senate Majority Whip. If there is a way you can talk out this issue with the party, I have no problem."

Mr. Speaker, Sir, Sen. Prof. Kindiki told me he would want a written document from the party. However, to me, that is neither here nor there. When the party was appointing or supporting him for that position, it did not give him a letter. Jubilee Party did not frame any reason as to why they gave him that position; it was an issue of confidence. I will end with these words. President Uhuru Kenyatta--

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

Sen. Kang'ata: Allow me to finish.

The Speaker (Hon. Lusaka): Let Sen. Kang'ata conclude.

Order, Sen. Murkomen! I will give you an opportunity.

Sen. Murkomen: Mr. Speaker, Sir, if he concludes, it will not be a point of order.

(Loud consultations)

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

Sen. Murkomen: Mr. Speaker, Sir, is it in order for Sen. Kang'ata to severally refer to a decision of the party to remove Sen. (Prof.) Kindiki? He has said several times that "the party has lost confidence" and "the party has decided". Is it in order for Sen. Kang'ata to make allegations that he cannot substantiate? This is because most of us who are Members of the party are not aware of any party meeting, whether it is the National Executive Committee or PG that made a decision.

The Speaker (Hon. Lusaka): Order, Senator! Do not drive---

Sen. Murkomen: Mr. Speaker, Sir, that is a very fundamental point of order. This is because the public is watching.

The Speaker (Hon. Lusaka): I know. Please do not drag the Speaker into party issues.

Sen. Murkomen: The party issues are the basis of the decision that is being made on the Floor of the House.

The Speaker (Hon. Lusaka): Okay. Do not drag me into those issues, Sen. Murkomen. Let him conclude---

Sen. Murkomen: Mr. Speaker, Sir, I have asked for Sen. Kang'ata to substantiate and not you.

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

The Speaker (Hon. Lusaka): What is your point of information, Sen. Sakaja? Then I will give a chance to Sen. Orengo.

Sen. Sakaja: Mr. Speaker, Sir, I am glad that Sen. Kang'ata has agreed to be informed and even accepted my plea for truncation.

The first thing I would like to inform the House and Sen. Kang'ata is that when he says that the party lacks confidence, the party in this House is represented by Senators who are in the Jubilee Party. Hon. Raphael Tuju or anybody else out there, is not voting in this House. When he says the party, he is rightly in order to say that the Members here do not have that confidence.

Secondly, because you said that this is the first removal of a Deputy Speaker and there is no precedent, but we have comparative jurisdictions which have done the same. On 17th April, 2017, Hon. Chrispine Blunt, in the House of Commons had a Motion to remove my friend, the former Speaker of the House of Commons, Hon. John Bercow. That Motion had no reason. He just said "impartiality" and did not even go into depth.

That is why I am telling Sen. Kang'ata, the more he talks, the more he is giving Sen. Murkomen ideas to talk about. Let us finish and go ahead with it. That precedent is there. We follow the Commonwealth tradition. That really must be how we move along with this.

The party is represented in this House by 39 Senators from the Jubilee Party. The minority party is represented by a number of Senators. We are not talking about a party elsewhere. I hold and still urge Sen. Kang'ata to finish as quickly as possible.

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

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I would like to inform Sen. Kang'ata that in as much as he is being harangued that there was no party meeting, it is in the public knowledge that the distinguished Senator for Elgeyo-Marakwet with others, filed a case in the High Court challenging the Jubilee Party and the Kenya National African Union (KANU) as to whether or not there was a Party meeting. There were responses to that case, but subsequently, they have withdrawn that case. This means what they placed before the Court had no standing.

Secondly, Mr. Speaker, Sir, another case was taken to the Political Parties Dispute Tribunal by the Senator for Nakuru County, challenging the Jubilee Party, and that case, borne of the same facts, was thrown away by the Tribunal on the basis that what they presented before the court had no standing.

Finally, now that Sen. Sakaja has given information to Sen. Kang'ata, in relation to motions of this change, I moved a Motion of no confidence on the Government of the Republic of Kenya. Sen. Kang'ata's Motion is even longer. Mine was just one line; that the House resolves that it has no confidence in the Government of the Republic of Kenya. It was the only ever Motion moved, and was as brief as that.

Secondly, I moved a Motion against Speaker Kaparo on the basis of Standing Orders, which have not changed much. Again, I was not required to give reasons. The Motion met the requirements of the Standing Orders.

I wish to inform Sen. Kang'ata.

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

(Loud consultations)

He has referred to me and it is important.

The Speaker (Hon. Lusaka): I thought it was information to Sen. Kang'ata.

Sen. Murkomen: No, Mr. Speaker, Sir. There is a point of order on the cases that he referred to me. If it goes to the record of the House, it is not a true record.

The decision of the Political Parties Dispute Tribunal made it abundantly clear that the coalition agreement between Jubilee and KANU is null and void. That decision was served on you, and you informed the House that you will give a detailed ruling on why you allowed changes in the leadership of this House despite that ruling.

Mr. Speaker, Sir, that is totally misleading.

Sen. Ochillo-Ayacko: Mr. Speaker, Sir, on a point of information.

The Speaker (Hon. Lusaka): Sen. Ochillo-Ayacko, proceed.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I would like to inform Sen. Kang'ata that the Standing Orders that talk about removal of the Deputy Speaker is a carry-over of the past Order. We used to call the past Order 'Motion of no confidence.'

The reason you have stated that Jubilee Party is withdrawing its confidence on Sen. (Prof.) Kindiki is the actual reason. You need to enjoy political confidence to be able to preside over a House of this kind and be able to represent or be a delegate of a party of the magnitude of Jubilee.

The main reason is: Does Jubilee Party, for whatever reason, have confidence in the person against whom they are withdrawing that confidence? I think that is sufficient.

The Speaker (Hon. Lusaka): Sen. Kang'ata, conclude.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. I conclude with the following words. Parties are very central to the Kenyan democracy. Article 4(2) of the Constitution says that Kenya is a multi-party democracy. Therefore, I, as the Chief Whip, must be allowed to give and withdraw confidence to those who do not follow party lines.

Finally, President Uhuru, as our Party Leader, has a certain manifesto which every person who is in this seat and getting a certain position ought to follow. I am here to support that cause together with my Party Majority Leader, Sen. Poghisio.

I urge those of us who belong to the Jubilee Coalition to, please, toe the Party line and ensure that President Uhuru Kenyatta achieves his vision. As the political vehicle in this House, we must ensure that we support his agenda and legacy.

I beg to move.

The Speaker (Hon. Lusaka): Who is your Seconder?

Sen. Kang'ata: Mr. Speaker, Sir, my Seconder is the Minority Chief Whip, my brother, Sen. Mutula Kilonzo Jnr.

The Speaker (Hon. Lusaka): Yes, Minority Whip.

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Speaker, Sir. I rise to second this Motion.

For the record, it is important that the matters of law that have been raised are settled. The Fair Administrative Action Act is in front of me. In the making of this law, we were all here; Sen. (Prof.) Kindiki was the Majority Leader then. We did not subject the removal of the Deputy Speaker, the Speaker for that matter, or any person to this Act. I must say that on record.

Two, for the avoidance of doubt, according to Article 106 of the Constitution and the Standing Orders, where this is a Special Motion, the reason I think – and it is my opinion – there are no reasons is because the position and Motion we are moving is of a Member who continues sitting in this House after the Motion. Therefore, it is important that, that person who is holding a position continues sitting in this House after a Motion of this nature has been moved. That is the position of a Deputy Speaker.

Thirdly, Mr. Speaker, Sir, it is not a coincidence that this Motion is being moved by the leaders. We are warning ourselves, me included, that the seat I occupy as the Minority Whip belongs to the Coalition. I must, in all cases, in the trust bestowed upon me by that Coalition, continue advocating for the obligations, rights and wishes of that coalition. Once that trust is done, there is nothing this House can do to a person who has lost the trust of his political party. It sounds like a death knell, but it is a fact.

The premium for these positions we occupy is loyalty to the cause. Unfortunately, our friend, Sen. (Prof.) Kindiki, finds himself in this position. It is not also a coincidence that Article 106 puts such a high threshold.

As I sit, I will not get into the details, as Sen. Kang'ata did, because many of us are not party to those issues. I strongly believe that those are not issues that all of us ought to get into.

Sen. (Prof.) Kindiki and any person occupying that position, under Article 106 of the Constitution, must be able to show that he has the confidence of the House. That is the reason there is a two-thirds membership of the Majority and Minority; it is a simple thing. Votes of confidence all over the world are not personal. So, nobody carries a personal agenda against Sen. Prof. Kindiki. None of us is questioning his competence.

Mr. Speaker, Sir, none of us, including myself, is conducting a trial. I would have great difficulties if we were conducting a trial. Since we are not conducting a trial, we did not conduct any recruitment of either you, the Speaker or the Deputy Speaker. You were elected and brought here politically. You persuaded the Majority to elect you politically and, therefore, you must persuade the Majority to continue remaining in office politically. There is no other question. There is no middle ground and that is the end of it.

This is momentous. We have rarely had a Motion of this nature, or even passed any constitutional Motion that requires a two-thirds majority. The fact that this Motion has reached this far, should tick the mind of Sen. (Prof.) Kindiki. What is it that you have done to this membership that would cause so many of them to allow this Motion to reach this stage?

I am now talking to your conscience because these decisions are about your conscience and not omissions or commissions; it is the confidence in this House. You will sit with us here after this Motion, whether you are removed or not. However, ask yourself these questions as you go along. Sen. (Prof.) Kindiki, the overtures you were offered should have informed your decision. Since you did not take them, the vote of confidence will be taken. You will see it for yourself what it means to have a Motion of this nature.

Therefore, allow me to quote Winston Churchill because this is politics which have no form. This is what he had to say, I say this to my friend, Sen. (Prof.) Kindiki; “politics is the ability to foretell what is going to happen tomorrow, next week, next

month and next year and to have the ability to explain why it did not happen. Sen (Prof.) Kindiki, you know what has befallen you. I second the Motion. Thank you.

(Question proposed)

The Speaker (Hon. Lusaka): Sen. Cherargei, you have the Floor.

Sen. Nyamunga: Mr. Speaker, Sir, point of order.

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

Sen. Nyamunga: Mr. Speaker, Sir, this debate may raise a lot of interest. I am wondering whether there is a time limit on the debate.

Sen. Murkomen: How do I make my interest known to you if I want to contribute to the Motion, is it by pressing the button?

The Speaker (Hon. Lusaka): Yes! You will press, then I will note.

Sen. Murkomen: When we press, the microphone does not show.

The Speaker (Hon. Lusaka): It comes out and I will note.

The time limit for the debate is three minutes except the Leaders who I will give five minutes each.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for this opportunity.

I have heard my brother, Sen. Kang'ata, who is the State House appointee of the majority side, saying that our brother, the Deputy Speaker, Sen. (Prof.) Kindiki---

Sen. Madzayo: Hoja ya nidhamu, Bw. Spika.

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

Sen. Madzayo: Asante, Bw. Spika. Umetuambia katika uamuzi wako ya kwamba tusitumie maneno ambayo yatakuwa na madharau ama yanaweza kuudhi mtu. Ninavyoelewa ni kwamba -

Sen. Murkomen: Mr. Speaker, Sir---

Mr. Madzayo: Tafadhali, Sen. Murkomen, kama ni mimi naongea *it is only fair that you keep quiet. I am on a point of order-*.

Bw. Spika, taratibu ni kwamba, na tunavyoelewa, Sen. Kang'ata ni seneta wa Muranga. Tukiambiwa ya kwamba Sen. Kang'ata ni mfanyikazi ama mtumishi wa State House, hiyo hatuelewi. Kama ni hivyo, basi, hafai kuketi hapa. Kama anaketi State House amekuja kufanya nini ndani ya Bunge la Seneti na alichaguliwa na watu wa Murang'a? Ni sawa sawa ikiwa ndugu yangu ambaye ni rafiki yangu, Sen. Cherargei, kutumia lugha kama hiyo?

The Speaker (Hon. Lusaka): *Sio sawa sawa.* You are out of order. Hon. Members, please do not force me to take action I should not take. You can communicate, convey your message without getting into unnecessary jargons.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. He misunderstood me and I can see Sen. Kang'ata is excited because he knows the weight of being referred to as a State House appointee since, as a Majority Side, we did not sit to elect him. I am told it was through *chai* and *mandazi*.

The Speaker (Hon. Lusaka): Order, Sen. Cherargei! Order! You are out of order. Make your point.

Sen. Cherargei: Mr. Speaker, you also need to protect me. You should allow me to be listened to. I can see people shouting across the aisle.

The Speaker (Hon. Lusaka): I am protecting you. Make your point, Sen. Cherargei.

Sen. Cherargei: I oppose this Motion because it is illegal, immoral and ungodly.

Sen. (Prof.) Kindiki has not only distinguished himself as a legal scholar but also made rulings that have been referred to by other jurisdictions. Having served as the Senate Majority Leader of the then The National Alliance (TNA) and the United Republican Party (URP) and as the Deputy Speaker of this House, he has done very well.

This political conmanship and persecution and scheming that continues across the political majority side---

The Speaker (Hon. Lusaka): What is your point or order, Sen. Ochillo-Ayacko?

Sen. Ochillo-Ayacko: Mr. Speaker, Sir, we are all being listened to and you have heard Sen. Cherargei say that we are discussing political conmanship, an illegal and immoral Motion. If we allow one Member to talk like that, would I be in order to also say that you will expand the debate and we talk about others' immoralities? Would it be okay if we engage in such verbiage?

I request you to enforce your ruling that we be of decorum. If the other side or some people start talking the way they are doing, we have some very hot-blooded Members on either side and this is going to be nasty and shameful to the House.

The Speaker (Hon. Lusaka): Sen. Cherargei, I want to caution you for the last time. There are statements you can make in political rallies, funerals or other places. This is a House of respect and integrity. Please make your point and stick to a language that is parliamentary.

Sen. Cherargei: Mr. Speaker, Sir, what I was simply saying is that this Motion does not meet the threshold of principles of natural justice. Despite the fact that they are levelling accusations against Sen. (Prof.) Kindiki, which is shocking to this country that Sen. Kang'ata can challenge your rulings. It does demean whoever sits in that seat. Even members of the Speaker's panel who sit down and make rulings, the rulings are sanctified and serious. It has been exposed to the country that there is a specific way of ensuring that they persecute individuals based on political affiliation or inclination for expediency.

If this House makes the decision either to retain or remove Sen. (Prof.) Kindiki, it will determine the future of this House as the Senate and Parliament. If today Sen. (Prof.) Kindiki is being prosecuted and removed as the Deputy Speaker of the Senate of the Republic of Kenya and we remove him, then we lack moral, legal and legislative roles we have had as a House. It is disappointing that I Chair the Justice, Legal Affairs and Human Rights Committee courtesy of the Majority side which is not a privilege but a right. Why should it appear like Members who occupy leadership positions do so as a privilege or prerogative of the party? It is not. That is why we will not allow impunity and worship of the demi-gods within the party.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I want you to make a ruling on this because I know for sure that all Motions that come on the Floor of this House are approved by the Speaker of the House.

The hon. Senator for Nandi has made an allegation that the Motion being debated now is illegal and immoral. If we leave this on the record of this House, then it will mean that the Speaker of the Senate approved an illegal and immoral Motion and presided over the same. I think it is absolutely important that the Member withdraws those words so that they are expunged from our records.

Secondly, Mr. Speaker, Sir, I want to state clearly that we are not discussing the qualifications and the integrity of my age-mate Sen. (Prof.) Kindiki. We have been told clearly that Sen. (Prof.) Kindiki was sponsored to the position by Jubilee Party because they had confidence in him. The sponsoring party has since lost confidence in him. We are not debating his integrity or capabilities. The party that sponsored him says it has lost confidence in him. Therefore, is he in order to start debating Sen. (Prof.) Kindiki's integrity?

The Speaker (Hon. Lusaka): Sen. Cherargei, this is my appeal to you. Irrespective of your emotions, please remember that some of the things you are saying border on challenging the Office of the Speaker. Wind up so that we move on.

Sen. Cherargei: Mr. Speaker, Sir, I think my good neighbour was not listening. I said that this Motion does not even adhere to the principles of natural justice.

Finally, on the issue of confidence of the party, I can confirm to this House that over 8 million Jubilee Party members and Kenyans across the country that we have never, as the Majority Party Senators, sat virtually through Zoom meeting or any other form to endorse any changes that we have lost confidence in Sen. (Prof.) Kindiki as the Deputy Speaker of the Senate. Some of us in the Jubilee Party will not allow impunity, political witch-hunt and the way issues are prosecuted.

I want to challenge my colleagues that this decision is not about the individuals but about the future of this House. This House is facing a lot of dangers. If we allow this impunity to go on and be rubberstamped by the minority side, I can confirm to you that it will not stop. You will be giving license to the party owners to continue purging you politically. For us, *aluta continua*.

I oppose this Motion in the strongest terms possible.

Sen. Ochillo-Ayacko: Mr. Speaker, Sir, the Jubilee Party was given the mandate by the public to run this nation. In order for it to do so, it has vested its trust in one leader, President Uhuru Kenyatta. The leader of the Jubilee Party also happens to be the Chief Executive Officer (CEO) of the nation. For us on this side, our work is to persuade the Jubilee Government to deliver to our people and oppose when we think it is transgressing.

In order for our people to receive services, we must have a functional Jubilee Government. If Jubilee Government has come to this House and claim, and we believe them, that their functionality is being affected by any person they think is disloyal and that if that person was withdrawn from their rank, then they would deliver to us, that has persuaded me and I beg to support this Motion.

The Speaker (Hon. Lusaka): Before Sen. Kihika comes, in the meantime we can have Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Speaker, Sir, the Jubilee Coalition has told us that they have lost confidence in one of their Members who has served this House diligently as a

Deputy Speaker. The question is whether the House agrees with the Jubilee Coalition. Does the House have confidence in Sen. (Prof.) Kindiki? That is the reason this decision could not be taken at the Parliamentary Group (PG) meeting at State House or wherever it was. That decision has been brought to us. It is now upon us to reflect and make a decision that will not break this House.

Sen. (Prof.) Kindiki is a fine gentleman. I have followed him in many aspects of his life. He went to Lenana School and I went there after him. He went to Moi University and I went there after him. He came to the Senate and I came to the Senate after him. Today, his head is on the chopping block but I hope that I will not follow him there.

(Laughter)

I want to encourage Sen. (Prof.) Kindiki to go back to the scriptures that he is fond of and reflect on the story of Pontius Pilate who was given the responsibility to make a decision between Barabbas the common thief and Jesus Christ of Nazareth. I have always asked myself what happened to Barabbas after he was released. Nobody knows what happened to Barabbas. He went into oblivion but Jesus Christ was crucified and everybody remembers him.

Sen. (Prof.) Kindiki, you have served us well for the duration that you have done. However, your party has lost confidence in you. That is the point at which we say that the centre cannot hold and things fall apart. The future is bright. You will continue being a Member with us here in case the House also resolves that it has no confidence in you.

I must say that while he sat on that chair, he made certain rulings and precedents that have strengthened this House.

Mr. Speaker, Sir, let us finish these things so that we go back to the fight against COVID-19 and poverty. Let us set a good example for county assemblies to emulate. We have been blaming our county assemblies for leadership changes every other day. Let us not degenerate to the level that we have been condemning in the assemblies.

Mr. Speaker, Sir, since the centre cannot hold because things have fallen apart, I support the Motion.

Sen. Kihika: Mr. Speaker, Sir, when I first wanted to talk, it was more of a point of order. However, since it takes quite a while to get here, I will make my contribution to the Motion.

For the record, it is important that I correct that the Senate Minority Leader, Sen. Orengo, mislead the House when he stated that when he brought a Motion back in 1996 against hon. Kaparo, he did not give any grounds or reasons for the removal. I have that HANSARD here and it is clear that he gave grounds. So, it is a travesty. It is immoral that we have a Motion in this House today to remove the distinguished Sen. (Prof.) Kindiki without having any grounds. It is also clear in the Standing Order No. 96(4) which states that:

“No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Senator or a Member of the Assembly.”

We are moving forward with the removal of the Deputy Speaker of this House. So, it is imperative that the Motion that we have here today by the Senator for Murang'a should have the grounds for removal.

As I stated earlier, when hon. Orengo moved his Motion to remove hon. Kaparo, he stated in the Motion that the rulings hon. Kaparo had made were in error. So, it is improper to bring a Motion seeking to remove the Deputy Speaker without any grounds. I needed that for the record because we have become a useless House, if I may use the word, but I know they will jump with Standing Orders.

Hon. Senators: No!

Sen. Kihika: Okay, let me rephrase it. We have become a House that is controlled from other areas or places.

The most unfortunate thing is that when I was growing up, some of the Senators I looked up to, who were defenders of human rights and other things in this country, are now the ones presiding over or helping to move this madness forward by seeking removal of a very competent Deputy Speaker without any reasons. Anyway, I am sure you will do whatever you will do. You will vote whichever way you will vote because you hold brief for whoever you hold brief for.

I stand here today to say that whether we are two, five or ten, we shall continue to fight on. We shall continue to fight on and we shall not allow the dictatorship that this country is quickly slipping to. Unfortunately, Sen. Orengo, you fought so many battles to get away from that, but thanks to you, we are quickly moving to that direction. It is okay. Maybe we shall move forward and we shall be the ones to now lead this next part, not just being part of the axis of evil that is happening here today.

It also says a lot, as we call competency into question, because again, we do not have the grounds for this Motion. I have heard the Senator of Murang'a, in his moving notes talk about a few issues here while those we thought were such defenders of democracy stand up and urge him to proceed. It is because most of you cannot look at yourselves in the mirror and that is why you do not want to cite any reasons as you remove this very competent man. You are just standing brief and that is okay.

Mr. Speaker, Sir, I oppose this Motion.

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. Sen. Kihika does not have a seat to take and so, today we will offend the rules.

(Sen. Kihika continued standing)

Sen. Kihika: No, I cannot sit; you said that I cannot sit in a place where it is not indicated, 'Sit'.

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators. Continue, in these extraordinary times. I will allow her to stand.

Sen. Kihika: Thank you.

Sen. Sakaja: Mr. Speaker, Sir, I understand the passion and the manner in which Sen. Kihika is speaking. This is a House of rules and certain things in our Standing Orders are being offended.

First, when this House has been called useless, the Senator has said that she is rephrasing it. Actually, what should be done is withdrawing because it cannot remain in the record of this House that a Senator has expressed the uselessness of where she sits because that speaks to many things.

Secondly, when imputing improper motive by saying that there are Senators here, who are leading this country into dictatorship and actually, we are part of the axis of evil, that also goes against our Standing Orders in imputing improper motives on colleagues.

Mr. Speaker, Sir, when we allow the passionate expression of heart and whatever that might be coming out, I urge you to ask that those words are withdrawn because they will forever remain on the record of this House. However, her opinions are rightfully her opinions and she can express them.

I ask that you rule that our rules are followed with respect to those two issues that she has done.

The Speaker (Hon. Lusaka): I leave it to her conscience because she serves this House and she is a Member of this House. I leave it to her conscience. That is all that I can say.

Sen. Kihika: Mr. Speaker, Sir, anyway, as we leave here today, whatever the decision that we shall make as a House, I oppose this Motion.

Let me say as I walk away, that Sen. (Prof.) Kindiki has served this House with distinction; he is a man of honor in a House that does not value that. He is a man who is extremely competent and I am sure that we shall not be able to see that as we move forward. Nevertheless, that is okay; that is the decision that we shall have to make here today.

The Speaker (Hon. Lusaka): Senator, your time is up.

Sen. Kihika: One minute, Mr. Speaker, Sir. I was interrupted with the many points of order.

So, this is a Motion that is quite vile and dishonorable. I hope that in future, we can focus on fighting the Corona Virus (Covid-19) pandemic and the poverty that is in our country, instead of hiding behind the Corona Virus (Covid-19) pandemic to use dictatorship to remove people from office.

I oppose this Motion. Thank you.

Sen. Mwaura: Thank you, Mr. Speaker, Sir. I have known Sen. (Prof.) Kithure Kindiki since the year 2005 when---

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. You know when I rose, and questioned what is going on; there is a very dangerous precedence that is being set. Standing Order Nos. 96 (1) (2) and (3) are clear about content of speeches. When a Senator offends the Standing Order and we leave it to someone's conscience, are we then saying that these Standing Orders are suggestions or are we going to follow Standing Orders?

The Speaker (Hon. Lusaka): Sen. Sakaja, I made a ruling on that matter. What you are now doing is also challenging the Speaker, which is out of order.

Sen. Mwaura, proceed.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I knew Sen. (Prof.) Kithure Kindiki way back in the year 2005 when he was a Doctor at the Moi University when we were working together on a project on human rights for people with disabilities, with a group from York University. I am sure that the Professor can remember that. I greatly admired him.

Later on, I could see him making commentaries on television on various political and legal issues. All of that, to the extent of, therefore, in the 11th Parliament we were able to meet in the House. If you see Prof. Kindiki on the Floor of the House, you can see that he is actually at peace with himself because he has actually conducted himself in an honorable manner.

He has also not forgotten his pedagogy because when Senators speak, he almost wants to award marks, he would say; very well, you have spoken very well here and there, just to show that he is still having his eyes on the academy.

Mr. Speaker, Sir, since I joined politics, I have come to see that it is an art of the possible. It is who gets what, where and how. In fact, according to me, it is some form of amorphous formlessness. It is the informality that constitutes the formal. Therefore, there are no clear rules. For example, there is no way that you can explain how an individual A would vote for an individual B and not individual C. There is no guarantee or threshold; it is just a choice.

Again, in politics, there are no permanent friends or enemies, only interests. The late National Assembly Minority Leader, Hon. Francis Nyenze, told me when I joined Parliament at the time we had the Coalition for Reforms and Democracy (CORD), made up of Wiper, Orange Democratic Movement (ODM), Forum for Restoration of Democracy (FORD) Kenya and others and the Jubilee Coalition comprising of The National Alliance (TNA) and United Republican Party (URP). He told me that within six months, you will start to see people changing their political allegiances. Indeed, he was vindicated. It is the same thing that we are also seeing in this 12th Parliament. Interests have changed and a lot has changed.

I would like to say, for purposes of record and transparency, that some of us, just as Sen. Kang'ata alluded to, are very much involved in ensuring that we do not come to this decision. Sen. James Orengo, Sen. Njeru Ndwiga and others, you can bear me witness. We really tried to ensure that, indeed, there is a pathway that would ensure that an alternative and the party confidence on the part of Sen (Prof.) Kithure Kindiki is actually restored and he is perpetuated so that we can continue to enjoy his contributions and his presiding over of this House. I am sure he has been very helpful to you, Mr. Speaker, Sir.

Having said that, I think that there comes a time when decisions have to be made because it is a matter of procedure. It is actually true, that there is always this question about how parliamentary positions are filled; whether a party has a right to de-whip a Member from a Committee or a position of privilege because all of us who hold any position in the Committee or the House leadership are as a result of numbers. It is a game of numbers. You are actually placed where you are supposed to be and that is the case.

However, when it comes to removal, it is always a question of, is there independence of Parliament in that regard?

Maybe in the future of our Standing Orders this is something we would want to canvass because we are evolving democracy. We need to see to it that we mediate that process so that it is neater and we are able to do much more.

As I conclude, Sen. (Prof.) Kindiki, I want to leave you with the following words:

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“In politics, your future allies are your current nemesis, and your current allies are your future detractors. In the end, what matters is that you arrived at your desired goal and position and both friend and foe, ally and the alienated will reckon, you are fan to their flame. Keep going.”

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for this opportunity you have given me to air my views with regards to this important Motion.

I will not repeat what other people have said. It is very interesting and it is with a very heavy heart that as human beings, we have to subject some of our colleagues to exigencies of the game of politics.

As a lawyer, I have realised that what we learnt in the School of Law and what we have taught in universities is not what happens in Parliament. In Parliament, it is a different ball game. It is very interesting that a man of impeccable academic prowess and a professor of international law, Sen. (Prof.) Kindiki, has to sit here and be subjected to lectures by Hon. Senators. With due respect, some have been his students. But what do we do? This has come to analogy which happened in South Africa sometimes back where a sitting President had to be recalled by his own political party. That was none other than Thabo Mbeki. That is the time I started to learn politics. This is exactly what is happening here.

It is not a question of academic meritocracy. It is not a question of professorship or whether you went to the International Criminal Court (ICC) to represent people; that is not the consideration here. This is a game of politics. It is a question of numbers.

When we are told to append signatures, many people do self-searching. As the Senator for Machakos County, I have taught with Sen. (Prof.) Kindiki in various universities, more so, at Kenyatta University. I remember in 2013, we both resigned and ventured in the game of politics lest did we know that things could fall apart. Sen. (Prof.) Kindiki was lucky to be elected in 2013 and he came to the Senate. I, Sen. (Dr.) Kabaka, did not get it. Somebody got it. However, here we are today as friends. This is because of party politics which is the hallmark of this game of politics.

Sen. (Prof.) Kindiki, you are lucky enough to belong to the greatest political party and the ruling party, Jubilee Party. It has its own benefits. It is the same benefits which you derived pursuant to Article 106(1)(b) and (c) which applied at that time. You were elected to the position of the Deputy Speaker together with the Speaker of the Senate; and together with the Speaker and Deputy Speaker of the National Assembly, respectively, through the goodwill of your political party.

In terms of politics, without putting moral aptitude, absolutely the political party has the right to recall you. If it has decided that it wants to put somebody else, who are we to say otherwise? It is a question of ganging numbers and we put you where--- We

know what happened during the French Revolution of 1789. I wish Sen. Wetangula was here because he is a great historian. He would tell you that the person who designed the guillotine was the third person to be chopped. We are chopping you now. On our side, I hear rumours that we are about to be chopped. I know that very soon it will be Sen. (Dr.) Kabaka or Sen. Mutula Kilonzo Jnr. to be chopped or somebody else. It is the right thing---

(Laughter)

If I were you I would have signed a memo to his Excellency the President, the Party Leader, and exited rather than subjecting myself to this game. I should be elsewhere teaching my children how to do assignments.

Next time if it the guillotine comes to Sen. (Dr.) Kabaka, so be it.

I support.

Sen. Madzayo: Asante, Bw. Spika. Mimi nataka kuunga mkono kwa kusema---

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. There is a concern on how we are wearing our masks. Could you, please reiterate the rules that we must wear our masks and cover our noses?

The public are watching and they think what we are doing is what they should do when they are in the streets.

The Speaker (Hon. Lusaka): I know it is a bit uncomfortable. However, let us try.

Sen. Madzayo: Asante, Bw. Spika. Sen. (Prof.) Kindiki ni rafiki, ndugu na shemeji yangu. Yeye amesoma vitabu mpaka akafika kiwango cha Profesa. Lakini kwa upande wa siasa, nafikiria alinoga. Lakini hayo yakijiri, mimi nataka kusema kwamba kuna mwanafalsafa mmoja aliyeishi zamani na alikua msomi, Niccolò Machiavelli. Mimi nmekua nikisema kila siku kwamba ikiwa wewe umechaguliwa au umeandikwa kazi, usiwe mwerevu kuliko bosi wako. Machiavelli alisema hayo katika mambo ya utawala na madaraka. Dhana hii inajulikana kama *Principles of Power*.

Unaweza kuwa umesoma sana kama Sen. (Prof.) Kindiki na pengine bosi wake hakufika kiwango cha elimu kama hiyo, lakini si sababu ya kutumia akili yako wakati bosi amekwambia ufanye hivi au vile halafu unafanya kinyume.

Mimi natoka katika chama cha Orange Democratic Movement (ODM) na ni lazima niheshimu Mhe. Raila Amolo Odinga. Jambo la pili nikukiheshimu chama changu. Vile chama changu kinanielekeza, ni lazima niangalie na nifuate mkondo wake. Nikikosa kufuata mkondo---

Basi ni kama ninataka kuachana na hicho chama na nitafute njia ya kwenda. Kule nitakapokwenda sijui kama ni kuzuri ama ni kubaya. Kuna msemu kwamba unaweza kuacha kuzuri ukifikiria kule kwingine ndiko kizuri zaidi, ukakuta ndiko kubaya zaidi kuliko kule ulikotoka.

Nampa wasia ndugu yangu kwa imani kuu. Yeye afunge huu usia wangu kwenye vidole vyake na autunze kama mboni za macho yake. Ukiangalia mbele, kama ni siasa, ni lazima ufuate mkondo wa maji. Tunaona mafuriko hapa Kenya. Yale maji yanavyoteremka yanabeba kila kitu, hata miti. Wewe sasa umejipata katika panda hiyo.

Hivi sasa, utazama, lakini kuvunjika kwa mwiko sio mwisho wa kupika. Sisi kwa upande wa Muungano wa National Super Alliance (NASA) hatukukuleta hapa na hayo

makosa. Makosa hayo yameletwa hapa mbele na Chama chako. Ni jukumu lako sasa kuchukua hii adhabu ambayo utapewa sasa, lakini ukumbuke kuna leo na kesho. Twakuombea kila la heri.

Sina budi bali kuunga mkono Hoja hii.

Sen. Murkomen: Mr. Speaker, Sir, allow me to make a few comments on this very important Motion. I want to be very clear that I oppose this Motion. I am not here to defend my friend, Sen. (Prof.) Kindiki, for he may walk with his head high knowing that he is innocent and diligent, even if persecuted so cruelly.

The evil that this House does lives after us. Long will it be remembered that this Senate swore to defend the Constitution and its institution, but betrayed the Republic in exchange for the meanest comfort. The credibility of this House as the watchdog of public interest, defender of our institutions and guardian of the rule of law has dramatically and tragically collapsed.

The usurpers of our Constitution have not laid any charge to back this disgraceful onslaught, but alleged that the affected Member of this House has been disloyal. Indefatigable stalwarts who have given their all to the cause; leaders who staked their careers on the daunting struggle to build and protect Jubilee and its Government; men and women who stood with our abandoned, besieged and maligned party leader and deputy party leader at a time of tribulation at home and abroad--- Members who have fought tooth and nail for the Presidency over three electoral contests; servants who unflinchingly stewarded Government business successfully through this House time without number, are today being insulted as disloyal---

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

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

Sen. Khaniri: Mr. Speaker, Sir, I rise on a point of order to bring it to your attention that the Senator of Elgeyo-Marakwet is in breach of our Standing Orders, in particular, Standing Order No.90. The provisions of that Standing Order 90(1) are very clear. It states-

“No Senator shall read a speech but a Senator may read short extracts from written and printed papers in support of an argument and may refresh memory by reference to notes.”

It is very clear that my very good friend, the Senator for Elgeyo-Marakwet, is reading a speech. He is not debating, and that is prohibited by our Standing Orders.

The Speaker (Hon. Lusaka): Sen. Murkomen, observe Standing Order No.90 (1). Do not read a speech.

Sen. Murkomen: Mr. Speaker, Sir, today, these people are being insulted as disloyal and viciously haunted by captive party. Today, the House has been asked to ratify the injustice. I am not here to mourn the fate of my friend, Sen. (Prof.) Kindiki because nothing can harm a good man in life or in death.

I grieve and mourn the deterioration of our democracy. I mourn the serial assassination of our independent institutions and their replacement with shells, ghosts and zombies. The argument has been made that Sen. (Prof.) Kindiki is disloyal. The epicenter of this Motion is that he has been disloyal. There is no evidence that has been presented in this House to demonstrate that lack of loyalty.

I served for the second half of last term as the Deputy Majority Leader to Sen. (Prof.) Kindiki. No Government Motion was lost in this House. Even in the first term when I served in the Speaker's Panel, no Motion was lost by Sen. (Prof.) Kindiki in this House as the Leader of Majority.

As Deputy Speaker of this House, Sen. (Prof.) Kindiki distinguished himself as a very committed scholar determined to protect the institution of the Senate. In fact, from that Chair, a number of decisions of the Deputy Speaker have been so weighty that they have been cited by the Court of Appeal and other jurisdictions.

Those who tell us today that Sen. (Prof.) Kindiki is disloyal are the same people who have opposed his defense of the same loyalty. I am not here to mourn Sen. (Prof.) Kindiki, but the Senate and not to praise it, because today's business belongs to the annals of history's worst mistakes. I say so because this House has heard the Mover of the Motion and the Seconder. They have said over and over again, and I wrote it somewhere, that it is about loyalty to the party. If this issue was about loyalty within Jubilee Party, why is NASA involving itself in the enforcement of loyalty within Jubilee? Do you think that a competitor would be so happy to participate in enforcing that loyalty? It is not true.

One thing we decided when we came to this House is that we were going to do everything humanly possible to ensure that we cling together to move this country forward.

Allow me 10 seconds to read this Bible verse to Sen. (Prof.) Kindiki, as it is now known that I am the guy who posts and reads Biblical verses. It is Daniel 3:16-18. I dedicate it to Sen. (Prof.) Kindiki and all who are in his situation.

It says-

“Shadrach, Meshach and Abednego replied to him, “King Nebuchadnezzar, we do not need to defend ourselves before you in this matter. If we are thrown into the blazing furnace, the God we serve is able to deliver us from it, and he will deliver us from Your Majesty's hand---”

Sen. (Prof.) Kindiki I emphasize Verse 18. It says-

“But even if he does not, we want you to know, Your Majesty, that we will not serve your gods or worship the image of gold you have set up.”

Mr. Speaker, Sir, I wish Sen. (Prof.) Kindiki the very best. He has a great future. The future is for those who are courageous enough to swim against the current.

Thank you, Mr. Speaker, Sir.

Sen. Linturi: Mr. Speaker, Sir, thank you, for this opportunity. I say this is a historical moment in this country, in this Senate. I am here as Sen. (Prof.) Kindiki's brother and closest neighbour. I believe in good neighbourliness and the principle of being our brother's keeper.

Let me remind Sen. (Prof.) Kindiki that when we were growing up and before we got circumcised, where I come from, there is story that we were always told that was passed over to generations. We were told that this country is a country of many tribes. Out of these tribes, we were told that as we engage in relationships and go out there looking for a wife to marry, we must be very careful where we get our girlfriends. This is

because there are certain communities or areas in this country where if you got a wife, the relationship was almost predetermined that it would not last long.

Mr. Speaker, Sir, this moment has given me an opportunity to remember that history. That is why I want to remind Sen. (Prof.) Kindiki that time has come. Here we are. We were told and culture is inevitable. When I remember that, I feel how we wish we listened to our forefathers and engaged cautiously in all the kind of relationships we got ourselves into.

(Sen. Mutula Kilonzo Jnr. laughed)

Let this not be a laughing matter, Sen. Mutula Kilonzo Jnr. There are those people that have a good memory of the history of this country from the pre-independence times. I remind the country that immediately after independence, and that is why I must speak passionately about this, the first political assassination was a Meru called General Baimungi.

Mr. Speaker, Sir, where we are seated today, if I got Sen. Kang'ata correctly, then the decision we are taking this afternoon has no basis. It has not been decided on the basis of substance, truth and evidence. It is a political decision. Political decisions have consequences and we will go by them.

As we look forward, and we must be in a position to get more sober now, we need to see how in the contemplated constitutional reforms if they will be coming, we can protect offices of Parliament from external influence. I believe this has given us an opportunity to reflect further on what we are doing.

Mr. Speaker, Sir, allow me to tell Sen. (Prof.) Kindiki that do not be worried. You are more popular today than you were yesterday in Meru. I can swear that when I go home tonight and appear in a station, the kind of confidence and the messages the people are sending to us are greater than the lack of confidence being purported as the reason why Sen. (Prof.) Kindiki has to go home.

We are not worried. We can remember history. The next political assassination happening here is Sen. (Prof.) Kindiki who is being assassinated by Jubilee Party which he has served with a lot of diligence.

Allow me to quote Chinua Achebe in his book *Things Fall Apart*. He said-

“A man who calls his kinsmen to a feast does not do so to save them from starving. They all have food in their own homes. When we gather together in the moonlit village ground, it is not because of the moon. Every man can see it in his own compound. We come together because it is good for kinsmen to do so.”

These are the words stated by Julius Ceasar in 44BC upon his brutal stabbing 23 times by a loyalist: “You too?” The Meru nation has asked: You too, “Mr. Party Leader”? You too, “Mr. Jubilee”? You have stabbed Sen. (Prof.) Kindiki. Rarely has a single man done so much for so few. Sen. (Prof.) Kindiki fought for our party and the President. He helped us write our new Constitution and the Jubilee Party manifesto. It is a shameful moment in this House.

The Speaker (Hon. Lusaka): Your time is up. Just wind up.

Sen. Linturi: Mr. Speaker, Sir, just one minute. Remember he is my neighbor and I have to talk to the people. I beg you so that I conclude. A minute will not be over.

The Speaker (Hon. Lusaka): Okay, use it well.

Sen. Linturi: Mr. Speaker, Sir, yes. Some men and women came to arm-twist us to commit an absolute illegality. When we are supposed to be champions of democracy, fairness, equity and devolution, we have almost become the Judas of this period. Shame on us! Shame on the Jubilee Party!

As you crucify our brother as the party leader, may you rest well in the notion that it was out of our total anger and refusal.

Thank you.

The Speaker (Hon. Lusaka): Sen. Faki, proceed.

Sen. Faki: Asante, Bw. Spika, kwa kunipatia fursa hii kuchangia Mswada wa Kiranja wa upande wa wengi katika Bunge la Seneti.

Kabla sijatoa maoni yangu, ningependa kumsahihisha ndugu yangu, Sen. Madzayo, aliposema kwamba Sen. (Prof.) Kindiki katika siasa alinoga. Nafikiria lengo lake lilikuwa kusema kwamba 'alilamba lolo'. Kunoga ni kufanya vizuri zaidi kuliko vile ambavyo inatarajiwa.

Niko hapa kwanza kusema kwamba ndugu yetu, Sen. (Prof.) Kindiki, ni mtu mwenye tajriba kubwa. Ni mtu ambaye alifanya kazi yake kama Naibu wa Spika kwa uzoefu mwingi na vile vile kwa hekima kubwa. Maamuzi aliyofanya ni ya kuaminika na yameweza kutumika hata katika mahakama za nchi yetu ya Kenya.

Bw. Spika, sisi sote katika Bunge hili, mbali na wale wachache ambao wamekuja kama wabunge huru, tunadhaminiwa na vyama vya kisiasa. Leo siasa inaweza kukubali na kesho ikakukataa. Kwa hivyo, Hoja hii haina shaka kwamba lengo hapa ni la kisiasa sio la kuangalia kazi ya Sen. (Prof.) Kindiki ilikuwa namna gani katika Bunge la Seneti.

Lazima tumpatie faraja ndugu yetu, Sen. (Prof.) Kindiki, ya kwamba ameweza kufanya kazi vizuri na sasa imefika wakati wa kurudi na awe kama sisi Maseneta wengine ambao tunahudumu na mwisho wa siku tunakwenda kwetu na watu wetu wanafurahia kazi zetu. Nina hakika Sen. (Prof.) Kindiki atakuwa mtu mwenye kutupatia msaada mkubwa katika majadialiano ambayo yataendelea katika Bunge hili kuliko vile alivyokuwa katika kiti cha Naibu wa Spika.

Bw. Spika, chama kikikosa imani na wewe, sisi kama Maseneta katika Bunge hili hatuna njia nyingine ya kuepukana na swala kama hilo. Vyama ndivyo vinatudhamini. Chama kikiwa hakina imani ina maana kwamba muda wako wa kuhudumu katika nyadhifa ambayo umepewa na chama umeisha hata kama ulichaguliwa kwa kura katika Bunge hili.

Ningependa kuwakosoa wale ambao wamezungumza mbeleni na kusema kwamba maamuzi yamefanywa mahali pengine. Ni kweli hata wakati wa uchaguzi wa Bw. Spika, Naibu wake na wenyeviti wa kamati mbali mbali ulipofanywa mara ya kwanza, uliamuliwa mahali pengine. Kuna ndugu zetu walikuwa kupiga kura upande wetu lakini wakasema uamuzi umefanya, kwa hivyo sisi hatuwezi kuenda kinyume na uamuzi ule.

Bw. Spika, hili sio jambo la kwanza. Kuenda mbele, siku za usoni kutoka mwanzo tukatae maamuzi yanayoamuliwa sehemu ambayo sisi Maseneta hatuko. Tukikataa kufanyiwa kwa maamuzi mahali pengine ndio tutaweza kuipatia Seneti hii nguvu ya kusimama mahali popote na kutetea haki ya mwananchi wa kawaida. Bila

hivyo, itakuwa ni ile mambo kiingereza tunaita “musical chairs.” Leo inapigwa kwa huyu na kesho inapigwa kwa yule na hakuna njia ambayo tunaweza kujitetea.

Sisi Waswahili tunasema muungwana akivuliwa nguo huinama. Nitamalizia hapo na ninaunga mkono Hoja hii.

The Speaker (Hon. Lusaka): Sen. (Dr.) Lang’at.

Sen. (Dr.) Langat: Thank you, Mr. Speaker Sir, for giving me this opportunity to make my contribution on this particular Motion. First of all, if there will be such an arrangement for a special sitting like this in the future, some considerations must be put in place. For example, the arrangement today never considered people with physical challenges like Sen. (Dr.) Musuruve, who is really struggling with the stairs and the sitting position on the other side. We have a lot of sympathy for her. I would like to call upon those who will make such arrangements in the future to consider such situations.

Back to the Motion; allow me to also congratulate Sen. (Prof.) Kindiki. I have known Sen. (Prof.) Kindiki for a long time. We taught together for around five years at Moi University, Eldoret. He is a competent professor. I have been touched by what I am seeing in social media from his former students. It is very encouraging. Whatever will happen will not mark the end of what God has predestined for his life.

I heard about the accusations that have been laid against him in this House when I was down there. One is his failure to attend a meeting during this particularly challenging period of the Coronavirus Disease (COVID-19).

I also failed to attend the meeting because I got the message very late at midnight, and I was in the interior of Bomet and, therefore, could not make it. I do not know the circumstances that prevailed so much that he could not attend the meeting, but I want to say that more consideration should have been put in place when calling such meetings.

Mr. Speaker, Sir, he has been accused of being independent minded. Outside there, he is getting more praise than he is doing here. It is good to be independent minded despite the prevailing circumstance.

He has also been accused of making rulings that might have not been favourable to the Executive or to our party; the Jubilee Party. However, they have been favourable to Kenyans. That is my happiness. Since my time is running out, I want to say that we thank Sen. (Prof.) Kindiki for being principled. That is number one.

As a scholar myself, I want to thank him for standing firm and representing the scholars; that they can be dependable, competent and so forth. I also want to encourage the young Senators that research has proven very well that experience can be challenged through research. Therefore, do not be intimidated by people who have been here for a long time. Sometimes people are experienced in wrongdoing, whereas experience needs to be divine.

I want to quote a verse for Sen. (Prof.) Kindiki. If you read Romans Chapter 8:28, it says that all things happen for the good of those who are with God. Do not worry. I do not know if it has already been predestined that he will remain or he will go. I do not know. Whatever will come out thereafter, I want to tell Sen. (Prof.) Kindiki to stand strong.

Mr. Speaker, Sir, give me one second.

Where we came from together in the scholarly world – I must say it - logical premises lead to logical conclusions. I have heard these people praising him; that he is a good man, he is competent, but they beg to support the Motion. I am different. He is competent, he is balanced and he is wonderful. If I say that I support this Motion, then I am supporting the opposite, which is mediocrity. Therefore, I oppose this Motion strongly, if we are to adhere to being principled.

The Speaker (Hon. Lusaka): Sen. Malalah.

Sen. Malalah: Thank you, Mr. Speaker, Sir. When I walk down memory lane, four years ago, I was facing the same challenge that Sen. (Prof.) Kindiki is facing today. It will be inscribed in the history of Kenya that I was the first deputy speaker to be elected in the Kakamega County Assembly. I was also the first deputy speaker to be impeached in the whole country.

As I was seated here, I looked straight into the eyes of Sen. (Prof.) Kindiki. I empathized with him, but all I can tell him is that, it is going to be okay. If it is not okay, it is not the end.

Mr. Speaker, Sir, the competency of Sen. (Prof.) Kindiki cannot be questioned. I nostalgically remember how he authoritatively took control of this House with his authoritative voice, “Order! Order, Sen. Malalah!”, but that is that. This is a political process. What the good professor did not know or read in his books of philosophy is that, this is a political process which has been initiated by his party; the Jubilee party. All I have to say to my good friend, Sen. (Prof.) Kindiki, is that we loved you, but Jubilee party loved you more.

I support this Motion.

(Laughter)

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. From the very beginning, you advised us that we were not impeaching anybody. The matter in front of us is a matter for us to make a decision on, but we are not impeaching anybody. Therefore, regarding all the correct attributes that have been given to our brother Sen. (Prof.) Kindiki, that stands. I do not think that anybody is questioning that. We all know, and we must all realize that the world we live in is a world of virtues and traditions, and it will work out in the end.

We have a situation where these positions originate from a political party, and that is the beginning of anybody running for a position. Even for elective positions, you begin with a political party. This is not different from other organizations, for example, religious organizations. We have the Catholic Church. Nobody will ever question when a Catholic Father is transferred from point A to point B in the Catholic Church.

This matter came out of a political process. I think that a lot of time has been spent laboring on the very good attributes of the able lawyer, Sen. (Prof.) Kindiki. Being a professor, I have no doubt that he is a very excellent lawyer, but you stated very early that was never really the issue that we were to adjudicate.

We have a matter here regarding the issues of virtues of political parties and this is what we are coming to. The question is; do we go with what that political party is

aligning itself to, or do we come to the Senate and start discussing how political parties should behave themselves? I do not think that is our job at all.

Mr. Speaker, Sir, we have heard all kinds of bad adjectives and attributes in this House. Some of them should be erased because they do not hold. This is a House of honor. Today, emotions have run higher than normal. So, I beseech that if you have power, some of these remarks are emotional and should not appear in the HANSARD unless they appear as an appendix.

(Laughter)

This is a House of honor and so is the discussion we are holding. This is a political process from a political party. We all came here through a political party. Most people hold positions through a political process and their political parties are the sponsors. Therefore, I support this Motion.

Sen. (Prof.) Kindiki is a great professor. That stands. However, I support what we are adjudicating because it concerned a political party which has its own traditions and virtues which must be followed.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, where I come from when somebody has died, people mourn in whatever manner. So, we cannot suppress those who want to express themselves in a particular manner.

In the interest of time, I will limit the number of those to speak.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. To my hon. colleagues from both sides of aisle and to the future generation who we are bequeathing this world to, I have this to say; party loyalty versus meritocracy are two different things.

My dear brother, a man I respect a lot, Sen. (Prof.) Kindiki, we are here today to discuss the issue of party loyalty and not your competence.

I have sat on this chair and listened to you give your rulings which are well thought out and your competency can never be questioned. The issue at hand has been brought by your party in regards to your loyalty to it.

My brother, you and I have gone through the same challenges. My party loyalty was questioned. I stand here to say that I am fully loyal to my party, ODM.

(Applause)

My party leader had been informed by other squatters - I call them that because they do not have homes - that I was disloyal to the party. That is not true.

My brother, democracy and its defense is a matter of life and death. However, in this case, it is a party loyalty issue. Your goose is cooked. The best you can do is to leave and fight another day.

The fight that I am going through which has brought a lot of questions is what I want to share with you so that you know you are not alone.

I plead with the people of Tharaka-Nithi to continue supporting the process of democracy that brought you into this House. When we come into this House, we are given opportunities to serve as Committee Chairpersons, deputy speakers *et cetera*.

In fact, if you remember, my dear brother, when you were elected, I was a competitor. You won and I shook your hand and said congratulations. So, life has ways of teaching us. Some may argue that party loyalty might reduce the greatest to the mere masses. However, these are things which are there in history that we cannot change.

Finally, I do not subscribe to the school of thought that we should blindly respect our parties because of democracy. However, when a party has made a decision, there is nothing that we in this House can do to save you.

If my party made a decision to de-whip me, whether or not I put up a fight, the only thing that I can tell the party is that I am loyal to it. I will stay in that party to fight from within for my position. I believe that the people of Narok, who elected me here, did so because of merit and not because of mediocrity. So, my brother, it will be well. These are positions that we are given. I have come to learn that politics is a dirty game.

Meritocracy versus political party loyalty is something that all of us must define in the future. Are we elected because of merit or our loyalty to the party? In this case, it is because of his loyalty to the party that Sen. (Prof.) Kindiki was given the chance to serve.

I assure my party leader that despite all the rumours he is getting, I and the people of Narok remain loyal to the core.

My brother, I will pray for you.

(Applause)

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

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

Sen. Dullo: Mr. Speaker, Sir, pursuant to Standing Order No.106 and due to the interest of time, I request that you limit the time of talking to two minutes.

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

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

Sen. Haji: Mr. Speaker, Sir, I support what Sen. Dullo has said. Some of us are fasting while all of you are eating and drinking. So, please, reduce the number of the people that are contributing and their time to two minutes.

The Speaker (Hon. Lusaka): We have few interests which will all be accommodated.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Motion on the removal of Sen. (Prof.) Kindiki from the position of Deputy Speaker of the Senate of the Republic of Kenya.

The Mover of this Motion, the Majority Whip, Sen. Kang'ata, has tabled what he believes to be the grounds for the removal of Sen. (Prof.) Kindiki. Of all the grounds that he has tabled, the Senator of Kitui County is guided by the ground of the fact that the appointing party has lost confidence in Sen. (Prof.) Kindiki as the Deputy Speaker.

There is no amount of debate on the Floor of this Chamber that can fix that relationship issue. It is between the Senator and the top leadership of Jubilee Party. What we are called upon to do today is to make a political decision.

For the avoidance of doubt, that decision would be made. When the debate on this Motion began, I listened to our senior Senators, our leaders and our lawyers arguing and

debating on the application and interpretation of the law in regard to the removal of the Deputy Speaker.

Mr. Speaker, Sir, even those of us who are not lawyers, we know very well that you cannot use general provisions of the law to make a decision on a matter for which there are specific provisions. Article 106 of the Constitution will apply on this one. More so, I want to say that the decision that would be made on the fate of Sen. (Prof.) Kindiki has got nothing to do with his competence or performance on the Chair.

I want to support the contribution by the Senator for Nairobi City County, Sen. Sakaja, that the Majority Whip did not do a very good job in moving this Motion. If you tell this House and this country that one of the reasons why you want to remove the Deputy Speaker is on account of a decision he made on the Chair, that would set a very bad precedent. Future Speakers will be looking over their shoulders before they make any decision. Decisions that are made on the Floor of this House are Senate decisions. They are not decisions of an individual Speaker or Senator.

Mr. Speaker, Sir, having said that, I would want to specifically speak to my brother and my neighbour, Sen. (Prof.) Kindiki. In the Book of Isaiah 49:15, God asks a very difficult question. "Can a mother forget her suckling child and that she may have compassion on the son of her own womb?" The Bible says, he says yes, but I will never forget you.

My brother, Sen. (Prof.) Kindiki, it does not matter what the outcome of this process is. God will never forget and forsake you. I say this because I served in the same Christian Union at Moi University with Sen. (Prof.) Kindiki. He was a senior leader of the Christian Union and a member of a care group. I know his faith and trust in God. My brother, we will have to do what we will have to do, but God still remains on the throne.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Lusaka): Sen. (Prof.) Onger, kindly proceed as Sen. Cheruiyot approaches.

Sen. (Prof.) Onger: Thank you, Mr. Speaker, Sir. I will speak and if I may have any little experience to give to a very distinguished scholar at the university, let me do it right now. We all serve and have served in various capacities, whether on appointed capacities as Cabinet Minister or elective positions. It does not matter what it is, you all the time serve at the pleasure of the appointing authority. Any indication that there is no confidence in you, in itself calls upon a very quick meditation on what you should do about that event.

Many times, I have escaped the wrath of a very ruthless decision because when I considered all things, I said that sometimes, it is better to move aside and allow certain things to happen. This is because when they happen, you will be vindicated in the future. I lost elections three times because people told me that I did not perform well and I have been elected back to power four times. That in itself, is a very humbling experience.

There was a time when there was a change of leadership in the party hierarchy, and a man I loved so much, the late President Daniel Toroitich arap Moi, said it was time to change the format. The late Prof. Saitoti was the Vice President and Vice Chairman of the KANU, but when the change came, we accepted it gracefully. In the end, he became the Vice President until he decided to leave when he joined the other party.

Sen. (Prof.) Kindiki, do not compare the academia with political games. These are two different worlds all together. If I were you, I would not listen to the kind of heavy messages of being told to move on. This is because after this debate, I dare say that you will be on your own. That is the time you will know those who are pushing you will be miles and miles away. My only simple advice is that accept the challenge that has been put before you gracefully and take the opportunity at some stage to meet the Party boss and reconcile since it is possible. If we were able to reconcile in 2007/2008 in very acrimonious elections, why can you not reconcile on a simple matter like this one?

Party loyalty is critical to anything else. Even if you think internally that you are right, when it comes to what the Party wants to tell you to do, you should do it. You can query it internally and raise issues that you might have wanted to raise. However, when it comes to the public domain, you must not give an opportunity to your enemies to push you to the limit. I call them your enemies because they will push you to the limit, but at the end of it all, they will leave you hanging.

My advice is; take it gracefully because it is a decision of confidence. It has nothing to do with qualities. The Party has no confidence in you. A Motion has been brought before this House. The only reason it is before this House is because when you were elected; your name was proposed unanimously from your Jubilee Party. We had no option, except to support you.

Similarly, your own Party has now suggested that they have no confidence in you. If I had had an opportunity to talk to you earlier, the best cause of action would have been for you to resign. I did not have that opportunity, but I can still offer you that opportunity by saying, accept this decision gracefully so that you can move on to better things.

I support the Motion.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this chance.

Mr. Speaker, Sir, I oppose this Motion. The celebrated Senegalese author, Ousmane *Sembène*, while writing in his book *Xala*, speaks of the importance of African leadership. He gives it as an example that it is based on inability to focus on what is essential, but our legendary desire to always be preoccupied with trivialities that Africa is what it is today.

Mr. Speaker, Sir, if a visitor were to visit Nairobi City County and be informed that the Senate of the Republic of Kenya is meeting this afternoon; and they were asked why they think the Senate is meeting, they would think that we are meeting as a reaction to the pleadings by the Chairperson of the Council of Governors (CoG), Gov. Wycliffe Oparanya, three days ago, reminding the country that up to this point, county governments are yet to be furnished with funds to fight the COVID-19 challenge that this country is facing.

Perhaps, you would be told that this Senate is meeting to consider and try to establish the truth of the veracity of the claims that were made recently in the local dailies that up to Kshs358 billion of taxpayers' money that should have been used to fight this particular menace has been stashed away. Or even a simpler reason that we are just trying to brainstorm on how we can cushion our citizens during this difficult time.

However, lo and behold, you will be told that we are meeting to discuss the conduct of a Deputy Speaker, who failed to attend a meeting, and, therefore, the Senate of the Republic of Kenya is gathered here.

Mr. Speaker, Sir, who cursed us, Africans? What is our problem? Why do we ridicule the people that sent us to this House? If we had this same amount of energy and vigour that we are displaying this afternoon, then this House should have concluded the Bill that was generated here more than a month ago on various responses to the challenges of COVID-19 that are being faced by various citizens that we represent in this House. However, it is what it is. That is why we are gathered here.

Let me speak to my friend, Sen. (Prof.) Kindiki, and ask him to take heart and remain strong. Remember the words of the late Maya Angelou, the American poet, that “Do not make it your life mission to survive, but seek to thrive.” Sen. (Prof.) Kindiki, you have sought to thrive. Many will make the decision today that is convenient for them to survive politically, but you have chosen to thrive. I stand with you, my brother.

(Applause)

Finally, Mr. Speaker, Sir, because we have heard long lectures about political party loyalty and being loyal to the party leader, I urge my colleagues to read Article 91 of the Constitution on what a political party is before they sleep tonight.

A political party is not the party leader. When you disagree with the party leader, you have not disagreed with your party. That is the mistake of Sen. (Prof.) Kindiki. Read and understand that a political party is about good governance. It is about the ideals of democracy.

Go further and read Article 91(2) that in this country, it is against the law to form a political party along the ideals of religion. I weep because what has befallen my Party, Jubilee, is that it has become a religious cult, where if you disagree with the party leader, you are called a heathen and thrown out. That is what is happening to Sen. (Prof.) Kindiki, and it is against the law.

Mr. Speaker, Sir, as a House, we need to be sincere to ourselves, rise to the occasion, speak to the true ideals of democracy, and say enough is enough. If we believe that we are a House that is founded on truth and all the ideals of democracy, you cannot support such a Motion. Do not give us excuses and talk about political party loyalty.

There is nowhere that shows that Sen. (Prof.) Kindiki has absconded his duties as a Jubilee Senator. Sen. (Prof.) Kindiki, walk proud and tall. I can assure you of that because I know the parts of the membership of Jubilee. If a vote were to be taken today, the more than eight million members of the Jubilee Party would stand with you and tell you that you are on the right path. Speak truth to power and stay true.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Kinyua, proceed. Is he not here?

Sen. Madzayo: Bw. Spika, jambo la nidhamu, tafadhali.

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

Sen. Madzayo: Bw. Spika, kwa heshima na taadhima kuu ya Seneti, nauliza tu iwapo tunaweza kutafakari kwamba tuko katika Mwezi wa Ramadhan. Tuko na dada na ndugu zetu wa Kiislamu, na hata Sen. Haji ambaye ni baba yangu.

Ikiwezekena, pengine tungefupisha ama tunganema huyu awe wa mwisho. Tukifanya hivyo, watapata nafasi ya kwenda Msikitini kuomba halafu waende wachukue futari wafungue mwadhini.

Ninakusihhi sana tupunguze muda wa kuongea.

The Speaker (Hon. Lusaka): Nimekuelewa. Huyo ndiye wa mwisho kisha tusikie kutoka kwa Sen. (Prof.) Kindiki na viongozi wa Seneti.

Sen. Madzayo: Asante, Bw. Spika.

The Speaker (Hon. Lusaka): Sen. Kinyua, endelea.

Sen. Kinyua: Asante, Bw. Spika, kwa kunipa fursa hii. Siku ya leo itabaki katika kumbukumbu. Nimesikiza kwa mapana na marefu. Nimesikiza Hoja yenyewe na tuhuma zilizozetwa kumhusu Naibu wa Spika na kuziweka mizani. Kwenye mizani nimeweka tuhuma pamoja na utenda kazi wake.

Ukweli usemwe kwa sababu Mswahili husema mghala muue na haki mpe. Ukiweka katika mizani kazi aliyofanya, inaonekana ni kazi ambayo sisi wenyewe---Napanga Hoja hii leo, kesho na hata milele.

Huo ndio ukweli na ukweli unapaswa kusemwa. Yeye aliongoza hapa akiwa amekalia kiti hicho na ameleta tabasamu badala ya mgawanyiko katika hii Seneti yetu. Sisi wenyewe badala ya kumpa "kongowea"-- Nilidhani tunakuja hapa leo kumpa kongole na pongezi kwa kazi nzuri aliyofanya. Ninasikia Maseneta wenzangu wakiongea wanampaka mafuta kwa mgongo wa chupa kwa sababu---

Sen. Sakaja: Jambo la ya nidhamu, Bw. Spika?

The Speaker (Hon. Lusaka): Jambo lako la nidhamu ni lipi, Sen. Sakaja?

Sen. Sakaja: Bw. Spika, hawa wenzetu ambao wanazungumza Kiswahili leo wanatukanganya. Kuna mwingine amesema "kulamba lolo" na mwingine sasa anasema "tungempa kongowea." Jamani, waeleze watumie Kiswahili sanifu wala sio *sheng* ama maneno mengine. "Kulamba lolo" ni sheng. Pia tunasema kongole sio kongolea.

(Laughter)

The Speaker (Hon. Lusaka): Basi zungumza Kiswahili ambacho kitaeleweka na Maseneta wote.

Sen. Madzayo: Bw. Spika, jambo la nidhamu.

The Speaker (Hon. Lusaka): Jambo lako la nidhamu ni lipi, Sen. Madzayo?

Sen. Madzayo: Bw. Spika, kwa heshima, najua Sen. Kinyua anaongea na singependa kumwingilia. Hata hivyo, amesema hapa kwamba tunampaka Sen. (Prof.) Kindiki mafuta kwa mgongo wa chupa. Ni kwamba ati tunayoongea hapa, sisi tunandanganya. Tukimtia moyo, tunamdamanya. Kupaka mafuta kwa mgongo wa chupa ni kumdamanya mtu lakini sio vile anavyosema.

Sen. Kinyua: Bw. Spika, ninakubaliana naye mia kwa mia, kwa sababu baada ya kusema vile Naibu wa Spika ametenda kazi kwa ueledi, amesema kuwa anaunga mkono Hoja ya kumtimua. Itakuwaje unasema mtu amefanya kazi nzuri na badala ya kumpa

heko, unasema unamtimua. Huko ndiko ninasema ni kumpaka mafuta kwa mgongo wa chupa, na yeye mwenyewe lazima ajue Kiswahili.

Kwa Sen. Sakaja, nitakuwa nimekosea kuja hapa kuzungumza kwa lugha ya Kiswahili ambayo yeye haelewi wala haimanyi. Mimi sina uwezo wa kumsaidia bali ninamwambia sisi tunazungumza kwa lugha ambayo wenzangu wa kutoka pengine Pwani wanaifahamu.

Ningependa kumwambia Naibu wa Spika, Sen. (Prof.) Kindiki, kwamba Biblia yangu inaniambia hata ijapokuwa unapitia katika bonde la mauti, usiogope kwa sababu Mwenyezi Mungu yuko pamoja nawe.

Vile vile napenda nikwambie kwamba kama vile Yesu alivyokuwa amebeshwa msalaba, kwa sababu naona ndugu yangu unaelekezwa Golgotha, naona taharuki imetanda na ninaona hawa ndugu zangu watakuelekeza Golgotha. Mimi, Sen. Kinyua, nitakubebesha msalaba kama vile Yesu alivyobeshwa na Simon wa Kirene. Nitasimama kama Simon wa Kirene nikubebeshe kwa sababu akufaaye kwa dhiki ndiye rafiki. Nitakusaidia kwa sababu hata nawe umekuwa na sisi na umetembea na sisi.

Ndugu zangu nawaomba kwamba mtu akifanya kazi nzuri, apewe hongera. Hawa ndugu zangu wa mrengo huu wa Wachache Bungeni, leo wanatuambia vile tunavyopaswa kujua uaminifu kwa chama. Unawezaje kujua uaminifu wa Chama cha Jubilee ilhali wewe uko katika Chama cha Orange Democratic Movement (ODM)? Ni kosa kuja kutufunza mambo ya uaminifu. Sen. (Prof.) Kindiki ni mwaminifu; amekuwa na ataendelea kuwa mwaminifu.

Utajuaje uaminifu wa chama cha Jubilee ilhali wewe uko katika chama cha Orange Democratic Movement (ODM)? Itakuwa kosa ninyi kutufunza uaminifu. Sen. (Prof.) Kindiki ni mwaminifu na amekuwa mwaminifu na ataendelea kuwa mwaminifu. Bw. Spika, nitamueleza Sen. (Prof.) Kindiki tutakuwa marafiki wa kufa kuzikana. Asante sana.

The Speaker (Hon. Lusaka): Now I will go to the leadership. The Senate Leader of Minority, Sen. Orengo. The leader of Majority should be near.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, first of all, let me join Members and the Senate in expressing a strong view that this Motion is not about the person, conduct and ability of Sen (Prof.) Kindiki in the House. If there is anybody who came to that conclusion, then they are arguing the wrong Motion.

Indeed, I am one of the last persons and there are many Senators who were with me that fateful evening; Sen. (Dr.) Mwaura was there. We were looking for a pathway and did not want to go through this process but were looking for a pathway of how to resolve this matter. We were up at night until about 1.00am in the morning.

I had the privilege of talking to Sen. (Prof.) Kindiki, the Deputy Speaker, looking for a way out of the quagmire. As it has been said, this matter has been brought by the Jubilee Coalition and not the NASA coalition.

Mr. Speaker, Sir, that being the case and Sen. (prof.) Kindiki knows when this House congregated for the first time for election of the Speaker, Deputy Speaker or the Leadership of the House, everything depended on the decisions of the political parties. Sen. Olekina, a very qualified Senator, ran for the office of the Deputy Speaker and we could not marshal enough numbers. It was not a question of competence but numbers.

That is how at the end you were elected as the Speaker of the Senate and Sen (Prof.) Kindiki was elected as the Deputy Speaker. I have all my respect for Sen. (Prof.) Kindiki. I have been with him in court, he has addressed the court in my presence, I have read some of his works but at the end of the day, the Constitution of Kenya says Kenya will be a multiparty democracy.

The centrality of the party in our democracy cannot be gainsaid. You can go through a lot of provisions of the Constitution. The President of the Republic of Kenya was sponsored by a political party not just two or three members of that party. He had to secure, I think more than 2000 signatures of party members and not registered voters; people who are registered voters and also party members. As we debate this matter, let us place the truth where it lies.

Before I go to the reasons I wanted to advance on this particular Motion, there are two issues that I want to bring to the attention of the House. First, the distinguished Senator for Bungoma has sent me a message - and it is on my phone - and he says he supports the position taken by the Minority Coalition which is the NASA Coalition on this matter. Our position is well known.

Mr. Speaker, Sir, hear those words Sen. Olekina has spoken in this august Chamber in relation to his party. Imagine if Sen (Prof.) Kindiki on Tuesday after the meeting made such an announcement that 'I am loyal to my party', the difference it would have made. I know he would find it very difficult to utter those words and there are many people on the opposite side who would find it difficult to utter those magic words. Therefore, this matter is not as easy as it looks.

Today people are citing the Bible, poets, philosophers. Let me also cite one of my favourite poets and playwrights, T.S. Elliot, who is regarded as the greatest poet and playwright of the 20th Century.

He got a Nobel peace prize for literature. He said this in one of his works: "The last temptation is the greatest treason; to do the right deed for the wrong reason". You do the right deed but you do it for the wrong reason. Why am I saying this? The problem in this matter is not Sen. (Prof.) Kindiki.

We have said this before and if it is a matter of who stands on matters of principle---. I have heard some Senators talking about issues of principles of yesteryear fighters for democracy. If you look at Motions and Bills which have come to this Senate and the last Senate, and look at how we have voted; those who are today talking about democracy, if I take every Bill, I collected many of the Bills that were passed in the last Senate and this Senate, the Security Law (Amendment) Bills, the Election Law (Amendment) Bills, the issue of Ruaraka land, how did they vote on that day? They talk about democracy everywhere until they lose their positions. How strange is that?

I agree on matters of principle you can judge me 100 times but when it comes to a matter of principle, I can tell you that I will never change. These are all politics of power. There are no politics of principle. It is all about power. Why do I say so? The meeting held in State House, look at the people who attended and those who did not. It tells a story which we must be told. Why did some people attend and others did not? It was not an accident that some people attended and some did not. It was choreographed and planned.

If you have read the classics, and I read a lot of classics, there was one time a Triumvirate in Rome consisting of Julius Caesar and Crassus and Pompey. When you have three generals controlling a republic, it willingly becomes dysfunctional until Julius Caesar had to become the absolute dictator, Pompey was killed in Egypt, Crassus who was the richest of them was murdered.

In Kenya today, we have a Rasputin who is occupying a political position. We are giving the Rasputin an AK-47. There is a Rasputin in the Republic who has many messengers in this House. The problem is that Rasputin was the greatest defender of the Czar of Russia, very close to the family, the wife—

The Speaker (Hon. Lusaka): What is your point of order, Sen. Ochillo-Ayacko?

Sen. Ochillo-Ayacko: Mr. Speaker, Sir, I am normally a curious student of knowledge. If there are agents of Rasputin in the House, would I kindly ask my leader to name a few of them so that I avoid them like the plague?

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I know you know them. You are just being a little bit clever by half.

After Rasputin died, history will tell you what happened to the Tsar of Russia. The Jubilee Party Members should sit together and decide whether they will obey the “Tsar” or “Rasputin”. That is when this problem will end because you cannot have an army with two field marshals. This is what is happening and it is causing havoc to this country.

Mr. Speaker, Sir, there is a time I said on the Floor of this House that Jubilee is dysfunctional. We want a functional party in Government. So, we are coming together as republicans and Kenyans to ensure that the Jubilee Government does something in the two years it is left with.

We are now talking about COVID-19 and Sen. Cheruiyot is the greatest campaigner of the rights of the people. Look at the Motion we have here. I can challenge the Senator for Kericho on how he has voted in the past on matters that concern the people. I am pleading to you.

Sen. (Prof.) Kindiki, this is probably not your day. However, I think you did the right deed for the wrong reason. That is why you are the centre of this Motion when I know that you should not be. You did a right deed for the wrong reason because that reason did not relate to the commander of your party, in addressing the agenda that you agreed should be addressed to attain one indivisible Kenya that can in the end be judged as a truly prosperous nation.

Nowadays people talk about politics like they are playing with toys. We have people who have been dragged out of this House and murdered. There are people who have been detained for 10 years. We are talking as if this Senate cannot have the same kind of people to sacrifice. They shout the loudest out there talking about truth and justice. You can only talk about justice if the President is talking about fighting against corruption. You should be the loudest saying that we are fighting corruption. However, what we hear is that corruption is being politicised. Who is going to speak for the Government in this House?

I want to end by saying this, just to address some of the issues that Sen. Murkomen talked about. There are constitutional offices. If you look at the Constitution, there are provisions including being MPs. If you were to be recalled, the Constitution states the manner in which you can be recalled and the manner in which the accusations against you must be addressed.

In fact, if I may read, Article 104(2) states that:

“Parliament shall enact legislation to provide for the grounds on which a Member may be recalled and the procedure to be followed.”

Therefore, an MP cannot be recalled without any grounds. Where it is important to put out grounds, like when you are impeaching a judge of the High Court, or seeking the removal of the Director of Public Prosecutions (DPP) or the Auditor-General, you are required to state the grounds and they must fall within the remit found in the Constitution. However, when it comes to the Speaker and the Deputy Speaker, there is no such requirement.

Mr. Speaker, Sir, allow me to read Article 106 (2) of the Constitution which states as follows:

“The office of Speaker or Deputy Speaker shall become vacant—
(a) when a new House of Parliament first meets after an election;
(b) if the office holder, as a member of the relevant House, vacates office under Article 103;
(c) if the relevant House so resolves by resolution supported by the votes of at least two-thirds of its members; or
(d) if the office holder resigns from office in a letter addressed to the relevant House.”

Therefore, what is required is a resolution and I know that at the end of this debate, we will have a resolution. Therefore, Article 47 was not being well interpreted and constructed in the context of the Constitution.

I was glad when Sen. Wambua said that when there are specific provisions relating to a particular circumstance, then you cannot fall on the general provisions of the Constitution. You follow the provisions set out in the Constitution and they have been elaborated in the Standing Orders. On this question, one can go on and on.

I know this Parliament will be required to play a critical role in the next two or three months. This is because when there are reforms, Parliament must be at the centre. We must be together as Parliament in this great quest to make Kenya a better country. Those who have decided and there are those who believe in the course they have taken in trying to reform the country need to be in support of institutions including Parliament. They must rest assured that we have a reforming Parliament.

I disagree that this can be described as a bad Senate. In the British history, parliaments have been described in many ways such as being bad or good and so on and so forth. In this Senate, we have tried. The greatest victory is the case that Sen. Omogeni argued before the Supreme Court that clearly says that the Senate has a critical role to play in legislation, including the allocation of revenue. That process is set out in the Constitution.

Mr. Speaker, Sir, therefore, Members of the Jubilee Party should go back and think critically, so that this matter is resolved. However, from the language I have heard here today, Sen. (Prof.) Kindiki's case was made worse. It is as if this case was against other forces that are not in this House because there were attacks against offices not involved in this debate.

When people say that we have dictatorship in Kenya and they remain in that same government or party, there is no honesty and people are not being candid. If you think Kenya should move forward on the path of democracy, then let us work together to make Kenya a better country.

I thank you and support the Motion.

The Speaker (Hon. Lusaka): Let us now hear from Sen. Poghisio who is the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, in supporting this Motion, I would like to say just a few words. In my short or long history in politics, I have seen the role a party can play to determine whether you move forwards, sideways, backwards and/or drop out completely. I have seen all those things. I will share the experience that I have about what a party can do but I would like to say a few things about this Motion.

I was very lucky to have been elected an MP in the Sixth Parliament. I will tell you briefly what happened. One day, Members of my party, which was the only party in the country, sat in the old Chamber. When I went out to have tea at 4 p.m., it was announced to me that I was a stranger in the House.

I was a Member of Parliament in the morning and by the afternoon Session, I was a stranger in the House. That is a party and the party can do that to you. It was called expelling you from the party at that time and I was expelled from the party, but I stand here today. So, times change. I sometimes consider it a great thing that happened to me because I went on to do other things and still came back here.

What I am saying to my friend, Sen. (Prof.) Kindiki and he knows that, is that if these were issues about his capacity, integrity or issues like that, we would not be talking. For example, if it was a debate about his character, it would be different. However, I want him to know that so many of his friends are going to vote for this Motion; a good number of your friends and they will still be your friends. It is not because of this that they are not your friends.

In fact, some of the people who are going to vote for this Motion are better friends than those who will try to probably show you that they support you because they are telling you the truth. The reality in life is about how you relate with your party and how loyal you are to your party.

Mr. Speaker, Sir, some of my colleagues have said to the Senator for Tharaka-Nithi that it does not matter whether you respect your party leader or not. I think that those are the people who are not really your friends. I think those are the people who will really put you in deeper trouble because that is not true. It is not possible.

As we stand here, the fact is that the process that has ushered us into this place is that same political system. It was the same Party Leader, sitting in a chair, chairing a Parliamentary Group meeting in State House that ensured that Sen. (Prof.) Kindiki

became the Deputy Speaker. It is that meeting that also ensured that Sen. Murkomen and Sen. Susan Kihika and all that team became office bearers. It was not for being nicer or being more intelligent or anything, but it was because the Party Leader decided and the party sat together as a coalition and voted at that time.

Mr. Speaker, Sir, I am just saying that sometimes, the people who speak above everybody else in trying to assure of their support, will not necessarily be the ones to support you. Some of the people who are going to guide you along the way after this are the people who are sitting, saying to you that please, accept these things. I want to say the same thing; accept these things that are coming your way because they make you stronger. They bring the best out of you and they will make you who you really are.

Like somebody said this afternoon, that we loved you but the party loved you more and---

(Laughter)

You know that language is one of finality and we do not want to go that way. We want to encourage you that you are going to bounce back. I heard Sen. Murkomen saying that he is going to bounce back. You will also bounce back; you will still be the Senator of Tharaka-Nithi, the great professor and a friend of many here and we will give you the support that you need.

I did not want to take too long to speak about other issues, because there are no issues to talk about. It is just a fact that the Party requires strengthening and direction. The party leadership has decided and we are going to vote this afternoon. Whatever the fate is, Sen. (Prof.) Kindiki, be willing to say, thank you because you have been given a chance to serve this country. You have served it with greatness and you should be thankful that at your age you have been able to occupy very high positions like this one.

In fact, that is my advice to all the others, including Sen. Murkomen and Sen. Kihika. You are very fortunate in a political system to have served when you did. It is not that others were not able to fill those positions. Let us just assure ourselves that as we move on from here, some of your best friends are the ones who are going to vote for this Motion and they will still remain your great friends.

Mr. Speaker, Sir, I support and I wish that we vote on this matter, finish and be able to get back a stronger party and the stronger side in the Majority. I want to thank all those who have supported this Motion.

Thank you.

The Speaker (Hon. Lusaka): Okay, Hon. Senators, like I did say in my Communication, I will now give this opportunity to the Deputy Speaker, Sen. (Prof.) Kindiki to say something.

The Deputy Speaker (Sen. (Prof.) Kindiki): I thank you, Mr. Speaker, Sir. I beg that you allow that I make occasional references to some notes under Standing Order No. 90 (2), which gives you that power.

The Speaker (Hon. Lusaka): Granted.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I want to make a disclaimer that the people who have accused me today, may it be known that it is not the President of Kenya, neither is it any Senator seated here, including the Mover

of this Motion. I have the highest respect for the institutions, for the President and for all my colleagues.

Today, I stand here paraded before the whole nation, accused of misdeeds whose particulars have never been brought to my attention until now, despite me consistently asking for them. There can only be two reasons for this; the first is that the trumped up charges against me are baseless and my case is a *fait accompli* and, therefore, I must be removed from office by all means whatsoever, even by unconstitutional means.

Mr. Speaker, Sir, how I wish that this Sitting, with the haste at which it has been convened, was meant to discuss the plight of the millions of our people across the country who are living in dire need and abject poverty. I bow in shame to know that we are here today for an illicit triviality, powered by petty divisions and vindictive politics as the country hurts from the lethal combination of a near collapsed economy, a ravaging pandemic, floods and a rare invasion of desert locusts not seen in this country for decades.

I am ashamed that we are here discussing party politics at a time when our motherland desperately needs the solidarity of every single Kenyan, even the weakest. At a time when our country needs reconciliation and not hate and pettiness.

It does not bother me at all that the die is cast against me. What bothers me is that the Constitution of our country is once more being indecently assaulted in full glare. A handful of rogue fellow citizens have made it their orgy of pleasure to humiliate freedom and truth with reckless abandon, with little patience for procedural details of our Constitution, which would have given our country some semblance of honor; even fake cosmetic or hypocritical honor.

Mr. Speaker, Sir, the right to be heard and to be tried fairly in a judicial, *quasi-judicial* or administrative process of any nature where a decision is being made, would help to cloth even a horribly evil process such as this one, with some form of legitimacy. Give a man a chance to defend himself even if the defence is regarded inconsequential and an outcome has been predetermined.

My faith in God instilled in me early in life has helped me to navigate even the deadliest of the storms of life with minimum injury or even none. Also, my more than one decade in academia helped me built moral resilience adequate to withstand the temptation of living an unprincipled life. To resist the urge to pursue vanity, it taught me never to sell my beliefs for expediency.

His Excellency President Uhuru Kenyatta, whom I am accused today of having disrespected, should know that I have always and will forever respect him. I hold him in the highest esteem and veneration as the leader of our country and the symbol of the unity of our nation.

I have faith in him as the leader of our party and will support him loyally to the end of his administration as a matter of duty and choice. I wish him and his administration all the best for the remainder of his term. I believe beyond peradventure that the President of our country is not linked in any way whatsoever to this or with this injustice.

Mr. Speaker, Sir, in my previous responsibility as the Senate Majority Leader, I did my best to push Government business in this House and to defend the President and his administration whenever they came under political attack.

Subsequently, the Jubilee Party with full blessings of President Kenyatta nominated me to run for the post of Deputy Speaker of this House to which I was elected and I am grateful, to assist you, Mr. Speaker, Sir, as your deputy in the non-partisan role of being an impartial umpire on disputes brought before this House.

In that role, I have tried my best, not only to be fair, but also to appear to be fair. If I have made any errors, to err is human. The reason I have been this way is because of the need to ensure that we do not compromise the dignity and independence of Parliament as an arm of Government.

Outside this Chamber, I have carefully calibrated my political utterances to give full respect and dignity to the constitutional office that I have been holding as an impartial umpire at least until the end of this Sitting. Neither in my previous role as Senate Majority Leader nor in my current role as Deputy Speaker that ends today, have I ever disrespected the Leader of my Party.

Mr. Speaker, Sir, I have endeavoured to respect my colleague Senators. This respect has been sincere and deep from my heart despite the unique challenges of moderating parliamentary debates because sometimes you have to rule a Senator out of order and sometimes it does not look tidy. Despite that, I have tried my best to restrain myself and to respect each and every Senator and to give each Member of this House an opportunity to address the nation and address the people who have sent us to this House.

Mr. Speaker, Sir, in recent times, I have somewhat restrained myself as I observe the worrying political developments that threaten to polarize our country to unprecedented levels.

My accusers – I have already said that it is not the Head of State or any Senators - may have mistaken this restraint for weakness. They thought I had no views to air publicly or that fear had triumphed over me. They wrongly diagnosed that I could be manipulated, cajoled or even threatened to join them in what, in my view, is a treasonable project of destroying our beloved country. I respect their choice to be petty, but they also ought to know that humility is not cowardice, neither is silence a sign of ignorance.

I have lived long enough to witness even darker moments when faith in our democracy and values have been severely tested. Nevertheless, I remain optimistic of better days ahead for our nation. However dark it gets the sun of freedom and justice shall soon shine again over Kenya.

In my struggles with the powers of darkness, especially during the past one week, I rejoice in my tribulations. Harboring hate against them would work in their favour. Therefore, I freely forgive those who have crucified me. If I do not forgive them, they will have succeeded in pulling me down into their dirty underground moral dungeon, from where they cook their hopeless schemes.

I am reminded of the wisdom of Martin Luther King Jnr, never to succumb to the temptation of bitterness. Therefore, as a sign of strength, I forgive them without conditions.

However, let them know wherever they are that victory over darkness comes to the victors in installments, but punishment for perpetuating the works of darkness is meted out on the conspirators in one lumpsum. Those who scheme and connive to carry out wickedness should know that a lie cannot last long. As Mahatma Gandhi stated, I shall not let anyone walk through my mind with their dirty feet, and nobody can hurt me without my permission.

I will forever be grateful for the tremendous outpouring of support that I have received from family, friends, fellow elected leaders, colleague Senators from both sides of the House, staff, my constituents from Tharaka-Nithi County and thousands of Kenyans of goodwill from across our beloved country.

It took darkness for me to see the galaxy of stars strewn all over our nation, who detest and abhor injustice. This has given me great hope that our nation shall rise again. Indeed, there is hope for Kenya.

Those who think that I have made a mistake must understand that freedom includes the freedom to make mistakes. Today, we must decide whether we will live in fear or in freedom.

I thank you. God bless Kenya, God bless the Senate.

The Speaker (Hon. Lusaka): Thank you, Deputy Speaker, Sen. (Prof.) Kindiki.

I now call upon the Mover to reply.

Sen. Kang'ata: Mr. Speaker, Sir, this job of being a Chief Whip is very challenging, my brothers.

Please, I ask Senators, whenever I bring a Motion as a Chief Whip, I am not bringing it in my personal capacity. I am bringing it on behalf of my Party. I have taken this position, and I am going to do my task.

I urge Sen. (Prof.) Kindiki - I am happy you did not take it personal - it has nothing to do with me. It is a pure political party issue.

Secondly, I bring to your attention that, that meeting in State House was very important. Just try to imagine yourself as His Excellency the President, then you call Senators and they refuse to come.

Mr. Speaker, Sir, I beg to reply and urge Senators to support this Motion so that we uphold the discipline in Jubilee Party and other political parties, generally.

Thank you.

The Speaker (Hon. Lusaka): The Division Bell will be rung for ten minutes like I said.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Let it ring for five more minutes.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Senators, take your positions. Let us have the Tellers for both sides, for the "Ayes" and the "Noes".

(Loud consultations)

Let us consider our Muslim brothers. *Wanataka kwenda kuswali.*

(Loud consultations)

Clerk, we are ready. Let us take our seats so that we vote.

(Question Put)

(Senators proceeded to vote by roll Call)

Sen. Haji: On a point of order. I thought that we agreed Muslims would be allowed to vote first. Can I vote?

The Speaker (Hon. Lusaka): Yes, give them an opportunity.

(Roll Call Voting in progress)

The Clerk-at-the-Table: Sen. Mugo, Beth Wambui!

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, on behalf of Sen. Mugo who had asked you for permission to leave on health grounds, I vote “Yes”.

The Speaker (Hon. Lusaka): I received the notification.

Sen. Murkomen: On a point of order. Mr. Speaker, Sir. On what basis does someone vote on behalf of someone else?

The Speaker (Hon. Lusaka): Let us vote. I will give direction on that.

Sen. Murkomen: Mr. Speaker, Sir, on what constitutional basis can one--- The Constitution is very clear.

The Speaker (Hon. Lusaka): The former Senate Majority Leader, remember I made a ruling here that in such exceptional times--- Even when you were the Senate Majority Leader, we were also taking votes through proxy. She has written and she is indisposed. It was brought---

Sen. Murkomen: Mr. Speaker, Sir, there can be no worse violation of our Constitution than that. There is no one---. There was never a time we sat in the Senate Business Committee to approve a Member who is not in the Senate Chamber to vote. It is impossible.

Mr. Speaker, Sir, in fact, it is the greatest violation of our Constitution. Please, do not go there. You already have the numbers to remove the Deputy Speaker. Do not rape our Constitution further.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, at least, if you give somebody latitude---. The words that are being used on the Floor of the House like ‘rape,’ what would young people, and particularly our women, think about our language? I think we should use language with decorum.

Sen. Murkomen: Mr. Speaker, Sir, I insist that allowing a person who is not in the Chamber and not within the vicinity of Parliament to vote, is not only rape. I would rather use ‘defilement’ because it is worse.

The Speaker (Hon. Lusaka): Sen. Murkomen, Sen. Mugo was here.

Sen. Murkomen: Mr. Speaker, Sir, even if she was here.

An hon. Senator: Yes!

Sen. Kihika: Who are you shouting at?

(Sen. Ochillo-Ayacko spoke off record)

The Speaker (Hon. Lusaka): Order, Sen. Murkomen!

She was here and because of illness, which was brought to my attention, that is how I allowed it.

Sen. Murkomen: Mr. Speaker, Sir, it is impossible. It is not for you, Mr. Speaker, Sir, to allow. It is impossible and unconstitutional. There is absolutely no basis for you to defile this Constitution. You have the numbers. Do not go there.

Sen. Ochillo-Ayacko: Mr. Speaker, Sir, this is a House of order. If you allow Members to talk back, overrule and heckle you, I am the best at that. Do not allow this because when others start it, this House will be disorderly. So, make your ruling with finality. I beg you.

The Speaker (Hon. Lusaka): Sen. Olekina, proceed.

Sen. Olekina: Mr. Speaker, Sir, I would not want to slow down the process. However, because we are talking about procedures, Standing Order No.1 gives the Speaker latitude to make certain decisions. I do not know whether this would apply to the issue of a Senator voting on behalf of another.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Let the voting continue. I will make a ruling at the end of it.

Hon. Senators: Yes!

The Speaker (Hon. Lusaka): Let us proceed.

(Hon. Senators proceeded to vote by Roll Call)

The Clerk-at-the-Table: Sen. Ndwiga, Peter Njeru!

Sen. Kang'ata: Mr. Speaker, Sir, yes, I have his letter. He says he votes "Yes". But I agree, we can keep it aside, pending your ruling.

(Roll call voting in progress)

Sen. Kang'ata: Mr. Speaker, Sir, I have a point of order.

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

Sen. Kang'ata: Mr. Speaker, Sir, I propose we exclude the two contentious votes.

The Speaker (Hon. Lusaka): I was going to make a ruling on that.

Sen. Kang'ata: Exclude the votes for abundance of caution.

The Speaker (Hon. Lusaka): That is okay.

DIVISION**ROLL CALL VOTING**

(Question, that the Senate resolves that Sen. (Prof.) Kithure Kindiki, EGH, MP, be removed from the Office of the Deputy Speaker of the Senate, put and the Senate proceeded to vote)

AYES: Sen. (Dr.) Ali; Sen. Boy; Sen. Chebeni; Sen. Dullo; Sen. (Prof.) Ekal; Sen. Faki; Sen. Farhiya; Sen. Haji; Sen. Halake; Sen. (Eng.) Hargura; Sen. Iman; Sen. (Dr.) Kabaka; Sen. Kajwang' M; Sen. (Prof.) Kamar; Sen. Kang'ata; Sen. Kasanga; Sen. Khaniri; Sen. Kibiru; Sen. Kwamboka; Sen. (Dr.) Lelegwe; Sen. Loiptip; Sen. Madzayo; Sen. (Eng.) Mahamud; Sen. (Eng.) Maina; Sen. Malalah; Sen. (Dr.) Mbito; Sen. (Dr.) Milgo; Sen. Moi; Sen. Mpaayei; Sen. (Dr.) Musuruve; Sen. Mutula Kilonzo; Sen. Mwangi; Sen. Mwaruma; Sen. Mwaura; Sen. Nyamunga; Sen. Ochillo-Ayacko; Sen. Olekina; Sen. Omanga; Sen. Omogeni; Sen. (Prof.) Ongeru; Sen. Orenge; Sen. Outa; Sen. Pareno; Sen. Poghiso; Sen. Prengei; Sen. Sakaja; Sen. Seneta; Sen. Shiyonga; Sen. Wako; Sen. Wamatangi; Sen. Wambua; Sen. (Rev.) Waqo; Sen. (Dr.) Zani and Sen. Zawadi.

Teller of the Ayes: Sen. Kwamboka.

NOES: Sen. Cherargei; Sen. Cheruiyot; Sen. Kihika; Sen. (Prof.) Kindiki; Sen. Kinyua; Sen. (Dr.) Langat and Sen. Murkomen.

Teller of the Noes: Sen. (Dr.) Mwaura.

The Speaker (Hon. Lusaka): Hon. Senators, for the avoidance of doubt, the results I am going to read are for those Senators who were within the precincts of Parliament and voted. The results of the Division are as follows-

AYES: 54

NOES: 7

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 54 votes to 7)

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. Therefore, the Senate stands adjourned until Tuesday, 26th May, 2020, at 10.00 a.m.

The Senate rose at 6.33 p.m.