

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 29th March, 2022

*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

SUSPENSION OF VIRTUAL/HYBRID SITTINGS

The Speaker (Hon. Lusaka): Hon. Senators, I have a Communication. As you are aware, the COVID-19 pandemic severely affected Parliaments along with all other governance institutions.

Parliaments have had to balance continuing to discharge their constitutional responsibilities to ensure democratic governance, enacting and meticulously overseeing Executive powers to combat the pandemic, setting an example in terms of safe working practices and protecting the health of parliamentarians and parliamentary staff.

Upon declaration of the COVID-19 outbreak on 30th January, 2020 by the World Health Organization (WHO) and subsequent confirmation by the Ministry of Health (MoH) on the first confirmed case of COVID-19 within Kenyan borders on 13th March, 2020, the challenge for the Parliament of Kenya then was to shut down and wait the pandemic out, or to take measures to ensure that the work of a modern Legislature of legislation, representation and oversight does not stall and is transacted within constitutional and statutory requirements of such work.

The Speakers of both Houses of Parliament issued guidelines aimed at curbing the spread of COVID-19 and to minimize the risk of an outbreak within Parliament, which at the time of issue in March, 2020, were meant to remain in force for 30 days.

Among the measures taken was suspension of all Plenary and Committee Sittings for both Houses, suspension of visiting delegations, suspension of all parliamentary engagements and activities, provision of sanitary and personal protective equipment and enforcement of strict preventive measures such as social-distancing and self-quarantine.

On the part of the Senate, on the advice of a COVID-19 technical taskforce that included officers from the Ministry of Health, altered its Calendar pursuant to Standing Orders No.28 and 29, on 17th March, 2020, to sit once a week and reduced its hours of

sitting, pursuant to Standing Order No.31 (3) (b), so as to be in line with a nationwide curfew, which was at 7.00 p.m.

Further guidelines were issued on 17th April, 2020 to enable Members to participate in legislative business remotely and for use of Roll Call voting, pursuant to Standing Order No.83.

On 21st July, 2020, the Senate amended its Standing Orders to provide for virtual sittings, pursuant to the provisions of Article 124(1) of the Constitution and Standing Orders Nos.255 and 257.

As a result, virtual/hybrid sittings had legal authority to enable the Senate to continue to exercise its constitutional mandate. Virtual/hybrid sittings enabled the Senate to pass Bills and Motions that were crucial at the time, to contain the spread of the pandemic and that have continued to serve the nation now and in the future.

Virtual/hybrid sittings had both pros and cons for both Plenary and Committee sittings. A positive side with respect to Committee meetings is that at all times Committees have been able to obtain a quorum on time to transact business. This has facilitated faster consensus building and arriving at resolutions on matters faster. This has resulted in many Committees clearing a backlog of legislative business that had otherwise stalled due to lack of quorum.

Another positive outcome is that engagement with stakeholders has been flexible, owing to the convenience of holding a meeting at any time, attendance from their places of work or stations, and in some cases, from home and limited pressure for Committee rooms. Stakeholders no longer had to travel to Parliament Buildings for meetings.

However, whereas virtual or hybrid sittings have had a positive impact for committees, the converse effect of this has been a drastic reduction in the number of Senators attending Plenary sittings both physically and virtually.

At the convening of the Senate at every sitting, there is barely quorum, hence, application of Standing Order No.36 is increasingly gaining prominence. On the other hand, for Senators who make the effort to attend Plenary sittings remotely, participation has been distant, unless there is a division.

As a consequence, presiding officers have been forced on many occasions to adjourn sittings shortly after convening, not due to lack of legislative business, but due to the absence of Movers of the business.

In addition to this, in instances where Movers of legislative business are absent, such business has been dropped from the programme of the Senate business, pursuant to Standing Order No.59 (3). This has further exacerbated the stalling of legislative business before the Senate.

Application of Part XXIXA of the Standing Orders is to the extent that a “physical sitting is not possible as the Speaker may, in consultation with the Senate Business Committee, determine”, as required by Standing Order No.251A.

Given the aforementioned concerns, the Senate Business Committee (SBC), at its meeting held today, Tuesday, 29th March, 2022, deliberated on this matter and noting that the Parliamentary Service Commission has made tremendous efforts to facilitate a conducive working environment and facilitated vaccination for both Senators and parliamentary staffers, and in view of easing of the nationwide containment measures by the Ministry of Health, due to favourable results in COVID-19 prevalence rates, resolved

that virtual or hybrid sittings of the Senate Plenary be suspended from Thursday, 31st March, 2022.

Hon. Senators, I, therefore, direct that virtual or hybrid sittings of Senate Plenary will be suspended effective Thursday, 31st March, 2022. However, committee sittings may continue with their virtual or hybrid sittings, pursuant to Standing Order No.251A (1) (b).

I thank you.

Sen. M. Kajwang', what is your intervention?

Sen. M. Kajwang': Mr. Speaker, Sir, I have just received a copy of the new Standing Orders. They are not necessarily new, but we now have the Kiswahili version. Virtual sittings have found their way in the Standing Orders. That is Part XXIXA.

Mr. Speaker, Sir, while I hear you and your concerns around getting quorum physically in the House, I beg the SBC to consider that decision. Fortunately, you have talked of suspension rather than full stoppage.

Mr. Speaker, Sir, you need to assure the House, that where the Speaker will determine that a sitting of the Senate is to be held virtually, then the provisions of Standing Order No.251B shall still apply because we are going to the political season.

In the next two weeks, you will struggle to get Members in this House because all of us will be subjected to nominations, with the exception of a few lucky characters like Sen. Cheruiyot and Sen. Murkomen, who sign certificates in their respective parties. They have already signed their own certificates. The rest of us will be in the villages campaigning.

We have The Division of Revenue Bill to pass and the budget process is ongoing. We might lead to a shutdown of Government activities if we insist that Members must be here. In fact, you should prepare to provide transport for Members to come from their respective areas because even the allowances that Members used to get for staying in Nairobi were stopped by the courts of law.

Mr. Speaker, Sir, just assure us that Standing Order No.251B shall still apply; that where in your wisdom there is need for a virtual sitting, that will still happen.

I thank you.

The Speaker (Hon. Lusaka): I assure you, but I also note that campaigns have not started officially. What you are engaging in are meetings. There is going to a period for official campaigns.

Therefore, you are expected to be in the Senate, but I get what you are saying. We will use the discretion and wisdom to make decisions as and when the need arises.

Proceed, Sen. (Dr.) Musuruve.

(Sen. Murkomen spoke off record)

Sen. Murkomen, I have said Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I thank you for your kind comments. Indeed, COVID-19 pandemic affected all sectors in this country. That is why the guidelines that were applied in March, 2020, came in handy to ensure that the legislative process of the Senate goes on.

Mr. Speaker, Sir, I agree with you that we must endeavour to be in the House and represent our people because we also have a mandate to conduct legislative business in as much as we represent our people. They also want to be represented in the House, so that the salient features across Petitions, Statements and others are executed.

That is part of our role as Senators. That is why we are being paid to represent our people in the Senate. We are also required to be on the ground to find out the gaps that are there, so that we can address them. When it comes to Bills, our people cannot come to the House to pass them. We are the ones to do that.

Mr. Speaker, Sir, I agree with you. It is a comment that is well meaning for purposes of ensuring that the legislative processes go on effectively.

I support.

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

Sen. Murkomen: Mr. Speaker, Sir, thank you for that Communication, which is timely. We were operating outside the Standing Orders. The Standing Orders give the permissive will to the Speaker to declare a session to be held both virtually and physical, or not. That should be decided from time to time. It was necessary for that period of time that the SBC proposed that we needed to have virtual sittings.

Virtual sessions are far less beneficial as compared to physical presence. They have been beneficial to the extent that we can vote virtually. However, other than that, we need to restore how Parliament should operate, particularly now that we are getting to the end of term of this Senate.

Mr. Speaker, Sir, I know that Sen. M. Kajwang' had some concerns about the need for virtual sittings. You have clarified that Standing Order No.251 is clear; that the SBC can meet, and with the permission of the Speaker, a virtual sitting can be called at any time within this period.

The advantage is that committees, including the SBC, can meet virtually. That decision is not difficult to make. Other than that, in the next Senate, more emphasis should be laid on physical sittings of the Senate because the other one encourages laziness.

Remember we draw allowances from the people of Kenya, particularly transport allowance, that is, mileage, as a result of being physically in this Chamber. We cannot have our cake and eat it by sitting somewhere virtually in Iten, in Elgeyo-Marakwet and at the same time, pretend to have been in the Senate in Nairobi.

This rule should be observed with a lot of commitment from our side. By the time the Speaker makes a certain declaration that a Senate sitting will be done virtually, it should be on exceptional circumstances that can be justified. It should not just be for any other situation.

Parliament must be Parliament. Just imagine a Senator or Congressman of the United States of America (USA), where we have the Senate and the House of Representative, perpetually meeting virtually. Nobody is sitting here and we are claiming to be attending virtually. I do not think it gives the traditional meaning of what Parliament should be.

That was an extraordinary situation and it must be kept as such. Standing Order No. 251 should be applied in exceptional circumstances.

Where is the incoming Governor of Busia; the incoming Governor of Kisii and the incoming Governor of Bungoma? They are all sitting here.

The Speaker (Hon. Lusaka): Order Sen. Murkomen. You are out of order! We are not here to name governors. What is your point?

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, they are sitting here in this House. Those of us who will be left behind as we transact business in this House, we want you out there to be proud that we are taking the business of the Senate seriously by taking time to come and sit in this Chamber and make sure we that we transact business with commitment.

I thank you.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I equally want to take the position that for Parliament to be an institution that is effective, physical sittings are very important.

There was time when the Houses of Parliament - the Commons - were bombed during the Second World War. Since the House of Commons has more than 500 Members, there was a suggestion that it should be rebuilt and expanded. Sir Winston Churchill refused. He said that the House normally has a sense of urgency and debate is more effective when the House is full.

Mr. Speaker, Sir, I have seen many times, when I walk into the Chamber, I find that I am alone with the most constant attendant in this Chamber, Sen. (Dr.) Musuruve. I end up making a point to an empty Chamber. The only person who has learnt how to talk in this Chamber in the absence of many other Senators is Sen. (Dr.) Musuruve, and I commend her for that.

In order to have honest and true debate, we should be able to be present and interact on points of order. This is part of the debate that goes on. Even the court system have found out how to do virtual hearings quite effectively. However, nothing can ever replace a physical conduct of proceedings in court.

I also believe that Parliament carrying out its legislative duty virtually can be effective. One thing that is slowly dying, that I constantly regret is that the galleries of these Parliaments are empty every day. If we turn virtual, even the delegations that want to come and see Parliament in operation, will come here and find poor Sen. (Dr.) Musuruve alone with the "Governor of Bungoma County".

(Laughter)

The impression about Parliament or the Senate would be very negative. I, therefore, believe that there can never really be a true substitute for physical conduct of the business of the Senate, especially in terms of the debates that go on.

I thank you.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Many of us including Sen. Orenge and I have been accused of trying to get quorum at the Council of Governors (CoG) in advance.

I congratulate the Speaker for this Communication. I think all of us, including myself, went into comfort zones and enjoyed the fact that we could conduct business while seated in our offices. In the next two or three months that are left, we should all make a commitment that we can attend the Chamber.

During the last session - for those who were here for the first time - we had The Division of Revenue Bill around this time and some of the Members who ended up on the mediation table had lost their nominations. Therefore, let us take all this positively.

We do not know what is going to happen, but we have got business to run. I think it is high time we all came back here. The Senate Majority Leader, please, look for controversial things for us to do. We need to get back to our old selves, where we used to debate in this Chamber now that COVID-19 is behind us.

Let us not beat ourselves to death too much; COVID-19 actually, affected this Chamber. The fact that the COVID-19 infections have gone down is something, I think we should celebrate, that it did not affect us as much as it affected other parliaments or countries, where they lost so many members during the COVID-19 pandemic. Thank you Speaker, for your leadership during this time. You managed us virtually and physically, and we are still here.

We should support the Senate Business Committee (SBC) Members. We do not have a lot of business pending and I think in the short time that we have, we can complete whatever it is that we must do. We cannot do everything, but there are a few things that we can finish quickly.

I thank you.

The Senate Majority Leader (Sen. Poghiso): Mr. Speaker, Sir, I want to thank you very much for the Communication. I do agree with the Members who have spoken before me. We seem to be totally in agreement that we now resume normal sittings. I hope that we will continue to be watchful on the COVID-19 rules.

That also means that now we have to reduce the distances, so that people can sit in their former seats. That will allow very close consultations and so on. I think it is time so that in the final stretch of the Senate people can see we are here, particularly if we can allow our galleries as well to be active. We have no shortage of controversial matters. We can always find them and bring them to this House, so that people can debate.

I do want to support the decision that next month we are fully back. I want to encourage Members to travel from wherever they are to attend Chamber.

I thank you.

The Speaker (Hon. Lusaka): Next Order!

PETITION

REPORT ON PETITION: THE PLIGHT OF SEED FARMERS IN TRANS-NZOIA COUNTY

Sen. Wambua: Thank you, Mr. Speaker, Sir. I beg to lay the following Petition Report on the Table of the Senate, today, 29th March, 2022:

Report of the Standing Committee on Agriculture, Livestock and Fisheries on a Petition to the Senate by Mr Joseph Mikolela and others concerning the plight of seed farmers in Trans-Nzoia County.

Mr. Speaker, Sir, this Petition was received on 22nd September, 2020. The Committee has held quite a number of sittings, including a visit to Trans-Nzoia for a meeting with maize seed farmers. A Report has been compiled and it is the Report that I am tabling today.

I beg to table the Report.

(Sen. Wambua laid the document on the Table)

The Speaker (Hon. Lusaka): Thank you, Sen. Wambua.
Next Order.

PAPERS LAID

The Speaker (Hon. Lusaka): Senate Majority Leader, Sen. Poghio, you may proceed.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, 29th March, 2022.

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY FUNDS/ BOARDS

Report of the Office of the Controller of Budget on the County Governments Budget Implementation Review for the first half of Financial Year 2021/2022.

Report of the Auditor General on the financial statement of County Assembly of Isiolo Car Loan (Members) Scheme Fund for the year ended 30th June, 2018.

Report of the Auditor General on the financial statement of Tharaka Nithi County Bursary Development Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Baringo County Bursary Fund for the year ended 30th June, 2014.

Report of the Auditor General on the financial statement of Baringo County Bursary Fund for the year ended 30th June, 2015.

Report of the Auditor General on the financial statement of Baringo County Emergency Fund for the year ended 30th June, 2016.

Report of the Auditor General on the financial statement of Baringo County Emergency Fund for the year ended 30th June, 2019.

Report of the Auditor General on the financial statement of Baringo County Community Conservation Fund for the year ended 30th June, 2019.

Report of the Auditor General on the financial statement of Baringo County Community Conservation Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Bomet County Bursary Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Bomet County Education Revolving Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Nyandarua County Executive Committee Members' Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Samburu County Assembly Staff Mortgage Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor General on the financial statement of Kirinyaga County Health Sector Service Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Meru County Revenue Board for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Kyeni Water and Sewerage Company Limited for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Tharaka Nithi County Assembly Car Loan and Mortgage Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Kericho County Assembly Members Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Kisii County Veterinary Services Development Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Kisii County Bursary Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Migori County Water and Sanitation Company Limited for the year ended 30th June, 2020.

(Sen. Cherargei consulted loudly)

Mr. Speaker, can you protect me from Sen. Cherargei?

The Speaker (Hon. Lusaka): Sen. Cherargei, Senator for Nandi, you are distracting the Senate Majority Leader.

(Sen. Poghisi laid the documents on the Table)

The Speaker (Hon. Lusaka): Sen. Mwaruma and Sen. Omogeni are also supposed to lay Papers.

Sen. Mwaruma is already here. Kindly proceed.

REPORT ON THE COMMUNITY GROUPS REGISTRATION BILL
(NATIONAL ASSEMBLY BILLS NO. 20 OF 2021)

Sen. Mwaruma: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 29th March, 2022:

Report of the Standing Committee on Labour and Social Welfare on the Community Groups Registration Bill (National Assembly Bills No.20 of 2021).

(Sen. Mwaruma laid the document on the Table)

The Speaker (Hon. Lusaka): Sen. Omogeni, you may proceed.

POINT OF ORDER

SUBSTANTIATION OF STATEMENT ON COG RECOMMENDATIONS TO IBEC ON REVENUE ALLOCATION

Sen. Omogeni: Mr. Speaker Sir, last Wednesday while making contribution on the Floor of the House, I made a Statement to the effect that the Council of Governors (CoG), through its Chairperson of the Committee on Planning and Economic Affairs, had recommended to the Intergovernmental Budget and Economic Council (IBEC) an allocation of Kshs751 billion, and I was challenged by Sen. Sakaja to substantiate that fact.

Mr. Speaker, Sir, this afternoon, I want to lay before the Floor of the House a Statement that was issued by the Chairperson of the Committee on Finance Planning and Economic Affairs of the CoG, Governor Nderitu Mureithi.

On the second page of the document, there is evidence to the fact that the CoG recommended an allocation of Kshs751 billion as the county equitable share of revenue, which was reduced by IBEC to Kshs370 billion.

I beg to lay the same before the Floor of the House.

(Sen. Omogeni laid the document on the Table)

The Speaker (Hon. Lusaka): The Senate Majority Leader, you may proceed.

The Senate Majority Leader (Sen. Poghisi): Mr. Speaker, Sir, Order Nos.8 to 13 on the Order Paper relate to Divisions, as you have seen. There have been concerns raised on how to proceed with a number of these Orders, which in my position, require further consultations among Senators.

Mr. Speaker, Sir, in consultation with the Senate Minority Leader, I rise to seek your indulgence to request that the proceedings of the Senate this afternoon be suspended for one hour to afford Senators an opportunity to have a closed door session before we reconvene.

Mr. Speaker, Sir, I seek your indulgence.

The Speaker (Hon. Lusaka): Senate Minority Leader, you may proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, that is the position.

The Speaker (Hon. Lusaka): Hon. Senators, I have listened to the request by the Senate Majority Leader and the Senate Minority Leader that we suspend the Sitting for one hour to allow for further consultations.

Pursuant to Standing Order No.1, I direct that we suspend the Sitting for one hour and have consultations in this Chamber.

It is so directed.

(The Senate was suspended temporarily at 3.10 p.m.)

(The Senate resumed at 4.40 p.m.)

The Speaker (Hon. Lusaka): Next Order.

STATEMENT

WORLD WATER DAY

Hon. Senators, I defer the Statement.

(Statement deferred)

Next Order.

BILL

Second Reading

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 8 OF 2022)

(Sen. Poghiso on 22.3.2022)

(Resumption of debate interrupted on 22.3.2022)

(Division)

The Speaker (Hon. Lusaka): Let the Division Bell be rung for two minutes.

(The Division Bell was rung)

Hon. Senators, let us start voting now.

(Roll Call Voting in progress)

BILL

Second Reading

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO.8 OF 2022)

(Sen. Poghiso on 22.3.2022)

(Resumption of debate interrupted on 22.3.2022)

DIVISION**ROLL CALL VOTING**

(Question, that the Division of Revenue Bill (National Assembly Bills No.8 of 2022) be read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdul Haji, Garissa County; Sen. (Dr.) Ali, Wajir County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kajwang' M., Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Poghiso, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wambua, Kitui County; and, Sen. Wario, Tana River County.

Teller of the Ayes: Sen. Kibiru.

NOES: Nil

Teller of the Noes: Sen. Kasanga.

The Speaker (Hon. Lusaka): Hon. Senators, the results of the division are as follows-

AYES: 29

NOES: 0

ABSENTIONS: 0

The "Ayes" have it.

(Question carried by 29 votes to nil)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, it is now 5.00 p.m. For the convenience of the Senate, under Standing Order No.31(2), the Senate, therefore, stands adjourned until Wednesday, 30th March, 2022, at 2.30.p.m.

The Senate rose at 5.00 p.m.