

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 3rd August 2023

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

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

PRAYER

DETERMINATION OF QUORUM
AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

We have quorum. Kindly proceed to call the first Order.

PETITION

PUBLIC MONEY ALLEGEDLY STOLEN
THROUGH THE SGR PROJECT

(Petition dropped on 02.03.2023, Afternoon Sitting)

The Speaker (Hon. Kingi): Proceed, Sen. Okiya Omtatah. Any Senator holding brief for the hon. Senator?

Secretariat, this is the second time this Petition is coming up. When it came up yesterday, I dropped it. I have not received any letter seeking to have it reinstated. How did it find itself back to the Order Paper? That Petition stands dropped.

(Petition dropped)

Hon. Senators, I have the following Petition to present.

IMPENDING EVICTION FROM ANCESTRAL LAND BY THE
HOLY ROSARY CATHOLIC PARISH, MWANDA

Hon. Senators, I hereby report that a Petition has been submitted to the Senate by Marungu residents within Mugange, Mwanda Ward, in Taita-Taveta County concerning impending eviction from the ancestral land by Holy Rosary Catholic Parish, Mwanda.

As you are aware, and Article 119(1) of the Constitution, and I quote-

“Every person has the right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in this Petition are as follows-

(a) THAT, the petitioners have resided and established their livelihood in Marungu area within Mugange, Mwanda Ward, in Taita-Taveta County for the last four decades;

(b) THAT, in the year 2007, the Holy Rosary Catholic Church approached the elders of Marungu area and persuaded them to allocate them a piece of land to enable them put up a structure to be used as a church and an orphanage. The community elders identified 75 acres for allocation to the church;

(Loud Consultations)

Sen. Methu, consult in low tones.

(c) THAT, on the date of the site identification, the Marungu area elders were accompanied by the area chief and subchief when the chief directed that the church be allocated a thousand acres instead of the 75 acres that the community had identified;

(d) THAT, due to the differences between the area chief and the Marungu area elders on the acreage to be allocated for the Holy Rosary Catholic Church at a meeting held in the year 2007, the exercise was not concluded, and since then a meeting to allocate the church the piece of land has never been held;

(e) THAT, in the year 2019, the mission constructed a church in the area they were to be allocated, and further sunk a borehole in the year 2021;

(f) THAT, in the year 2023, the Ministry of Lands, Housing and Urban Development set up an adjudication scheme known as Ngoloki adjudication Scheme covering Marungu area. The adjudication scheme did not adjudicate on approximately 1000 acres in the area for reasons that it belongs to the Holy Rosary Catholic Church mission and that the land had been adjudicated;

(g) THAT, the decision to allocate the church 1000 acres was made without involving the residents of Marungu area, and that the initial occupants of the said land are facing eviction;

(h) THAT, the Petitioners have made efforts to have this matter addressed by the relevant authorities, in this case, the National Lands Commission (NLC), which has failed to give a response to their concerns.

The Petitioners, therefore, pray that the Senate intervenes in this matter with a view of establishing the rightful owner of the 1,000 acres of land in Marungu and recommend that ownership of the land be reverted to the community.

Hon. Senators, pursuant to Standing Order No.237, I will allow comments, observations and clarifications regarding this Petition for not more than 30 minutes.

Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for giving me the opportunity to take the first bite on this Petition from Taita-Taveta County that neighbours the Lower Eastern Region Counties of Kitui, Machakos and Makueni. For that reason, many people from my community are settled in Taita-Taveta.

I want to say two things about this Petition. Ideally, when people are being evicted or uprooted from their land, they run to the church for refuge. In this situation, we are dealing with a very complicated matter, where a church has been invited to community land, and as per this Petition, the church now wants to evict the same people that housed it.

Mr. Speaker, Sir, I pray that this Petition finds serious consideration in the Committee on Land, Environment and Natural Resources. However, as this matter is also being looked into, I invite the Committee to look at several other land cases, especially in Makueni and Kitui Counties or residents who are forcibly being---

The Speaker (Hon. Kingi): Hon. Senator, there is a lot of movement in the Chamber, kindly take your seats.

(Sen. Cherarkey stood in his place)

Sen. Wambua: Mr. Speaker, Sir, Sen. Cherarkey is not heeding to the call of the Speaker to take his seat.

The Speaker (Hon. Kingi): Sen. Cherarkey, kindly proceed to your seat.

Sen. Wambua: Thank you, Mr. Speaker, Sir. This Committee should extend its investigation to a land matter in Makueni and Kitui Counties on the eviction of residents from Kibwezi to Athi, Ikutha, Mutomo, Kitui, Kabati and Migwani.

People's land has been taken to pave way for the construction of a superhighway. To date, those people have not been compensated.

So, as the Committee looks into this matter of the land in Taita-Taveta, which is our neighbour, the compensation for those people who have paved the way for the road construction should also be looked into.

The Speaker (Hon. Kingi): Sen. Cheruiyot, please, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. This is a strange Petition in the sense that on many occasions, people run to the church to seek refuge.

What I am reading about the Marungu residents in Mwanda Ward in Taita-Taveta County is a bit strange. This is because it is the church against the people, yet the church and the people are supposed to be one and the same. Therefore, I would like to call upon

the Committee on Lands, Environment and Natural Resources to keenly listen to the cries of these people.

One of the campaign pledges of Kenya Kwanza is that there shall never be evictions as used to be the order of the day during the infamous 'handshake' days.

Mr. Speaker, Sir, you remember that even amidst COVID-19, many citizens used to be kicked out of their homes and many such things used to happen. We said we must give dignity to even those that are least endowed economically amongst ourselves. I believe that these citizens would not have looked up to the Senate if they were well established and had the connections.

For example, my good friend, the Senator of Kisumu County, would have put up a case for them and many such things that other well-endowed citizens normally do. However, they have looked up to the House of representatives, which is the Senate. I believe that in here, they will find justice.

This is not to castigate the church. The Book of Proverbs, if you are a good reader of the Bible, tells you that when you listen to the first person to speak in court, you would think of how evil the accused are, until they also get a chance to speak.

That is old, ancient wisdom, which I want to guide the Committee of Land, Environment and Natural Resources, as they listen to this Petition. This is because it will be important to understand the exact thinking of the Holy Rosary Catholic Church. What is the nature of the dispute? Did they pay for this land and any such matters that may arise?

This is one such Petition that you cannot do justice to if you just listen to it here in Plenary, where you get the documentation. In the public hearing and in the establishment of facts, ensure that you get onto your vehicles or whatever means of travel, drive all the way to Mwanda Ward in Taita-Taveta, and listen to those people, so that you can find and establish the truth about what is it that they seek from the Senate.

I believe that in the long run, justice will be served to them.

The Speaker (Hon. Kingi): Sen. (Prof.) Tom Odhiambo Ojienda SC, please, proceed.

Sen. (Prof.) Tom Odhiambo Ojienda SC: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Petition.

Clearly, the land question commands listening to both parties and especially where the church is involved. This is a case that would involve eviction within the law. That is one. However, two, it includes considering questions of adverse possession and of ensuring that communities that have lived in church are able to get accommodation. If land acquisition is the way to go, then the National Land Commission that does acquisitions would be involved within the framework of the Land Act, 2012.

Mr. Speaker, Sir, I support this Petition. This is because it is commonplace for communities that find themselves living in places for a particular time, for example, over 12 years, to claim rights, yet at the same time, those who claim ownership of those parcels of land also claim rights. So, you have a conflict in ownership.

Mr. Speaker, Sir, of a particular instance, I want to cite this for the record. We have a land question in Kibos, which is almost similar to this involving the Nubian Community that came to Kenya during Independence. The community has lived in Kisumu County since Independence. In 2021, it was evicted from the land parcel that they occupied and are now living as squatters in a place they have known as home since their birth. I will bring a similar Petition which mirrors the one we have today.

Mr. Speaker, Sir, the land question in this country must be taken seriously. Land is not only an emotive issue, but also at the very center of life. It is important that the agencies that deal with land to take community problems and community complaints seriously.

Mr. Speaker, Sir, I pray that this Petition be committed to the Committee on Land, Environment and Natural Resources, chaired by my friend Sen. Methu and ensure that it is treated with the seriousness it deserves.

Mr. Speaker, Sir, we have another problem with a parcel of land neighbouring the airport in Kisumu County. The community has the question of ownership and they have kept complaining over who---

Time is up.

The Speaker (Hon. Kingi): Sen. Mungatana, please, proceed.

Sen. Mungatana, MGH: Asante Bw. Spika kwa kunipa nafasi hii kutoa mawazo yangu kuhusu *Petition* hii amabayo iko mbele yako. Swala la ardhi sehemu ya Pwani limekua donda sugu kwa wakaazi wa Pwani.

Kati ya ahadi ambazo Serikali hii ya Rais Ruto ilitoa ni kwamba, watalimaliza hili swala na kupunguza shida za wananchi sehemu ya Pwani.

Ukweli usemwe kwamba katika safari za Rais na Mawaziri wake, tumeona dalili ya swala hili kutatuliwa.

Ni jambo la kusikitisha sana kusikia kwamba sehemu ya Mghange, Kaunti ya Taita-Taveta, wananchi wengi wanakosa ardhi kwa sababu kuna shamba kubwa ambazo zimeshikiliwa na mabwenyenye.

Bw. Spika, tunashangaa sana kusikia kwamba kanisa na wananchi wanakosana kuhusu ardhi yao ya tangu jadi. Kwa hivyo, tunataka Kamati ya Ardhi kupitia mwenyekiti wao, walichukulie swala hili kwa uzito. Sehemu ya Pwani ina rekodi mbaya kuhusu watu kunyang'anya watu wengine mashamba. Watu ambao ni wachochole na ambao hawana nguvu, wananyang'anywa mashamba yao ama kukoseshwa haki zao za kiardhi. Kwa hivyo, nasimama kuunga hii Ardhi hali. Naomba Kamati husika itatue swala hili kwa haraka sana.

Ningependa pia wakati Kamati hiyo inaangalia hili swala, nawaomba sana watembelee sehemu hiyo. Hii ni kwa sababu Mghange ni sehemu ya milima. Ukisikia mtu amechukua ekari 1,000 katika sehemu hizo za milima, basi wale Wananchi wamebaki na mahali pachache sana.

Kwa hivyo, tunaomba Kamati husika wafanye hii kazi na watembelee sehemu za Mghange. Wasifanye kazi Nairobi tu bali waende wajione wenyewe hali ya maisha ya wale Wataitata ambao wanaishi huko juu.

Asante sana, Bw. Spika.

The Speaker (Hon. Kingi): Proceed, Sen. Dullo.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to support this Petition. It looks like this is an extraordinary Petition. Ordinarily, you do not expect the community to fight with the church. As other Senators have said, people normally ran to church for solutions. This is unfortunate. The community should seriously look into it.

Secondly, whenever there is compulsory acquisition of land, it happens in community land. This matter seriously needs to be looked into. Every Tom, Dick and Harry, feel that they can go to the community lands and take their land without even consulting them.

I believe there is a legislation where the community and the relevant Government institutions on the ground and the community need to be consulted. We have a similar situation in Isiolo where the Government has acquired land to construct the road from Isiolo to Modogashe. The National Land Commission (NLC) has agreed to review the compensation figure, but they have not done anything. I brought a Statement on the Floor of this House, which has not been resolved to date.

The Committee should seriously look into issues of compensation specifically on community land. Where private land is involved, procedures are followed. However, where community land is involved, nobody takes the laws seriously in this country.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Kingi): Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Just like those who have spoken before me, I note with great concern that Christians are petitioning against their own church.

I noticed the mention of the area chief and the community elders. Traditionally, elders have been preceding the word and the opinion of chiefs. I am sure that when the Committee will go to the ground, they will discover that this particular chief is one of the usual, typical big man syndrome, sort of chief that we get in the rural areas.

A chief who after the community allowed the church to be given 75 hectares free, then wanted to punish the community by warning that they give away 1,000 hectares. Probably, the chief wanted to use that excuse to help other land-grabbers who have nothing to do with the Catholic Church, to soil the good name of the Catholic Church.

Mr. Speakers, Sir, this brings into question two points. The first one is the Alternative Disputes Resolution (ADR) mechanisms that were being promoted by the former Chief Justice, Hon. David Maraga. Perhaps, the elders through the usual traditional sittings can best sort out a matter like this.

Secondly, it brings into question the issue of land tenure policy in this country. Our land tenure policy is not sustainable. We have to slowly start educating our youth to know that in the fullness of time, not every Kenyan will have a title deed. Sometimes, I normally wonder why a doctor like myself, a lawyer like you Mr. Speaker and Sen. Cherarkey, will be fighting for your father's two acres of land to subdivide with their siblings. What for?

(A Senator spoke off record)

Even if it is 10 hectares, the money I make out of an operation of 30 minutes, can enable me to do further investments, similar to the money that Sen. Cherarkey makes in court. You do not have to fight over your fathers 10 or 100 acres of land. You can actually live as a professional doctor, lawyer and so on without necessarily owning a title deed. This mindset must be removed, so that we can now plant trees or do afforestation in our country. Let us leave those people who are professional farmers to grow wheat, maize and sugarcane for us when the rest of us earn our living from our intellectual property.

I support.

The Speaker (Hon. Kingi): Proceed, Sen. Onyonka.

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I rise to support the discussion that my colleagues have had. However, we need to have a different approach on how to handle certain matters, including this issue of land.

The Committee on Lands, Environment and Natural Resources that is chaired by my brother, Sen. Methu, might want to handle this matter in piece meal form, because there are various matters relating to land, which are questionable and have raised pertinent issues. One of the recommendations I will make to Sen. Methu is to consider the possibility of setting up an *Ad Hoc* Committee, which will specifically deal with matters of land and look at the historical injustices without necessarily going back to the Ndungu reports and all the reports that have come historically. This is because, many of these issues are coming up from all counties and areas.

Whenever governors are sworn into office, the first thing they do is go to peoples' land whether the documentation was available or not. Some will say that people who have those pieces of land are actually trying to steal it and that it was not theirs, and all that kind of stuff.

We need to create a semblance of order. One of the matters that I am curiously watching the Kenya Kwanza regime and especially President William Ruto, is for us to have a system that is based on geo-spatial planning where pieces of land owned in this country, ---

The Speaker (Hon. Kingi): What is your point of order, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise under Standing Order No.105. Did you hear the Senator for Kisii County, call the administration of Kenya Kwanza, headed by President William Ruto a regime? Could he table evidence to demonstrate that the administration is actually a regime? What we have is the---

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators. Sen. (Dr.) Khalwale, kindly take your seat.

Sen. Onyonka, proceed to conclude your comments.

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I think Sen. (Dr.) Khalwale must have had a very bad lunch today. He said that he did better than Sen. Sifuna; I doubt.

Mr. Speaker, Sir, with those few remarks, I thank you.

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

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

(Sen. Cherarkey stood in his place)

The Speaker (Hon. Kingi): Just take your seat, Sen. Cherarkey.

(Sen. Sifuna spoke off record)

The Speaker (Hon. Kingi): Sen. Sifuna, please, there is only one Chair, and I am the Chair.

Sen. Cherarkey, proceed to make your comments on the Petition.

Sen. Cherarkey: Mr. Speaker, Sir, the dictionary meaning of the word ‘regime’ is authoritarian.

(Loud consultations)

This is not a market place. However much you shout, you must listen to what I am saying.

The Speaker (Hon. Kingi): Order, Members! Sen. Cherarkey, I gave you the Floor to make comments on the Petition.

Sen. Cherarkey: I am making comments.

The Speaker (Hon. Kingi): Proceed.

Sen. Cherarkey: Mr. Speaker, Sir, the Government that we have in place is God-chosen. It is a Government, not a regime. The regime is a wrong denotation. It means ‘authoritarian.’

What I want to say on the aspect ----

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators! Kindly allow the Senator to make his comments on the Petition as presented by the Chair.

Sen. Cherarkey: Mr. Speaker, Sir, I thank you for that protection.

(Laughter)

Mr. Speaker, Sir, I agree that the issue of land is emotive. My former lecturer in Law School, Sen. (Prof.) Tom Odhiambo Ojienda, will tell you that land is an emotive issue. He taught me land laws, conveyancing and has also written extensively on conveyancing in this country. Therefore, land is an emotive issue.

Mr. Speaker, Sir, every African and especially where I come from, if you do not have land, then you are a nobody. You are not a 'man.' Of course, there are other qualifications to be a man.

I want to encourage communities to employ alternative dispute resolution mechanisms. We have established a mediation centre, especially on land matters, in this Republic. I am happy that Kimasas squatters won a case of 350 acres against African Produce in Kapsabet Law Courts. They chose to employ a judicial process.

One of the commitments of President William Ruto's Government has been to ensure that no Kenyan is evicted unlawfully; what we call 'infrastructural evictees.' I urge these communities to know that the church is part of the community and the community is the church. Therefore, these prayers are very important.

We need to be careful about issues of land. There is a dangerous disease in this country that is cancerous. It is a disease called 'grabiosis'. Most of the road reserves have been grabbed. People have built next to road reserves. At the end of the day, the Government ends up paying for its own land when there is compulsory acquisition. I urge the Committee led by my young brother, who is the last born of the Senate, Sen. Methu, to ensure that they look into the issues of public land.

We must look at some of the people who have grabbed public facilities, including the Kisumu Molasses Plant, the area next to Kisumu International Airport and other areas here in Nairobi. We must also look at those title deeds and the title deeds of primary schools. We had the famous Ruaraka land scandal where the former Cabinet Secretary was widely mentioned.

We need these people arrested, so that we do not witness the issue of historical land injustices. We want them to be arrested, so that we protect the sanctity of title deeds. We do not want to reduce the title deeds to tissue papers in this Republic. You are given a title deed that has been given to many other people.

Mr. Speaker, Sir, I know where you come from. You have been the Governor of Kilifi County and now Speaker of this House. The issue of historical land injustices must be relooked. I know it affects the coastal area. However, I am happy that you, being the Speaker of this House and a leader, have an opportunity to address the issue of historical land injustices.

Finally, we have the issue of Talai land historical injustices. As I have said before in this House, the people who use helicopters, 'the sky team', when flying over Kericho and Bomet think we live in Canaan. We do not. Those tea plantations are stained with blood. The owners are drinking tea somewhere in London, while we are suffering down here. That matter must be put to rest.

The issue of Delmonte in Kiambu must also be relooked. The great people of Kiambu have never benefited from it. The issue of land must be faced head-on. I know there are names, when mentioned, people shudder, but they are part of the people who have grabbed land in this Republic. They must be arrested and prosecuted.

Mr. Speaker, Sir, with those many remarks, I support this Petition.

The Speaker (Hon. Kingi): Hon. Senators, we have expended the time allowable for comments on this Petition.

(The Petition was committed to the relevant Committee)

The Speaker (Hon. Kingi): Before I call on the Chairperson of the Committee on Education, allow me to make the following Communication.

(Interruption of debate on Petitions)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TERESIA'S SCHOOLS
GILGIL, NAKURU COUNTY

The Speaker (Hon. Kingi): I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Teresia's Schools, Gilgil, Nakuru County. The group comprises four teachers and 28 students, who are in the Senate for a one-day academic exposition.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

VISITING DELEGATION FROM MILIMANI
PRIMARY SCHOOL, NAIROBI CITY COUNTY

The Speaker (Hon. Kingi): I would also like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Milimani Primary School, Nairobi City County. The group comprises five teachers and 229 students, who are in the Senate for a one-day academic exposition.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

VISITING DELEGATION FROM SABIS INTERNATIONAL
SCHOOL, NAIROBI CITY COUNTY

The Speaker (Hon. Kingi): Lastly, in the Public Gallery, we have five students accompanied by three teachers from Sabis International School, Nairobi County, who are in the Senate on an educational tour.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I will allow the Senator for Nairobi, on behalf of the Senate, to under one minute, to welcome the three delegations.

Sen. Sifuna: Thank you, Mr. Speaker, Sir, for giving me an opportunity to welcome the students from the three schools; two from Nairobi and one from Nakuru. On behalf of my colleague, the Senator for Nakuru, who is not in here, I welcome you all to the Senate this afternoon. I hope that you will get an opportunity to learn one or two things during your tour.

Mr. Speaker, Sir, I was in Moi Forces Academy this morning, where all primary schools in Nairobi are having their games, as we wait for them to proceed to the nationals in Kisumu.

I encourage these young people who are here this afternoon to work as hard as they can during their time in school. They should listen to the directive of their teachers and parents and shoot for the sky. I do not think that in the current times that we live in, there is anything that is beyond anyone if you put your mind to it.

Therefore, on behalf of the Speaker, the Senate, and my colleague the Senator for Nakuru who is not here, I welcome you and wish you a fruitful visit.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The Chairperson Standing Committee on Education can now present their Report.

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

The Speaker (Hon. Kingi): Sen. Madzayo, you cannot stand on a point of order on the issue you have shared with me, unless you have a different matter.

Hon. Senators, you will recall that sometimes last week, the Senate Minority Leader rose to seek a Statement on the security of the Senators on the Minority side, pursuant to the withdrawal of their security. That matter is urgent.

I implore upon the Committee on Defence, Security and Foreign Relations to expedite in bringing that Statement to the Floor of the House. At any rate, I am directing that we get a progress report before we proceed for recess next week. It is so directed.

Proceed.

(Resumption of debate on Petitions)

REPORT ON PETITION: DELAY IN PAYMENT OF PENSION TO
TEACHERS WHO RETIRED BETWEEN 1997 AND 2007

Sen. Seki: Thank you, Mr. Speaker, Sir. I beg to lay the following Petition Report on the Table of the Senate, today, 3rd August, 2023:

Report of the Committee on Education on the Petition concerning payment of pension to teachers who retired between 1997 and 2007.

Mr. Speaker, Sir, in summary, this Petition is on matters concerning teachers who retired between 1997 and 2007. I thank the Petitioner who brought this matter before the Committee, Mr. Philip K. Too.

As a Committee, we deliberated on the issue and involved all the stakeholders. The stakeholders include the Kenya National Union of Teachers (KNUT), the Kenya Union of Primary Education Teachers (KUPET), the Retirement Benefits Authority (RBA), the Chief Executive Officer of Teachers Service Commission (TSC) and the Cabinet Secretary for National Treasury and Economic Planning.

Mr. Speaker, Sir, we had a total of 23,487 claims of teachers who had not been paid their arrears and pensions. We engaged the Ministry of National Treasury and Economic Planning and they came to the Committee just the other week. They confirmed that they have paid a substantive number of teachers this pension. They also confirmed that the rest, 1,300 teachers whom are yet to be paid their arrears, will be paid within three months.

I lay this Report on the Table of the House as a concluded report by the Committee.

Thank you.

(Sen. Seki laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

PAPERS LAID

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

The Speaker (Hon. Kingi): Sen. Cherarkey, you know you can only rise on a point of order if another Senator is on the Floor and contributing.

(Sen. Cherarkey spoke off record)

No, just have a seat, Senator.

LEGAL NOTICES ON VARIOUS CATCHMENT PROTECTION AREA ORDERS

Sen. Seki: Mr. Speaker Sir, I beg to lay the following Papers on the Table of the Senate, today, 3rd August, 2023:

Kabeere Springs Catchment Protection Area Order, Legal Notice No.104 of 2023.

Kajulu Hills Catchment Protection Area Order, Legal Notice No.105 of 2023

Manguo Swamp Groundwater Conservation Area Order, Legal Notice No.106 of 2023.

Marura (Ewaso Narok) Swamp Catchment Protection Area Order, Legal Notice No.107 of 2023

(Sen. Seki laid the documents on the Table)

The Speaker (Hon. Kingi): Clerk, next Order.

QUESTIONS AND STATEMENTS

The Speaker (Hon. Kingi): Hon. Senators, before we prosecute that Order, pursuant to Standing Order No.45 (2), I wish to move to rearrange the sequence of today's Order Paper.

If you look at today's Order Paper, Order No.9 and 11 are very urgent. We need to pass this Motion and also push Order No.11 to Division, so that we be able to undertake Division on it next week before we proceed on recess.

Therefore, I seek to rearrange the sequence in this order; that we move straightaway to conclude debate on Order No.9 and Order No.11, so that by next week, we move them to Division, before we break for recess. After we are done prosecuting Order No.9 and 11, we can then come back to Questions and Statements. At least, we will have moved these two Orders to the level that we can conclude on them next week.

(Statements and Questions deferred)

Before I allow the Clerk to call the order as rearranged, allow me to make a Communication.

COMMUNICATION FROM THE CHAIR

MEMBERSHIP TO THE COMMONWEALTH PARLIAMENTARY ASSOCIATION

The Speaker (Hon. Kingi): Hon. Senators, the Commonwealth Parliamentary Association (CPA) is an international organisation that brings together Parliamentarians from over 180 Parliaments and legislatures of countries and territories within the Commonwealth community.

The Association was established in 1911, making it one of the oldest and more significant Parliamentary institutions in the world. The CPA main objectives are to promote Parliamentary democracy, provide a platform to Parliamentarians and Parliamentary staff to exchange ideas and best practices and foster cooperation among member countries.

The association is committed to upholding the values of the Commonwealth including democratic governance, respect of human rights, equality and the rule of law.

Hon. Senators, the CPA constitution provides for the establishment of branches and the members of the legislature in which branch is formed, are entitled to become

members of the branch. Therefore, Membership is open to all members of the Senate and the National Assembly on payment of the applicable subscription fee.

The affairs of each branch are managed by the Executive Committee. Members of Parliament (MPs), who wish to become members of the CPA are required to pay a subscription free of Kshs4,000 for life membership and Kshs1,000 for annual membership by completing a membership form. The membership form may be obtained from the office of the Clerk.

In accordance with the rules of CPA, Kenya Branch, the branch is required to hold the Annual General Meeting (AGM) to among other things, hold elections of Members of the Executive Committee. For this purpose, the joint presidents have convened a meeting scheduled for Thursday, 10th August, 2023, at 10.00 a.m. in the National Assembly Chamber. The elected Members of the Executive Committee will have the responsibility of steering the branch towards achieving the objectives of the Association.

The Executive Committee Members will be chosen based on their expertise and dedication to the principles of the Association. It is essential to elect individuals who can represent the interests of Kenya and contribute meaningfully to the CPA's collective efforts in promoting democracy, good governance and respect for human rights and the rule of law.

The available slots are 12, to be shared on a 3:5 ratio between the Senate and the National Assembly. In this regard, five Members will be drawn from the Senate and seven will be drawn from the National Assembly. Interested Members will be expected to be Members of the Association and only duly registered members will be eligible to participate in the elections.

Hon. Senators, I, therefore, take this opportunity to bring this matter to the attention of all Senators and encourage Senators to join - those who have not done so - and invite interested Senators to tender their applications for the elections to the Executive Committee through a written notification to the Office of the Clerk before Tuesday, 8th August, 2023

I thank you.

MOTION

APPROVAL OF THE COUNTY GOVERNMENTS EQUITABLE SHARE CASH DISBURSEMENT SCHEDULE FOR FY 2023/2024

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the County Governments (Equitable Share) Cash Disbursement Schedule for Financial year 2023/2024, laid on the Table of the Senate on Thursday, 27th July, 2023 and that pursuant to Section 17 (7) of the Public Finance Management Act and Standing Order 189 (3), the Senate approves the County Governments (Equitable Share) Cash Disbursement Schedule for Financial year 2023/2024.

(Sen. Tabitha Mutinda on 1.8.2023)

(Resumption of debate interrupted on 2.8.2023)

The Speaker (Hon. Kingi): Before the debate was interrupted on Wednesday, Sen. Mumma was on the Floor and she had a balance of 15 minutes.

Sen. Mumma: Thank you, Mr. Speaker, Sir. I had contributed to this Report. I was midway through. First, I congratulated the Government for the quick disbursement of all the funds to the counties. I urged that in future we should have funds meant for county governments to be disbursed on time because we are all aware of how the counties have suffered in the past few months.

Secondly, I suggested that we need to remember that the function of oversight in the Senate is a collective function that is served through the Committees of the Senate, and I would urge that the Committees or the Senate be properly resourced in order for us to do meaningful oversight of implementation of county activities and county budgets.

It has been said in a few spaces by the President, Senators and even by some governors that the presence of the Senate on the ground or *mashinani* in terms of doing their job of oversight is very minimal. As we finalize this Financial Year, most Committees were not able to carry out all the activities they had scheduled because we were told that there was no budget line to continue doing those activities.

I would, therefore, request our Commissioners in the Parliamentary Service Commission (PSC) to make case for the need for Senate to do its job properly. We cannot do our jobs properly if that oversight is merely dependent on what we do in these chambers. We should be able to move to the counties to look at what is happening.

The other day, the Committee on Devolution and Inter-Governmental Relations went to Kajiado to look at a project on a market, which petitioners had raised concerns about it and we have made recommendations that will guide not just Kajiado County, but other counties on what we have seen.

We will need to do a bit more for us to observe prudence and conformity with the rule of law and the Constitution in terms of implementation. We have seen governors use county monies on things like feeding programmes in schools, which is a National Government function. We have seen governors trying to compete with Members of Parliament, trying to deploy funds that are required for county functions onto National Government functions and we have seen county government functions being ignored.

We will not pick this properly if we are not enabled to scrutinize not just the County Integrated Development Programs (CIDPs), but the kind of annual work plans that counties are making.

For one to talk of a school-feeding programme or a bursary fund when the National Government Constituency Development Fund (NG-CDF) is awash on bursary matters, then we are actually not doing our job. This is because everybody goes on a podium to thumb their chest about what they are doing on wrong functions and yet their own functions are not being carried out.

Therefore, I would urge that the Senate be enabled to carry out and have the necessary resources for operations in order for us to be able to scrutinize the annual plans and the implementation plans, in order for us to monitor the developments that are happening with these funds.

Mr. Speaker, Sir, I support.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I rise to support this report by the Finance and Budget Committee.

From the outset, I want to thank President Dr. William Ruto because when he was campaigning, he made a commitment that he would support devolution. I remember most of his competitors doubted that, but he has proved them wrong.

Historically - and Sen. Madzayo is one of the oldest ranking Members of this House apart from being the Senate Minority Leader - there is no time that counties have received their cash disbursement on time.

The Speaker being a former Governor is well versed on this issue. This has been the excuse where governors would go to funerals and *harambees*, especially my Governor who would say that money has not been released. When *Wananchi* ask why the roads are bad, why there are no drugs in Kabsabet County Referral Hospital, Kibiyet Sub-County Hospital, Mosoriat, Maraba Hospital; the roads in Kapkulumben among other areas, the Governor has always said the money has not been released.

I am happy with the comment that the President made while he was in Lamu, when he said that he has released money to counties and now it is the business of the governors to deliver.

I think that the biggest elephant in the room and we have considered even during County Public Accounts Committee (CPAC), including County Public Investments Committee (CPIC) where my brother Sen. Osotsi is the Chairperson, has been the delayed cash disbursement by the National Treasury.

Article 219 of the Constitution says that:-

“A county’s share of revenue raised by the national Government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.”

This is very important because if it is not released on time, it will affect service delivery.

For example, out of Kshs7,305,294,003 that will be dispersed to Nandi County in the FY 2023/2024, I am happy that my county received Kshs620,949,993 in June. Last month, it received Kshs584,423,523. In total, Nandi County has received over Kshs1.2 billion in two months. However, when you go to the ground, as they say, *vitu ni* different.

It is now raining in Nandi. The roads are impassable and there are no drugs. We need to be serious and ask county governments to do their job. The money does not belong to the Governor or the county government; it belongs to the great people of Kenya and Nandi.

As a Senate, we need to be proactive. When we walk around, most of the time, *wananchi* ask us what the Senate is doing about plundering of resources. I urge the

Committee on Finance and Budget to sometimes invoke Article 225, where counties have not used money in a transparent way.

I said here and I will say it again without fear of contradiction, that the Ethics and Anti-Corruption Commission (EACC) is the biggest impediment in the fight against corruption in this country. When cases of pilferage of resources are reported in the counties, the EACC meets governors *nyuma ya tent*. That is why up to now the fight against corruption remains a joke, especially in the county governments. We have created 47 billionaires because they plunder resources meant for counties.

Secondly, I urge the Committee on Finance and Budget that Sen. Ali Roba chairs to look at the possibility of stopping money that goes to counties under Article 225.

Another issue is on pending bills. Counties have procurement plans. You will find pending bills of less than Kshs1 million or Kshs2million. These are young poor Kenyans. Their Local Purchase Orders (LPOs) are financed by banks through loans. Can you believe that in the counties, there are people still owed as little as Kshs500,000 since 2013 up to date?

We need to pass the Prompt Payment Bill, so that when you supply, there is a timeline for payment by both national Government and county governments. Why do we have pending bills? As a Senate, we must prick our conscience. When you ask the National Treasury, they tell you that all the money has been released to the counties, but on the ground, people are still owed. Where does the money go? That is why I said that the EACC has failed this country when it comes to protection of devolution.

Another biggest challenge is incomplete projects. Why would your predecessor find it hard to complete projects that you started, yet they know well those projects do not belong to you, but to the people of Kilifi or Nandi?

As I speak, there are many stalled projects from 2013 to 2017, like the Governor's Office in Kapsabet Town. Sen. Osotsi might have seen that white elephant because that is his route to Vihiga. When you look at the County Integrated Development Plans (CIDPs), there are flagship projects that have been earmarked for improvement. Some of us who are passionate about the success of devolution feel bad when we pass money to go to the counties, but it is not reflected on the ground.

I do not want to use any other county. In Nandi, we have a Cooperative Creamery at Kabiyeet, which was supposed to be completed in 2021. No one, including the Governor even when he appeared before the County Public Accounts Committee (CPAC), has ever told us the total value of Kabiyeet Dairies Company Limited.

Another one is the Paediatric Wing at the Kapsabet County Referral Hospital. There is also expansion of Kabocha and Kapsengere dispensaries, but the amount is unknown. We also have expansion of Maraba among other 196 facilities

I thank the President because he supported the expansion of Chepterwa Nyayo Hospital in Mosop Sub County. Up to now, no one the value of projects that have stalled. When you raise questions, the county government hires bloggers and other people to insult the Senator in funerals, baby-showers and other public fora. As a country, we must be honest and speak the truth. We should not be intimidated.

I want to say on the Floor of this House that I shall not be intimidated, cowed and will not succumb to insults because I know the highest calling is being elected by the great people of Nandi.

We need to look at the CIDPs and Annual Development Plans (ADPs). The issue of asset registers by counties is one of the challenges we are facing. You will be shocked that most counties do not have complete asset registers. Many assets have been acquired. For example, in Nandi, they acquired a tractor to prepare silage. The scams are interlinked with own source revenue in quick succession. Where are the assets? We have Kiborgok Tea Estate in Emgwen Sub County. Up to now, out of 256 acres that the estate occupies---

We have people who plant tea, including Sen. Wakili Sigei and others. You cannot tell me that 256 acres can give you own source revenue of Kshs15 million in a year. That asset should generate revenue for the county. Up to now, Kiborgok Tea Estate has one a title deed for ownership of one part. The other part it is not known. You cannot talk about the management company that runs the estate to improve the proceeds.

Own source revenue is tied to the assets. Assets should generate money apart from the equitable shareable revenue and conditional grants. That is donations and other additional funds as per the Constitution.

It shocks me that when counties pass Finance Bills, they go for public participation and then start chasing the *mama mboga* and *boda boda* to tax them. You will be shocked when you go where the *mama mboga* and *boda boda* stay.

They say; '*kulipa ushuru ni kujitegemea.*' When it comes to collecting taxes from *boda boda* and the *mama mboga* in Nandi County, they are clobbered. However, when it comes to giving them services, even in Mosoriot Township where I was born and bred, our women sell their *mboga* and other merchandize in the open air.

When it comes to collecting revenue, the county is quick. Just go to Nandi Hills Town or Kapsabet. In fact, Kapsabet Market is the worst of all. Can you believe that at Kapsabet Market, which is the headquarters of Nandi, there is no toilet, running water and proper sanitation? The situation is the same at Maraba, Kaptumo and Kobuchai. When we collect own source revenue, as a country, we must ensure that people get services.

Mr. Speaker, Sir, at Chemelil-Chemase, our *Boda Boda* riders are hit by the sun because they do not have sheds yet they paid for *Boda Boda* stickers. They have been forced to construct *Boda Boda* sheds using grass.

When it comes to collecting money, we use county enforcement *askaris* to harass *mama mboga* and *Boda Boda* riders. Nandi County is an example of what happens at the expense of providing service. The clarion call of Kenya Revenue Authority (KRA) is *kulipa ushuru ni kujitegemea*. Let it be "pay tax, get service". Why would you pay tax without service?

Mr. Speaker, Sir, it pains me. When we go to the Devolution Conference, I will request the Committee of Trade to visit Kapsabet Town Market, which is the headquarters. I pity those women. Our women in this country are very beautiful and

hardworking but their work places do not have toilets, water or electricity, which deprives them their dignity.

I wish they could be motivated so that they work in a clean environment with water and electricity so that when paying taxes, they would dance and celebrate the way Kenyans are celebrating the Finance Act that the High Court has allowed.

(Laughter)

Mr. Speaker, Sir, we must motivate them. I can see the Minority Side, led by Sen. Sifuna are so happy that they have even gone to take tea.

Let us be honest in this country. I even saw our women roast maize in Kingwal but without sheds yet this is a rainy season. They are forced to go to hospital more often. It is funny that in Nandi, you would buy food in places where you are not sure of your hygiene. When you fall sick, you go to Kapsabet Referral Hospital where there are no drugs and you end up buying drugs from a pharmacy run by county staff. It does not make sense. That is why some of us are at pain. *Wananchi* in Nandi County sometimes ask me what the role of devolution is. They would ask where the money we send to the county is. We must be held accountable.

I have seen the National Agricultural and Rural Inclusive Growth Project (NARIGP), the Danish International Development Agency (DANIDA) and other organizations giving a lot of money through agriculture. The county bought avocado seedlings and would give one avocado seedling to a farmer. It does not make value. Others went and bought chicken and chicks. What do you call---

(Laughter)

(Sen. Oketch Gicheru spoke off record)

Vifaranga? No, stop misleading me.

Mr. Speaker, Sir, through you, I know Sen. Oketch Gicheru---

The Speaker (Hon. Kingi): Just proceed and stay focused.

Sen. Cherarkey: Mr. Speaker, Sir, I will stay focused, as guided. My eye is on the price. I ask the Committee on Finance and Budget to also provide us --- we have passed a law on the issue of conditional grants.

Mr. Speaker, Sir, having been a former Governor, you are well versed with these issues I am raising. I am happy that you were a former Governor and you understand the issues I am raising. Counties are given money by NARIGP through the World Bank. The county then decides to buy chicks.

Some counties went and bought fingerlings and just threw them into a stream. How can you throw fingerlings on the stream and say this is a county project? We also heard of a county in the eastern side of Mt. Kenya, I do not want to name it...

Mr. Speaker, Sir, in conclusion, because I have seen that my time is far spent, I am happy Nandi County is getting Kshs7.3 billion. However, I am sad that the money will not translate value to the people of Nandi. Even with Kshs1.2 billion for June and August, there is nothing happening on the ground.

The national Government gave us coolers to store our milk but up to now, those coolers have not got a proper housing where farmers can take milk.

The issue of reducing fertilizer price from Kshs3500 to Kshs200 by the President is welcomed but it is a national Government project. I ask the Committee on Agriculture, Livestock and Fisheries led by Sen. Murango - where is the role of the Senate?

Governors will be quick to go on the ground to say *tumewaletea mbolea* but what will a Senator say? I ask the Committee on Agriculture to engage the Ministry of Agriculture, Livestock and Fisheries by ensuring that Senators are part of it because this is a national Government budget. Can you believe it that the only role the county Government provides is logistics? However, the budget is financed by the national Government through payment of Kshs2500?

I ask the Committee of Agriculture, Livestock and Fisheries to please assist us so that Wananchi---

Sen. Eddie, you know all politics is local. The governors would go say that they have brought fertilizer. Someone else would ask what the Senator and Member of National Assembly have brought.

Therefore, we must be honest with ourselves. I thank this Committee for the Cash Disbursement Schedule. I hope this money will meet disbursed on time and used prudently. We increased money that went to the counties. It was Kshs370 billion in the last financial year and now it is Kshs385.3 billion, which is an addition of Kshs15 billion. I thank President William Ruto.

I congratulate and wish the Committee well as they proceed and ensure that this money is disbursed. I hope by next week; we shall pass this Cash Disbursement Schedule so that wananchi will be able to get opportunity for this service delivery.

With those remarks, I beg to support.

The Speaker (Hon. Kingi): Sen. Cherarkey, approach the Chair.

(Sen. Cherarkey approached the Chair)

I called the Senator because he had an assignment to do and he was supposed to table a report, which he has just informed me that he did.

Proceed, Sen. Sifuna.

Sen. Sifuna: Thank you, Mr. Speaker, Sir. As a new legislator in this House, this is the second report of the Committee on Finance and Budget that I am interacting with after a report on the Division of Revenue Bill.

I have had lamentations of some of the Senators who have spoken before me about the inadequacy of the resources that we have been sending to the county

governments. However, the country needs to know that we, as a Senate, had an opportunity to increase the resources that---

(Sen. Tobiko and Sen. Okenyuri consulted loudly)

The Speaker (Hon. Kingi): Sen. Tobiko and Sen. Okenyuri, you can consult but not to disrupt the proceedings of the House.

Sen. Sifuna: We, as a Senate, had an opportunity to increase the resources that go to our county governments. As I look at this Cash Disbursement Schedule, as the Senator of Nairobi City County, I can see that Nairobi City County has the highest allocation of about Kshs20 billion annually.

I know from my calculations that if this House had agreed with the earlier report of the Committee on Finance and Budget and voted for Kshs407 billion to our counties, Nairobi would be hitting almost Kshs22 billion. So, to hear lamentations from some of my colleagues who voted against Kshs407 billion does not make sense to me.

However, I point to page 5 of that Report. This particular Cash Disbursement Schedule is stated by the Committee to serve two things. First, by compliance with Article 219 of the Constitution which expressly provide that the counties share of revenue raised by the national Government shall be transferred to the county governments without undue delay and without deduction.

Mr. Speaker, Sir, the Schedule itself is not just about the amount of money each county is getting. On the first column at the top, there is a date that is provided for when the counties can expect that this money is going to be in their accounts.

The money that counties expect under devolution is not a favour. It is a constitutional right. We decided that we were going to have and finance two levels of Government. Therefore, no one should expect us praise to him or her for doing what is the constitutional imperative. If sending money to the counties is a constitutional imperative, do not expect us to praise you for doing it. You are doing a constitutional imperative. That is not something you have a choice in.

I have heard people praising some quarters and saying that money has been released to the counties. That is your job and that of the Executive to ensure that our counties are financed on time.

Mr. Speaker, Sir, once we pass the Schedule, the people of Nairobi City County expect that by the 15th of July, 2023, and by the 15th of August, 2023, each of the counties will have received the monies that have been specified.

The Speaker (Hon. Kingi): Sen. Sifuna, please, the hon. Sen. Cherarkey would like to inform you.

Sen. Sifuna: Mr. Speaker, Sir, I totally reject that offer.

(Laughter)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir

The Speaker (Hon. Kingi): What is your point of order, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am rising on a point of order in line with Standing Order No.105. You have heard the Senator for Nairobi City County speak to a misleading statement that there was no increment in the amount that was allocated in the Division of Revenue Bill.

The second falsehood he is alleging is that there is a delay in the disbursement of funds and yet, as late as last week, there was no single county with arrears. In fact, last week, Kshs232 billion was dispersed to the county governments.

The Division of Revenue Bill that we passed raised the money from Kshs370 billion to Kshs385.3 billion. All the arrears that had been accumulated by the 'handshake', Building Bridges Initiative (BBI) Government was cleared. Is he in order to mislead the House?

The Speaker (Hon. Kingi): Sen. Sifuna, kindly, be factual in your comments.

Sen. Sifuna: Mr. Speaker, Sir, it is a fact that the Kshs15 billion additional that is going to the counties was passed, not by the Senate, but by the National Assembly. In the green Bill that came before this House, that money had been allocated by the National Assembly. We as a Senate, did not add a single shilling.

Our Committee---

(Loud consultation)

Mr. Speaker, Sir, I must be heard in silence! This cannot continue.

The Speaker (Hon. Kingi): Order, hon. Senators. If I heard the Senator correctly, he said that the Senate did adopt the Bill as it came from the National Assembly. That is factual

Sen. Sifuna: Mr. Speaker, Sir, correct. That is factual. Can I please, proceed?

(Loud consultation)

The Speaker (Hon. Kingi): What is your point of order, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, according to the Constitution of Kenya, the Division of Revenue Bill cannot be signed into law without the concurrence of the two Houses.

Is the Senator of Nairobi City County in order to mislead the country that, by us agreeing with the National Assembly, we were failing in our responsibility yet we were meeting the constitutional threshold that expects that, for the Division of Revenue Bill to become law, it should meet the recurrence of the two Houses?

In conclusion, on this point of order, I am tired and sick of new Senators in this House giving the impression that we do not know what we are doing and we are not up to the task. We have worked and we want our constituents to appreciate as much. I do not earn a free salary.

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, if I heard Sen. Sifuna make his comments, he said that the Senate adopted the figure as passed by the National Assembly.

So, there was concurrence of the figure between the two Houses which is factual. I do not see why there is a big problem there.

The two Houses concurred that the figure be increased by Kshs15 billion from last year's allocation. Where is the problem here?

Sen. Sifuna, please, proceed.

Sen. Sifuna: Thank you, Mr. Speaker, Sir. I want the conscience of all of us to us in our sleep and in our waking for the decisions that we take on the Floor of this House.

I am happy and will not tire to remind you that, in fact, there is a second limb to the facts alluded to here. Our own Senate Standing Committee on Finance and Budget, on the advice of the Commission of Revenue Allocation (CRA) proposed to this House that instead of the Kshs385 billion given by the National Assembly, we, as the Senate, should go with the figure of Kshs407 billion. That is also a fact.

That question of Kshs407 billion or Kshs385 billion was put to us, as Senators, in the House and as individual Senators elected to get every single coin we can for our counties. It is factual that 22 of my colleagues, whose conscience you can see is snowing at them, voted against Kshs407 billion.

Let their conscience eat them until the day they die. You will not run away from a vote that you took. Nobody forced you to vote in that particular manner.

The Speaker (Hon. Kingi): What is your point of order, Sen. Cherarkey? As you raise your point of order, please---

Sen. Cherarkey: Mr. Speaker, Sir, is it in order---

The Speaker (Hon. Kingi): Sen. Cherarkey, I am speaking.

As you stand to raise your point of order, make sure you use parliamentary language.

Please, proceed.

Sen. Cherarkey: Okay. Mr. Speaker, Sir. I rise under Standing Order No.105 and Article 93 of the Constitution of Kenya, which defines Parliament as the National Assembly and the Senate.

Is it in order for Sen. Sifuna to continue misleading Kenyans by shifting goal posts between Kshs407 billion and Kshs370 billion, yet for us who have been in this House long enough, know that it was an increment of Ksh15.3 billion from Kshs370 billion to Kshs385.3 billion?

Can Sen. Sifuna confirm to the country that there was an increment of allocations to the counties through the Division of Revenue Bill?

The Speaker (Hon. Kingi): Hon. Senators, let us stop this henpecking exercise on these figures. This is the position, the Bill that went to the President for assent is a Bill of Parliament. This is because it was processed in both Houses of Parliament. Upon being assented to, it became an Act of Parliament. This means that whatever increment of the monies as compared to last year, was a collective decision of both Houses. That is why it is an Act of Parliament.

(Applause)

I do not know why we are still arguing on these very basic facts. Can you allow Sen. Sifuna to conclude his comments in silence, please?

Sen. Sifuna, be guided by the Chair's observation on that particular matter.

Sen. Sifuna: I thank you, Mr, Speaker, Sir. What I know is that I am required to comply with the Standing Orders in my debate. I have stated matters of fact. If you are uncomfortable with the facts, that is your funeral. However, I must state the facts as I know them.

The Speaker (Hon. Kingi): Sen. Sifuna, are you saying that, if the Chair is uncomfortable with those facts, then he should---

Sen. Sifuna: No. Mr. Speaker, Sir. I am addressing you because I do not want to address the people who are in discomfort.

The Speaker (Hon. Kingi): Sen. Sifuna, just stick to your comments.

(Sen. (Dr.) Khalwale and Sen. Cherarkey consulted loudly)

Sen. (Dr.) Khalwale and Sen. Cherarkey, allow Sen. Sifuna to conclude his comments.

Sen. Sifuna: Mr. Speaker, Sir, if there is an unparliamentary word that I have used, you need to point it out. I am just---

(Sen. (Dr) Khalwale spoke off record)

Sen. (Dr) Khalwale: On a point of order Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Sifuna, you have used unparliamentary language---

(Loud Consultations)

Sen. Sifuna: Which one?

The Speaker (Hon. Kingi): To the extent that you said, "For those who voted against, let their conscience eat--" The HANSARD will bear you out.

Sen. Sifuna: Mr. Speaker, Sir, that is not unparliamentary. That is linguistic gymnastics, which I am allowed to perform on this particular Floor.

(Loud Consultations)

The Speaker (Hon. Kingi): I know exactly what you said.

Sen. Sifuna, going forward, refrain from using unparliamentary language.

Sen. Sifuna: Mr. Speaker, Sir, I am going to find the most flowery language to describe what happened in this House. When the vote for Division of Revenue Bill (DORB) was put---

(Sen. Cherarkey spoke off record)

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

The Speaker (Hon. Kingi): Sen. Cherarkey, can Sen. Sifuna be heard in silence? Proceed, Sen. Sifuna.

Sen. Sifuna: Mr. Speaker, Sir, when the vote was put here, you had an option to vote yes and agree with the Committee just as we have been asked under this particular---

(Sen. Cherarkey spoke off record)

Mr. Speaker, Sir, can I please be heard in silence?

The Speaker (Hon. Kingi): Sen. Cherarkey, you have raised your concern. Sen. Sifuna, our Standing Orders provide very clearly on how you should refer to your colleagues. You refer to them as hon. Senators. There are no people or guys here. We have hon. Senators.

Sen. Sifuna: Mr. Speaker, Sir, I apologize for that. I am going to find the most flowery language to remind the distinguished Senators on the Majority side that your conscience will follow you. The decisions that you take on this Floor are public.

Mr. Speaker, Sir, we have another opportunity to vote. There is another report of the Standing Committee on Finance and Budget. I would not be surprised if people take the decision they took during the debate on the DORB---

The Speaker (Hon. Kingi): Sen. Sifuna, I have just told you do not use the word people. Refer to your colleagues as hon. Senators. That is a requirement of the Standing Orders. How would you feel if your colleague referred to you as a person?

(Sen. Cherarkey spoke off record)

Sen. Sifuna: Mr. Speaker, Sir, but I am a person. The word 'people' is not offensive language.

(Loud Consultations)

The Speaker (Hon. Kingi): Order, Senators!

Sen. Sifuna, take your seat. You are not going to start a debate with the Chair. You know exactly what that amounts to; it amounts to disorderly conduct and the consequences are very clear. You are a person and a people. However, that is a language allowable outside the doors of this Chamber. As long as you are in this Chamber, you shall refer to your colleagues as hon. Senators.

Kindly, proceed.

(Sen. (Dr) Khalwale spoke off record)

Sen. (Dr) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your point of order, Sen. (Dr.) Khalwale?

Sen. (Dr) Khalwale: Mr. Speaker, Sir, Standing Order No. 122, speaks to disorderly conduct.

Allow me to read it. Standing Order 122(1)(b), states

‘(1) A Senator commits an act of gross disorderly conduct if the Senator-
(b) declines to retract use of unparliamentary language or declines to offer apologies, despite having been ordered to do so by the Speaker;’

Mr. Speaker, Sir, I cannot be voted for by 300,000 people in Kakamega County and come here to be made a figure of the kind of picture that the hon. Senator for Nairobi City County is painting. You need to call him to order unless you want to allow this House to degenerate into a fistfight. If you allow me as a bullfighter, I shall fix him here and now, and it will be sorted out.

(Laughter)

(Loud Consultations)

(Sen. Oketch Gicheru spoke off record)

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

(Sen. Omogeni spoke off record)

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

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale---

(Sen. Omogeni and Sen. Sifuna stood in their places)

Sen. Omogeni, resume your seat. Sen. Sifuna, resume your seat. Sit down, Sen. Sifuna. Sen. (Dr.) Khalwale, that is unparliamentary language. You have to withdraw it. When I brought up the issue to Sen. Sifuna of how to address his colleagues, he proceeded to withdraw that. He did withdraw that word unless you are not keen.

Sen. (Dr.) Khalwale, you were doing very well until you brought out your character of bull fighting.

(Laughter)

(Loud Consultations)

Sen. (Dr.) Khalwale, you cannot threaten to fix hon. Senators on the Floor of this House. Kindly, proceed to withdraw that.

Sen. (Dr) Khalwale: Thank you, Mr. Speaker, Sir, as I withdraw and apologise to the House, I want to confirm that this is not the place to fix him. I would never fix him in this House. However, if he gives me an opportunity to fix him outside---We cannot allow small boys---

(Laughter)

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, just leave it there. Resume your seat.

(Loud consultations)

Order, hon. Senators. We have such an important matter to prosecute before us. We are wasting a lot of time on what I will term---

Sen. Omogeni: No. Mr Speaker, Sir, you must---

The Speaker (Hon. Kingi): Sen. Omogeni, shut up. The Chair is speaking. I have not given you the opportunity to speak.

Sen. Omogeni: I need to speak.

The Speaker (Hon. Kingi): Sen. Omogeni, you are out of order. I am calling you to order.

Sen. Omogeni: I have a great point of order.

The Speaker (Hon. Kingi): Then wait for the Chair to give you that opportunity.

(Sen. Cherarkey spoke off record)

Sen. Cherarkey: It is the prerogative of the Chair---

Sen. Omogeni: Mr. Chairman, Sir, ---

The Speaker (Hon. Kingi): Sen. Omogeni, if you persist, you know exactly what will befall you.

Hon. Senators, we have such an important matter before us. We are taking a lot of time on frivolous points of order.

Sen. Sifuna, the way you are making your comments; you are inviting unnecessary points of order. You are making good points but there is a way you can put them across without necessarily having to attract the points of order. Stop throwing jabs. Go straight and make your comments. Let us conclude this business. Proceed, Sen. Sifuna.

Sen. Sifuna: Thank you, Mr. Speaker, Sir. For the avoidance of doubt, it gives me great pleasure again to withdraw my comments by referring to hon. Senators as people. I withdraw and apologize. I want to make it clear that there is no point in us having debate in this particular House if we offend people's sensibilities even when we are within the rules because some people are uncomfortable when history is re-visited.

Let history judge all of us. I have no problem with that. However, not all these lamentations should be coming from people who had an opportunity to do something. On the state of our hospitals, you should not be lamenting on the lack of drugs or services in your county when you had an opportunity to better the lot but chose other things.

I repeat that you should not expect plaudits; expecting people to praise or say you are a good man because you did what you were required and paid to do, anyway. I do not expect the people of Nairobi City County will clap for me because I came to the Chamber this afternoon. That is what I was elected to do. We were elected to fight for all the resources that we can get to come to our counties. We should learn to live with the

decisions that we make when we do the opposite. Let us not run away from the decisions that we have made. In Nairobi City County, we have issues that need to be addressed. I want to touch on some of them.

Last financial year, Nairobi City County opened its first Intensive Care Unit (ICU). The entire county did not have ICU beds. We need resources to expand the facilities at Mama Lucy Kibaki Hospital. I have spoken to the question of timely disbursement of resources. The Schedule here has two components. It has an amount and date. It is our expectation going forward, because this is a concern that has also been expressed by the Committee itself on page 6 of the Report, the delays in disbursement to counties negatively affect the operations and service delivery as well as priority finding.

Our Governor has set upon an ambitious plan of feeding kids in school. It is costing us a county Kshs800 million per year. That is just for a fraction of the school-going children. This amount he is using for this particular programme is only for the kids in public schools. A large proportion of the students in the county are not in public schools. They are in what we call semi-formal schools.

We would like an opportunity for this programme to expand. In fact, there are people who have gone to court to say it is discriminatory for one to have such a programme only benefitting people in public schools. I have asked the majority of the students and they are not in those particular schools; they are in non-formal schools.

Mr. Speaker, Sir, we have county playgrounds here in Nairobi City County. We have a lot of talent. Just like I was saying earlier, I was at Moi Forces Academy this afternoon for the Kenya Primary Sports Association Games to determine the team that will represent Nairobi City County in the national games in Kisumu County. There is a lot of talent in Nairobi City County but we do not have proper playing grounds.

If you go to Camp Toyoyo, a pitch that was built a few years ago, it used to host all the games that were being played *pale mtaani*. However, if you look at the playing surface right now, it is in such bad shape that we need all the resources we can get for us to be able to provide proper facilities.

Out of the money that the counties receive in this particular year, the Governor has set aside about Kshs500 million for the refurbishment of the City Stadium. The shame of this country--- I have seen people going around saying we are going to host the African Cup of Nations (AFCON). I do not know which year it is. You know for a fact you are lying to Kenyans. We do not have the facilities to do these things. If Kenyans elected truthful leaders who kept their word, we would be enjoying the six stadia that we were promised in 2013. Right now, we are just wallowing in this miasma of people lying to us that we are going to host continental games when every Kenyan knows it is not going to happen.

Out of my experience in the Committee on County Public Accounts (CPAC)---

The Speaker (Hon. Kingi): Sen. Sifuna, would you wish to be informed by Sen. Cherarkey?

Sen. Sifuna: Absolutely never.

One of the things we experienced in the CPAC when we had a conversation---

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

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

Sen. Cherarkey: Mr. Speaker, Sir, I am rising under Standing Order No. 101 and 105. Is it in order for Sen. Sifuna to indicate that this country has never hosted any continental sports event yet Kipchoge Keino Classic was held in Eldoret, the athletics games were held here in Kasarani Stadium and the World Rally Championship was also held in this country? Is it in order for him to mislead the great people of Nairobi City County and Kenyans at large by alleging that this country has never hosted or held the events?

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators. Sen. Cherarkey, when your colleagues are speaking, it is good to pay attention so that when you rise on a point of order, you rise on the speech that they have made. I do not know how your point of order is warranted as far as the speech by Sen. Sifuna is concerned. Unless the HANSARD bears us witness. I did not hear him say that as a country we have not hosted continental events. He alluded to just one event that as a country, we would wish to host; that is the AFCON.

He said, with the state of infrastructure we have, we may not be able to do that but we could have been able to do so had we started this journey in 2013.

(Applause)

That is what I got to understand from the Hon. Senator.

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

The Speaker (Hon. Kingi): What is your point of Order, Sen. Omogeni?

Sen. Omogeni: Mr. Speaker, Sir, Sen. Cherarkey is one of my closest friends in this House. He is a colleague whom I respect.

The Speaker (Hon. Kingi): Sen. Omogeni, who are you trying to call to order? The Senator on the Floor is Sen. Sifuna. Is that the Senator you are calling to order? Is Sen. Sifuna out of order according to you?

Sen. Omogeni: No. I am rising on a point of order because when Sen. Cherarkey was on the Floor---

The Speaker (Hon. Kingi): He was on a point of order. You cannot do that. Sen. Omogeni, kindly, take your seat.

(Loud consultations)

Sen. Sifuna, please, proceed.

Sen. Sifuna: Mr. Speaker, Sir, with great respect, I believe I am going to break the record as the Senator who is interrupted the most on this Floor. I understand the fear and trepidation that I instill in a strike in some of these people.

The Speaker (Hon. Kingi): Sen. Sifuna, proceed to make your comments.

Sen. Sifuna: I need the protection of the Chair.

The Speaker (Hon. Kingi): I have protected you enough. If you engage the Chair directly--- I have called you to conclude your comments, what more protection do you need from the Chair?

Sen. Sifuna: The direction I wanted is how much time I have left given all sorts of interruptions that have happened since I started speaking.

The Speaker (Hon. Kingi): Proceed. The Chair will protect you.

Sen. Sifuna: I need guidance so that I can be able to see---

The Speaker (Hon. Kingi): You have five minutes.

Sen. Sifuna: I believe that is enough to impart wisdom and knowledge.

(Laughter)

I have two final points to make. This is drawn from the experience that I had at the CPAC when we heard an engagement with the National Treasury and Kenya Revenue Authority (KRA). It was clear that the National Treasury has taken the word 'national' in its name to imply that they serve the interest of the national Government first.

The evidence is there that just two months to the close of the Financial Year 2022/2023, 20 per cent of the Kshs90 billion that was due and had been allocated to the county governments, had not been disbursed. Compare that to the only 10 per cent of the almost Kshs2 trillion that was due to the national Government that had not been disbursed.

One of the things that we want to see is that the National Treasury should be encouraged, in the disbursement of resources, to respect the two levels of Government so that there is no favoritism as can be demonstrated from the amount of money that was pending during that financial year just those few months to the close of the financial year.

As I have said, we, in Nairobi City County, have a lot of issues. We would like for devolution to work and all the resources that we can get to the people of Nairobi City County so that we can do the things that are expected of us, as a County Government.

Mr. Speaker, Sir, finally, I have a lot of respect for all of my colleagues here. However, it is becoming increasingly evident to me that I might be a marked man in this House. Every time that I stand on this Floor--- I have even heard somebody whom I know for a fact cannot beat me in a fair fight, challenging me to a fight. It is very unfair.

(Laughter)

(Loud consultations)

The Speaker (Hon. Kingi): Sen. Sifuna, you know the responsibility of protecting a Senator lies in the hands of the Chair. If you feel you have been marked, you can only address your concerns to the Chair. Throwing similar jabs on the other side because you

have been--- I ruled that particular statement unparliamentary but still, you are clinging on it.

Sen. Sifuna: Yes, because a threat has been made to me.

The Speaker (Hon. Kingi): It has been withdrawn. So, conclude your remarks and sit. It is no longer a subject of discussion.

(Loud consultations)

Sen. Sifuna: Mr. Speaker, Sir, if you allow me, because I have asked you to protect me on many occasions, I ask that on this one, please do not protect me. I would want to welcome that challenge that has been put in by the Senator of Kakamega County.

(Laughter)

The Speaker (Hon. Kingi): Take your seat, Senator.

(Laughter)

(Loud consultations)

The Speaker (Hon. Kingi): Sen. Sifuna, you have alluded to the fact that you are the Senator who attracts the most points of orders. Remember when you were contributing, I cautioned you that the way you are contributing may either open yourself to these points of order or you may insulate yourself from them. Your parting shot is clearly unparliamentary and uncalled for because you are responding to a statement that is no longer part of the record of the Senate. It has been withdrawn. Why then proceed to respond to it?

So, the way we debate will either allow your colleagues to give you silence as you prosecute your comments or will open a lot of points of order. So, look into your eyes before you look into the eyes of your colleagues.

Nonetheless, the Chair will be here to protect you like all other Senators.

Sen. Thang'wa, proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Thang'wa, please, have your seat. I am told there is a school that is going all the way back to Baringo County. Let me acknowledge its presence.

(Interruption of debate on the Motion)

VISITING DELEGATION FROM JUNIORMAX ACADEMY
MUCHUKWO, BARINGO COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Juniomax Academy Muchukwo, Baringo County. The group comprises seven teachers and 33 students who are in the Senate for a one-day academic exposition.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

VISITING DELEGATION FROM CHEBONEI GIRLS
HIGH SCHOOL, BOMET COUNTY

Hon. Senators, also, I would like to acknowledge the presence, in the Public Gallery this afternoon, visiting teachers and students from Chebonei Girls High School, Bomet County. The group comprises four teachers and 100 students who are in the Senate for a one-day academic exposition.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

VISITING DELEGATION FROM HOMA BAY TOWN
CONSTITUENCY STUDENTS ASSOCIATION

Likewise, hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Homa Bay Town Constituency Students Association, Homa Bay County. The group comprises 18 students who are in the Senate for a one-day academic exposition.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

(Applause)

I will allow the Senator for Baringo County to make welcoming remarks to the delegation from Baringo County under one minute, followed by the Senator for Bomet County, who will use less than a minute to welcome the delegation from Bomet County. Sen. Ogola will also welcome the delegation from Homa Bay County in less than a minute.

Kindly, proceed.

Sen. Cheptumo: Thank you, Mr. Speaker, Sir. I wish to welcome the students and teachers from Juniomax Academy in Baringo County. This is a new school and one of the schools that is performing well.

I welcome them to the Senate of the Republic of Kenya. They have seen live debate here. If you work hard, be resilient and disciplined, it is possible that one day, you will be in Parliament to represent Baringo County as a Senator or as a Member of the National Assembly. We can be whatever we want to be if we work hard.

I welcome them and wish them safe journey back home. I look forward to meeting them outside the Chamber to bid them farewell.

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. Chebonei Girls is a sister school to Tenwek High School, a school that I cherish and went to. We shared a sanctuary and they still do.

May I take this opportunity to welcome them to the Senate. I am sure you have experienced the happenings in the Senate and learnt a lot on what we do as the Senate and how we debate. I am sure when you go back to your lovely school, you will share your experiences with the rest of your colleagues. Take the opportunity to learn and go back and work hard in order to succeed. This is a place you are destined to work for and experience in the future. Welcome to the Senate, the place where legislation is done.

Sen. Ogola: Thank you, Mr. Speaker, Sir. I am honoured to extend a welcome to the Students from Homa Bay County. They are university students who are paying a courtesy call to the Senate this afternoon.

Homa Bay County is a county of endless potential. It even shows on the young men who are visiting the Senate. To the students, this is the House that oversights, legislates and represents counties and their governments.

This afternoon, if the Speaker grants me the opportunity, I will be presenting a Statement on teenage pregnancy in Homa Bay County. I know this is of great interest to you as young men and future leaders.

In the Senate, we have a number of young Senators. We have Sen. Oketch Gicheru, Sen. Okenyuri, Sen. Lemaletian and Sen. Methu.

(Sen. Oketch Gicheru spoke off record)

Sen. Oketch Gicheru is insisting that Sen. Mumma is also a young Senator, to which I agree. We also have Sen. (Dr.) Oburu who is the youth representative in the Senate.

Young Kenyans, I implore you that not even the sky will limit you. Welcome to the Senate and I will shortly see you outside to share pleasantries with you.

(Resumption of debate on the Motion)

The Speaker (Hon. Kingi): Sen. Thang'wa, proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir. As I rise to support this Motion, I seek your indulgence. Before I give my remarks, I have noted how Senators are being profiled in this House because of how they vote. It is the right of any Senator to choose which direction to vote and they should be protected.

We voted on the Konza Technopolis Bill and those who voted against it are being profiled. If profiling people by the way they vote is a thing to go by, I would like to remind you that the Minority Side never voted for you. They walked out when we were voting. If we have to live with our conscience, we should always be remembering that. We are not voting machines but people who vote with their conscience.

Mr. Speaker, Sir, I stand to support this Motion. About 18 days ago, Kiambu County received the first disbursement of this year's budget amounting to Kshs1 billion. In 12 days, Kiambu County will receive another Kshs978 million from---

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

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

Sen. Olekina: Mr. Speaker, Sir, I rise on a point of order on statement of facts. It is important.

The Speaker (Hon. Kingi): What Standing Order are you referring to?

Sen. Olekina: Mr. Speaker, Sir, it is Standing Order No.105. The distinguished Senator is a Member of the Committee on Finance and Budget. Is he not? If he is not a Member of the Committee, is it in order for him to mislead the public that funds can be released without being passed by this House?

This is when we are debating the disbursement schedule. The only time the National Treasury can release money for this financial year is when this House has approved the Disbursement Schedule. I believe the money he is talking about – he can correct us – is for the previous financial year. Nonetheless, if the National Treasury released money for this financial year before this House approves this Disbursement Schedule, then I do not know what we are doing.

So, perhaps, the distinguished Senator could correct his statement so that it does not mislead the public and so that we know what we are doing here; because I was prepared to debate this disbursement schedule for the Financial Year 2023/2024.

If the National Treasury has already disbursed that money, then I have no business debating it because then I will just be rubber-stamping something that has already been done.

I thank you.

Sen. Thang'wa: Mr. Speaker, Sir, the Government cannot wait when we have *maandamano*'s outside there, interfering with the running of county governments and the running of Government projects.

The Speaker (Hon. Kingi): Sen. Thang'wa, just take your seat. Let me get this over and done with.

The point of order raised by Sen. Olekina is as follows and it is not a point of order really directed to the Senator who was on his feet.

The Senator for Kiambu while commenting said that the Government has released all the monies meant for last financial year and proceeded to release the first tranche meant for July. That is what he said. Is that, therefore, a statement of fact because Sen. Olekina rose under Standing Order No.105 to confirm if indeed that is a statement of fact? If it is not, then he will call you to order as being disorderly.

So, leave out the issues of the *maandamano* and the long history and just stick to that. I think we will make great progress in this matter.

Sen. Thang'wa: Thank you very much, Mr. Speaker, Sir. I talked about Kiambu. I am the Senator of Kiambu. He talked about my county; I did not talk about Narok County. I said Kiambu has received Kshs1 billion by 15th and in 12 days, Kiambu is

going to receive another Kshs978 million. So, I do not know his interest. I am talking about my county. I am talking about Kiambu---

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators! Let us not make scenes here. Sen. Olekina, the Senator for Kiambu has said that whatever he stated is factual. You rose on a point of order to challenge him on that and he has stood and said indeed it is factual. He has said:-

“What I have said is concerning Kiambu and Kiambu did receive all the monies meant from the last financial year and on the 15th, Kiambu received this much.”

He stated that that is factual. Therefore, your point of order as far as Standing Order No. 105, because you challenged him to substantiate.

The other limb of your point of order is, if that is so, if the Government can then release money before we debate this particular Motion and that is not something that the Senator for Kiambu can bear the brunt.

His was to confirm that, yes, what I have said is true. My county received this much on this particular date. Whether the Government is doing that illegally or otherwise, as you are putting it, is not his concern. His concern is, I received this money.

(Applause)

Sen. Olekina: Mr. Speaker, Sir, the framers of the Constitution established three arms of Government to allow separation of powers and to be able to institute checks and balances.

This House passed the County Allocation of Revenue Bill, 2023 (CARB), which was later assented into an Act of Parliament - CARA. In that Act, the law also gives this House the power to approve the Cash Disbursement Schedule.

So, if indeed he is setting aside the issues of Kiambu, Narok or interest or whatsoever that the distinguished Senator was talking about, if indeed the Executive through the National Treasury disbursed money without the approval of this House, it is a matter that should concern this House.

So, when I rose here to request for that to be substantiated, the best thing that can help this House, is for the distinguished Senator to table the facts that the National Treasury has indeed released that money so that it can be able to be part of the HANSARD; that the National Treasury released money before this House approved the disbursement schedule.

It is very simple. It is not a matter of interest of Kiambu. Of course, I am interested in Kiambu because it is part of Kenya, but I am also interested in ensuring that all the 47 counties receive money approved by this House.

Mr. Speaker, Sir, the Senate plays a critical role. This is a Bill that originates from this House. The Cash Disbursement Schedule cannot be originated from the National

Assembly. The Division of Revenue Bill would be originated from the National Assembly. However, when it comes to the issue of the Cash Disbursement Schedule, it comes out of here because we are now dividing part of our Kshs385 billion, which is going to the counties.

So, I am rising on an issue of statement of fact and the importance of ensuring fiduciary to the rule of law. That is my essence of rising on that point of order.

Mr. Speaker, Sir, I appreciate you trying to correct or maybe put certain things in order, but it is also of concern to me when a law is broken. You cannot apply the law retrospectively.

In this case, if we sit here, we debate and approve this Cash Disbursement Schedule, then we will be doing so retrospectively because it has already been overtaken by events. So, that is my greatest concern.

I thank you.

The Speaker (Hon. Kingi): Sen. Olekina, I carefully gave you that opportunity and I listened to you attentively. Now, when you rise on a point of order, it is presumed that the Senator speaking according to you is disorderly and you want to call him to order. Therefore, you rise on a point of order.

Now, when the Senator for Kiambu rose to speak, he stated that in Kiambu County, all the monies meant for that county for last year was received. He proceeded to say the monies meant for July; the July tranche was also received. To that extent, he is not out of order.

Your main concern which is a valid concern Sen. Olekina, is the second limb of your point of order which cannot then be attributable to the Senator of Kiambu, when you rose to say I am concerned.

When you say: These monies that are supposed to be disbursed this financial year ought to be disbursed after the Senate has debated this particular Motion that we are debating now. So, how come Kiambu has received its July share? That is not for the Senator for Kiambu to respond. The person to respond to that concern is the National Treasury. The Senator for Kiambu merely said we have received. The person who is responsible for that disbursement is actually the National Treasury.

Sen. Olekina, this is my advice to you. You have been told that Kiambu has received its disbursement for July, which can only have come from the National Treasury. According to you, that ought not to have been done until the Senate has debated this matter. Therefore, take that matter to the National Treasury.

(Sen. Olekina spoke off record)

Sen. Olekina, I am making my observation and giving directions on this matter. You know that you cannot debate with the Chair.

My advice to you, Sen. Olekina, having noticed that Kiambu has received its share for July before Senate has debated this matter, take this war straight to where it lies and that is the National Treasury.

You can do that by way of seeking a Statement from the National Treasury why it released the money before the Senate debated the disbursement schedule. That cannot be handled by the Senator for Kiambu.

It is so directed. Proceed, Senator for Kiambu.

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

The Speaker (Hon. Kingi): Sen. Omogeni, what is your point of order? Before you make your point of order, I will refer you to Standing Order Nos.121 and 122 on a matter where the Chair has pronounced itself. You cannot debate the directive of the Chair. If you do, you will be deemed disorderly and the consequences will ensue immediately.

Proceed, Sen. Omogeni.

Sen. Omogeni: Mr. Speaker, Sir, we came to this House as elected Senators and I represent Nyamira County. Every Wednesday, I watch debates in the House of Commons. A Chamber like this---

Sen. Kinyua: What is your point of order?

The Speaker (Hon. Kingi): Sen. Kinyua, you are out of order.

Sen. Omogeni: Mr. Speaker, Sir, we have not come here to---

The Speaker (Hon. Kingi): Sen. Omogeni, the Chair is speaking. I expected you to say that you are rising on a point of order, quote the Standing Order and then proceed to give us that history.

Sen. Omogeni: Mr. Speaker, Sir, I rise pursuant to Standing Order No.105(1). I am here today as the Senator of Nyamira. When I go to Nyamira this weekend, I am expected to answer some questions from the people I represent.

I have heard this afternoon that the County Government of Kiambu has already received disbursements for July. That is now on record. It means---

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators. May the Senator be heard in silence.

Sen. Omogeni: It means that contrary to the provisions of Article 27 and in a discriminatory manner, the National Treasury, in defiance of the Constitution, has already disbursed money to the County Government of Kiambu, whereas other counties like Nyamira have not received any disbursement.

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators.

Sen. Omogeni: Mr. Speaker, Sir, since I would like to take up the matter with the National Treasury, I request that the Senator for Kiambu, under Standing Order No.105(1) to substantiate the allegation that money has already been transferred to Kiambu County Government. Why is the County Government of Kiambu receiving preferential treatment?

The point I am making is that we want this to be an interesting Chamber. When I rise on this point of order, I have nothing against my good friend the Senator for Kiambu.

Sen. (Dr.) Khalwale watches debates in the House of Commons. The Prime Minister of the United Kingdom (UK) goes to the Floor and is asked questions by the people's representatives. Therefore, we raise issues on behalf of the people who elected us.

We want this to be an interesting Chamber of debates. I am sure even the Commissioner, Sen. Kinyua there, wants this to be an interesting Chamber.

Unless we are disorderly in any way, let us make this House lively. If a Senator is makes a statement that is not factual, we have a right to challenge that Senator. That happens all over. Unless---

The Speaker (Hon. Kingi): Order, Sen. Omogeni.

Sen. Omogeni: I thought I am on a point of order.

The Speaker (Hon. Kingi): Even if you are on a point of order, as the Chair, I can order you to yield and sit.

Sen. Omogeni, before you made your point of order, I took time to cite the Standing Orders. I have already given a directive on this particular matter. Debating that directive amounts to a disorderly conduct.

I will refer you to Standing Order No.122 which states-

“(1) A Senator commits an act of gross disorderly conduct if the Senator-
(a) defies a ruling or direction of the Speaker or Chairperson of Committees.”

You may not agree with what I have said, but it stands. You cannot debate that particular directive which I have given.

I have given you such a wonderful way of how you can handle this. According to the Kiambu Senator, the National Treasury made the disbursement. If you feel that the disbursement is in breach of the law, you have recourse. You can seek for a Statement on why the National Treasury released the money before the Senate could debate and pass the disbursement schedule. It is within your right. Do not push the Senator for Kiambu to do so.

He has confirmed, as the Senator for Kiambu, that Kiambu has received. Are we doubting that?

An. hon. Senator: Yes.

The Speaker (Hon. Kingi): This is a matter that I have already ruled on.

Sen. Thang'wa, proceed to conclude your comments.

Sen. (Dr.) Khalwale: I have a matter of procedure, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your matter of procedure?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank you for your indulgence. I am speaking to procedures of this House. I invite you, with your permission, to look at the contents of speeches under Standing Order No.101. If you do not make decisive and aggressive adherence to this Standing Orders, then our House will degenerate.

Standing Order No.101 (5) states that-

“It shall be out of order for a Senator to criticize or call to question, the proceedings in the National Assembly, a County Assembly or the Speaker’s Ruling in the National Assembly but any debate may be allowed on the structures and roles of County Assemblies or the National Assembly.”

Mr. Speaker, Sir, I have heard you painfully---

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, we are past that.

Sen. (Dr.) Khalwale: I want to emphasise because it is a matter of procedure. It appears we are being controlled by---

The Speaker (Hon. Kingi): This House is not being controlled by anybody other than the Chair.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Therefore, kindly take your seat. That matter rests there.

(Sen. (Dr.) Khalwale sat at his place)

Senator for Kiambu, proceed to conclude your comments.

Sen. Thang’wa: Mr. Speaker, Sir, I thank you for your guidance. Anybody who wants to know more should do so through a Statement. Just to help them, out of Kshs9 billion, Narok County has received Kshs781 million. Out of the Kshs5 billion, Nyamira County has received Kshs453 million. Please bear that in mind as you prepare to request for a Statement.

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

The Speaker (Hon. Kingi): Sen. Thang’wa, Sen. Kinyua would wish to inform you?

Sen. Thang’wa: Any time because he is my Commissioner.

Sen. Kinyua: Bw. Spika, ni ukweli mtupu na ni dhahiri shahiri ya kwamba hizi pesa ambazo anasoma zimetumwa katika gatuzi zetu. Ni vizuri Sen. Thangw’a aelewe na asijisumbue zaidi kwa sababu, hawa Maseneta wa upande wa Upinzani wamekuwa katika maandamano. Kwa hivyo, hawana uzoefu na hawaelewi.

(Laughter)

The Speaker (Hon. Kingi): Sen. Kinyua, that is not a point of order. Kindly have your seat. Honestly, that is not information to aid the Senator for Kiambu in making his comments.

Sen. Thangw’a, proceed to conclude your comments.

Sen. Thangw’a: Thank you, Mr. Speaker, Sir. Holding everything constant and assuming that they cannot disburse these monies without the law, does that mean that the Senate has already failed? We have gone to the next month.

If they were to wait for all this, would we just be waiting for our people at the county to suffer just because we could not pass this? That will be deliberated when the statement is asked. Why are people suffering?

Why do we have the about 250 Universal Health Coverage (UHC) staff who were committed to the County Government not absorbed by the counties? With all these monies, every county can budget for the UHC staff and absorb them as their employees.

The UHC staff are suffering because they are paid about Kshs5,000. If one has a certificate, he is paid Kshs40,000 and yet, their counterpart, who is employed by the national Government, is paid about Kshs70,000. We need to fight this inequality. It can only be done once this money has been disbursed. The counties have done the budget to factor in these health workers.

Mr. Speaker, Sir, the national Government is building about 181 markets. Out of all those, 72 have already been advertised for tendering. It is sad to note that in Kiambu County, there is one such market called Githurai that is already completed. For almost one year, it has not been occupied. Reason being, the county Government is not able to allocate people. It is collecting money from *mama mbogas* for them to be allocated a stand within that market.

I believe any county that loves its people, will always prioritise their people and give them places to uplift them economically. I am speaking here today talking about Kiambu County because I have everything about Kiambu County on my fingertips.

[The Speaker (Hon. Kingi) left the Chair]

[The Temporary Speaker (Sen. Wakili Sigei) in the Chair]

Mr. Temporary Speaker, Sir, we should be talking every time and supporting each other instead of fighting. You do not understand what my people are going through yet money has been disbursed. When such governors are invited to appear before the County Public Accounts Committee (CPAC), they are given a leeway. They ask for several months and they are given.

Somebody who was supposed to appear before the Senate by the month of March is said to be appearing in July. Yet, somebody stands here to ask me who released that money to Kiambu County.

As I stand here, this Government of President William Samoei Ruto is devoted to support devolution. If you look at the Cash Disbursement Schedule, the money will be sent to the counties every month. They will get Kshs32 billion this month and Kshs30 billion next month. Just like that all the way to 15th June, 2024.

The only month they are going to get a lot of money is the month of April 2024, where they will get Kshs34 billion. We should be asking ourselves as a Senate, what are the governors doing with these monies?

Mr. Temporary Speaker, Sir, I heard Sen. Mumma here talk about the feeding of children in primary school in Nairobi City County being a national Government rather than a county Government exercise. I wish all the governors in the 47 counties could embrace that programme and feed the children.

We are not feeding the schools, but the children. It is a nutritional issue. It is a health issue. Health function is devolved. We should not be fighting the county Government programme just because we sometimes believe it is the work of the national Government.

As I conclude, as I had earlier said before I was interrupted, it is good to know 18 days ago, all the counties in the Republic of Kenya received their July cash disbursement.

(Applause)

Check with your governor if you talk to him. Check with your National Treasury and you will understand that this Government is serious. Even if the Senate is not, this Government is. In 12 days, every county Government will receive their disbursement because the Kenya Kwanza Government is committed to uplift devolution. It is committed to make sure our people at the county level are not fighting.

As we walk out of this Senate when we are having important debates, please, let us not walk out on this one. Let us debate and make sure it is passed.

Mr. Temporary Speaker, Sir, I settle my case.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, very much, Sen. Thangw'a, for your contribution.

Sen. Osotsi for Vihiga County, you may have the Floor.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to also rise and support this Motion on Cash Disbursement for the Financial Year 2023/2024.

I have had an opportunity to look at the report prepared by the Standing Committee on Finance and Budget. I thank them for it. In their report, it is very clear the amounts of money going to be disbursed to the counties and the effective dates. This Cash Disbursement Schedule is guided by Section 17 of the PFM Act that clearly says two things.

One, that at the beginning of every quarter and in any event not later than the 15th day from the commencement of the quarter, the National Treasury shall disburse monies to the county Government.

Secondly, it says that, the disbursement referred to herein, shall be done with a Schedule prepared by the National Treasury, in consultation with the Intergovernmental Budget and Economic Council (IBEC), and most importantly, with the approval of the Senate. Thereafter, the Cash Disbursement Schedule is gazetted in the Kenya Gazette.

Mr. Temporary Speaker, Sir, this is clearly a legal process which culminates in publication in the Kenya Gazette. In most cases, this Schedule is not adhered to. It is never adhered to because you find that disbursement of money to the county is delayed sometimes, even by two or three months. Counties have suffered because of that, pending Bills have occurred, delayed implementation of project and challenges with absorption.

This is an exercise that this Senate should take seriously. We cannot be spending our time discussing this Schedule and approving it, when the Executive is not going to follow it. It is useless.

Mr. Temporary Speaker, Sir, it is useless. It is making us look bad as a Senate to approve a schedule and become toothless in enforcing it.

I urge the Senate and particularly the Committee on Finance and Budget effective from the approval of this schedule, to be serious and ensure it is adhered to.

This schedule is not arbitrary. There is a process that goes into it; including budget and revenue projections. The Department of Planning is also involved for them to come up with this schedule. It is then taken to the IBEC, which has representation from the national Government and county governments for discussion. Therefore, it cannot come to the level where the National Treasury decides when to send and not send the money to the counties.

We thank the Kenya Kwanza Government for ensuring that monies for the last financial year were 100 per cent disbursed by June, 2023. However, we must also appreciate that from December, 2022 to around March, there was delayed disbursement to the counties that affected service delivery.

Mr. Temporary Speaker, Sir, I urge that the relevant Committee, in this case, Committee on Finance and Budget must ensure that this schedule that we pass here is not an exercise in futility. It is adhered to and monies are sent to the counties within the timeframe indicated on this schedule.

Allow me to also talk about the role of the Senate. Sometimes, I get concerned about where we are heading as a Senate. Article 96 (1) of the Constitution provides for the role of the Senate which is to represent counties and protect their interests and county governments.

With all due respect, we respect and like our political parties, coalitions and our party leaders. However, the primary role of a Senator, when they get through that door is to protect and represent their counties.

Sometimes when you sit here, you get the impression that we are not representing our counties, but the Executive or our political parties. That is why when we were given an opportunity to increase the money that goes into our counties to Kshs407 billion, it was very disappointing that this Senate rejected it and went for a lower figure. That is a fact.

(Applause)

In the next few days, we will all be going to Eldoret for the Devolution Conference. What message is the Senate going to say in that Devolution Conference when we denied our counties more money?

(Applause)

We may argue and say that we gave them an extra Kshs15 billion. Yes, but we had an opportunity to make it higher than that to up to Kshs407 billion. It is very disappointing. We must sit down and ask ourselves whether we are doing justice to our counties.

Sen. (Dr.) Khalwale, I respect you as an elder. I came to this House because I used to watch you make contributions in the Senate. I, therefore, urge you and your colleagues---

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Khalwale, what is your point of order?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am rising on Standing Order No.105. With all humility, the Constitution says that money that will be disbursed to devolved governments should not be less than 15 per cent.

When we increased by Kshs15 billion, we met the threshold by giving 24 per cent of the last audited account.

Is the Senator in order or is he ignorant of the fact that 24 per cent is way above 15 per cent? Therefore, is he in order to impute improper motives to the Senator of Kakamega when he knows very well that we met the constitutional threshold? Division of Revenue Allocation Bill is about dividing revenue between the national and the county government and thou shall never give less than 15 per cent. Is he in order to mislead the country?

The Temporary Speaker (Sen. Wakili Sigei): Respond, Sen. Osotsi.

Sen. Osotsi: Mr. Temporary Speaker, Sir, I thank Sen. (Dr.) Khalwale for unnecessarily interrupting me. However, if he listened to me carefully, I said that as a Senate, if we are given an opportunity to get more money for our counties, let us go for that option.

He is talking about Kshs385 billion which was an increase of Kshs15 billion. However, Kshs407 would be an increase of Kshs37 billion. So, if he listened to me, it was an opportunity for us to get more money for our counties. It was a report brought by the Committee where my good friend, Sen. (Dr.) Khalwale sits.

Sen. Oketch Gicheru: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, Sen. Oketch Gicheru would like to inform you. Do you want to be informed?

Sen. Osotsi: Sen. Oketch Gicheru is a very pragmatic young man. I am ready to be informed by him.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Oketch Gicheru.

Sen. Oketch Gicheru: I want to inform Sen. Osotsi that the Constitution under Article 216 (1) gives the Commission of Revenue Allocation (CRA) the mandate to help the nation determine the equitable share.

I will read it because he can relay this information to Sen. (Dr.) Khalwale.

“The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government”

Sen. Osotsi, this information is important to you because the Kshs407 billion that we were suggesting for an increase to the counties was determined by the CRA. That is a

fact. They advised the Committee on Finance and Budget of this House with clear indications of where those monies were going to come from.

The Temporary Speaker (Sen. Wakili Sigei): You have made your point, Sen. Oketch Gicheru.

Sen. Oketch Gicheru: I am just finishing, Mr. Temporary Speaker, Sir. So, the money that---

The Temporary Speaker (Sen. Wakili Sigei): The point of order was to inform. You have informed Sen. Osotsi. So, take your seat.

Sen. Oketch Gicheru: Thank you, Mr. Temporary Speaker, Sir.

Sen. Osotsi: Thank you, Sen. Oketch Gicheru. CRA is the constitutional commission that came up with the Kshs407 billion.

Before I was interrupted, I was emphasizing the significance of Article 96. That this Senate, when called upon, on many matters on this Floor, our priority should be our counties. It should never be whether you are either in the Executive or not. It should be our counties.

We have seen some drawbacks to devolution. For example, we have seen some conversations where primary health care function like community health volunteers now want to be taken over by the national Government. What is the Committee on Health doing about it?

Regardless of whether you are in Government or not, something has to be done about this matter and many other cases. What are we doing about issues of housing, which fall under my good friend Sen. Thang'wa, the Chairperson of the Committee on Roads, Transportation and Housing?

This fixation on which side of the coalition we are in is going to interfere with the proper functioning of this Senate. I implore upon my colleagues in this House from both sides of the political divide to ensure that our guiding principle in this House is how well we represent our counties and protect the interests of the counties and their governments.

Secondly, Article 219 of the Constitution states is very clear that –

“A county’s share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.”

It is high time that this Senate took keen interest in Article 219. We cannot be saying we are Senators, but when we go to our counties, our governors tell us: “We have not received money for three months, we have not paid salaries, we stopped projects.” We are not doing our work and yet we call ourselves Senators.

Article 219 of the Constitution is there for us. Why are we not invoking that? The National Treasury collects money, but it does not prioritize allocation or disbursement to counties. It prioritizes national functions. As we pass this schedule, we must take into account Article 219 of the Constitution. The Committee on Finance and Budget should do its work. Sometimes, I wonder whether the Minority side should lead the Committee on Finance and Budget. This Committee has to make very weighty decisions. However, because it is led by the Majority side, it cannot make that decision.

We thank the Kenya Kwanza Government that for the first time, they have disbursed all the money. However, had it not been for the Committee that I Chair, the Committee on Public Investments and Special Funds (CPISF), that would not have happened. We took up this task and put pressure on the Cabinet Secretary for National Treasury and Economic Planning. At some point, we would have meetings until 10.00 p.m. in the night putting pressure and discussing the issue of disbursement to the counties. We want the Committee on Finance and Budget to up their game so that you---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi----

Sen. Osotsi: Ensure the law is complied with particularly Article---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi

Sen. Chute: Mr. Temporary Speaker, Sir, on a point of information.

Sen. Osotsi: Article 219 of the Constitution should be complied with.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, when the Chair speaks, pay attention.

Do you want to be informed by Sen. Chute?

Sen. Osotsi: Sen. Chute is a good friend of mine and a very reasonable member of the Majority side. I would like to be informed by him.

The Temporary Speaker (Sen. Wakili Sigei): Proceed Sen. Chute.

Sen. Chute: Thank you, Mr. Temporary Speaker. I would like to inform Sen. Osotsi. He said that for the first time, the Kenya Kwanza Government has sent money. I would like to inform him that we have not received our first budget. We are trying to undo the mess that was created before, but we decided to send money to the counties. It is the first time for this Government. Do not say we did it for the first time.

What we have done is what was supposed to be done by the 'Handshake Government'. Thank you very much for congratulating us, but kindly be informed that this is not our budget. It is the 'Handshake' budget.

Thank you very much

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi kindly wind up on your comments.

Sen. Osotsi: Mr. Temporary Speaker, that is what I alluded to earlier about the role of Senators, particularly under Article 96 of the Constitution. We are here to talk about our counties. I said that 100 per cent of the money meant for counties had been dispersed by the 30th June, 2023. I also said that it is not that there was no delay; there was a four-month delay from December to March. Towards the end of the financial year, they rushed and sent the money. However, that was not without the input of the Senate. The CPISF worked very hard. We had long meetings with the National Treasury to push for the disbursements of these funds. We have been getting audit queries around the---

Sen. Wafula: Point of order

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, there is a point of order from Sen. Wafula.

Senator, proceed

Sen. Wafula: Bw. Spika wa Muda, kwa mujibu wa Kanuni 105 ya Kanuni za Kudumu za Seneti, lazima Seneta awajibike kwa matamshi yake. Sisi kama Maseneta na viongozi wa Kenya Kwanza tulikula kiapo kufanya kazi kwa mujibu wa Katiba na kuhakikisha ugatuzi unafanya kazi.

Sen. Osotsi hawezi kujilimbikizia heko kwamba kama siyo wao, kaunti zetu hazingepata pesa. Hiki ni kinaya kwa sababu sisi kama Walio wengi katika Serikali tuna vikao vya mara kwa mara na Mhe. Rais. Haya ndio masuala sisi hujadili kwa minajili ya kusukuma ajenda ya maendeleo za gatuzi zetu. Naomba asiwe wa kujipiga upato kwa sababu hata hapa Seneti wengi wa Walio wachache hawapo.

Sisi tunavumilia kuwasikiza na kuwafanyia mema Wakenya waliotupigia kura. Naomba Sen. Osotsi atoe thibitisho kwamba walifanya mikutano mpaka asubuhi ili Wakenya wapate pesa.

Jambo la mwisho, ni lazima Sen. Osotsi afurahi kwamba sisi ni wachapa kazi ambao tunawapenda Wakenya wote.

Asante, Bw. Spika wa Muda.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, could you conclude on your comments.

Give Sen. Osotsi the microphone.

Sen. Osotsi: Thank you, Mr. Temporary Speaker. Sen. Wafula is from my region and he is still a new Senator. He still learning the ropes of how Parliament works.

Mr. Temporary Speaker, Sir, if you give me until Tuesday next week, I will table minutes of the CPISF in which this matter was dealt with. I will even table letters to the National Treasury, including letters to summon the Cabinet Secretary for National Treasury and Economic Planning to appear before our Committee and answer issues around disbursement of funds. That I am prepared to do.

We even pushed for it and had a memorandum and the dates are there. Sen. Olekina is here to confirm. He is a Member of my Committee.

The Temporary Speaker (Sen. Wakili Sigei): You have up to Tuesday to do so.

Sen. Osotsi: Mr. Temporary Speaker, Sir, this is one of the ways of defeating Article 96 of the Constitution; through frivolous points of order whenever serious issues are being raised in this House. I call upon you to apply Standing Order No. 1. The issue of frivolous points of order, especially pursuant to Standing Order Nos.105 and 101 should end. We need quality debate. We need to inform this House. We are not here to protect our various coalitions or the Executive. We are here because of our counties and the people who elected us.

Allow me to talk about disbursement to my county. My county is going to get an additional Kshs200 million. This is still very little. The CRA has started the process of---

(Sen. Osotsi microphone switched off)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, your time is up. Kindly take your seat.

(Interruption of debate on Motion)

I have a Communication from the Chair to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM LORNA LABOSO
SECONDARY SCHOOL, BOMET COUNTY

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, in the Public Gallery we have 63 students accompanied by four teachers from Lorna Laboso Girls Secondary School in Bomet County who are in the Senate on an educational tour.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

Hon. Members, this is an institution from the County that I represent. I will call upon Sen. Olekina to welcome them on behalf of yours truly.

Sen. Olekina: Mr. Temporary Speaker, I thank you very much. Let me welcome the students from Lorna Laboso Secondary School.

This is a very special school. I remember going there with the late governor for a fundraiser for the school. It is an amazing school. I will tell the students that the lady whom the school was named after had a vision. The sister also came in and had a vision to support you.

You have now come to the Senate to see the kind of work that we do here. When we debate, we are debating not because of our own interests, but for the interest of future generations.

Your Senator who is currently sitting in as the Speaker is a distinguished gentleman. I sat with him in the Bipartisan Committee and I can tell you any time we made any single progress, it was because of him.

I know your school has many students from Narok; in fact, maybe 60 or 70 per cent. However, there are other locals from that region.

When you go back home, tell your constituents and your parents that your Senator is doing a fantastic job and is a distinguished lawyer and someone who we really regard very highly in this House. This is how we work.

(Applause)

We debate for or against any Motion. He is doing a fantastic job. I hope that one day we will see one of you sitting here. You know Sen. Wakili Sigei is a very young man, but currently sitting in as the Speaker.

I welcome you and wish you a wonderful visit to the Senate. Hopefully, we will still come back to the school and support it.

(Resumption of the debate on Motion)

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much, Sen. Olekina. I give this opportunity to Sen. Mundigi.

Sen. Munyi Mundigi: Asante, Bw. Spika wa Muda. Naunga mkono kupitishwa kwa bajeti ya Wizara ya Fedha iliyopitisha pesa kwa sababu---

The Temporary Speaker (Sen. Wakili Sigei): What is your point of order, Sen. Omogeni?

Sen. Omogeni: Mr. Temporary Speaker, Sir, you have heard my good friend Sen. Mundigi saying in his opening remarks that he supports this Motion that wants to pass the budget. You know that the Senate never passes the budget. May the Senator inform you which budget this is, that the Senate is passing and is not in the Order Paper?

The Temporary Speaker (Sen. Wakili Sigei): Senior Counsel, Sen. Omogeni, if I heard him right, because he was submitting in Kiswahili, he said fedha not budget. I believe he was referring to the schedule for purposes of disbursement of the budget that was passed.

Proceed, Sen. Mundigi.

Sen. Munyi Mundigi: Bw. Spika, naunga mkono jambo hili linalohusika na bajeti. Pia naunga mkono Serikali ya Kenya Kwanza kwa kazi inayofanya.

Kwa miaka mingi kumekuwa na shida na bajeti ya Kenya. Hii ndiyo bajeti ya kwanza ya Serikali ya Kenya Kwanza. Pia naunga mkono Wizara ya Fedha kwa kazi ambayo imefanya katika mwezi huu wa saba. Kwa mfano, ninaona Embu kwa mwaka moja tumepewa pesa billioni 5.34. Mwezi wa saba tumepata milioni 454.

Tumetaabika kwa miaka mingi. Naunga mkono kwa sababu sasa hakutakuwa na deni. Kila mwezi mipango ya kaunti itakuwa inaendelea vizuri. Mnajua ya kwamba kaunti zetu ziko na shida ya mambo ya elimu, ukulima, mijengo na maji ya kilimo.

Nashangaa sana kusikia watu wengine wakisema tulipitisha pesa kidogo ilhali wakati tulipokuwa tukijadili mambo haya yote, hawakuwa katika kikao hiki. Mlikuwa mmeenda kutupa mawe. Kwa hivyo, nataka niwaambie sio wakati wa kuleta vita. Ni wakati wa kuenda kuangalia kaunti zetu na magavana wetu wanavyofanya kazi.

Kwa mfano, kama nina agano nawe kuwa nitakupa shilingi milioni kumi alafu nije nikuambie nina shida nipe milioni moja, hautaona makosa ya kunipa pesa hizo kwa sababu unajua nitarudisha. Kilicho muhimu ni kuwa usinipe pesa zote. Ninaunga mkono mambo haya.

Pia naunga Serikali ya Kenya Kwanza mkono. Inaonekana ina mpango mzuri. Tutakuwa tunapokea fedha hizi kila mwezi. Hivyo basi, hakutakuwa na madeni.

Asante Bw. Spika wa Muda.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I congratulate the students from your county who are just leaving the Chamber, and who have paid their courtesy call to the Senate together with their teachers. I assure the people of Bomet that they elected a very distinguished lawyer who has done very well in the short time that he has been in the Senate.

Mr. Temporary Speaker, Sir, I rise to support the Motion on the Floor on the Cash Disbursement Schedule. First, I wish to thank the Committee of Finance and Budget chaired by the Senator for Mandera, Captain Ali, who I must say has distinguished himself as a very committed chair. He has brought his experience as a governor to be extremely beneficial to the debate of this House, especially the report that we are now debating.

Last week we were debating another report from the same Committee on the Equalization Fund with a proposal that we allow an extension for another ten years. I want to be on record just for posterity that I am one of those Senators who are extremely disappointed by ourselves collectively as Senators because when we make a decision whether we like it or not, it goes on record as a decision of the Senate.

Mr. Temporary Speaker, Sir, we cannot lie to ourselves that giving our counties Kshs385 billion is adequate to support the various and important devolved functions that are offered by our counties. So, we may want to make it look like a political debate, but it is not. This is a matter that remains a disappointment to many people who reside in the counties. A sum Kshs385 billion, which represents 25 per cent of our last audited accounts is not adequate to provide health care, water, take care of roads, and build Early Childhood Development (ECD) centres in our counties.

Mr. Temporary Speaker, Sir, we must tell the United Democratic Alliance (UDA) administration that we are extremely disappointed. The people of Kenya are disappointed that you are giving lukewarm support to devolution. It could have been something if we increased this to Kshs407 billion.

If you look at counties that have devolved systems, whether you call them states or counties like in Kenya, the main purpose of having a Senate is to defend the devolved states. That is why the statement in Article 96 is very clear. It says the Senate as a whole, not Senator of UDA or Azimio, represents counties and it serves to protect counties. The only way you can protect counties is by ensuring that you give counties adequate resources.

I hope that as we move along, we shall reflect and that when we are considering this matter next time, we shall have the wisdom to increase money to counties.

Mr. Temporary Speaker, Sir, you do not know where you will fall sick; you would be visiting a certain county. Last time during Senate Mashinani, Sen. Mutula Kilonzo Jnr., now the Governor for Makueni County, fell seriously ill in Eldoret. We ran around looking for a hospital that has facilities to attend to his urgent medical need.

So, when we talk about these matters, do not bring in politics. Look at it as a matter that affects all of us. We are also going to retire back to counties. When I go to Nyamira County on a weekend, I do not know when I will fall sick. Therefore, when I am

fighting for more money to go to counties, it is because I and the people I represent, want to receive more money so that we can have these facilities.

We had a meeting today with the National Hospital Insurance Fund (NHIF). Since county hospitals are not adequately resourced and do not have the facilities and expertise, most refunds from NHIF go to private hospitals. It is a tragedy.

My friends, distinguished Senators, the people you represent do not want you to support a system that is giving more money to Nairobi Hospital, Aga Khan University Hospital or the Nairobi West Hospital. They want a system that is sending more money to county hospitals.

In Britain, the Universal Health Service (UHS) money that the Government spends is to ensure public hospitals are functional and consultants are in those hospitals. This enables the citizens of those countries to receive adequate treatment in those facilities.

Going forward, I hope we will audit these services. This has been a debate since devolution and in every successive Government.

The Ministry of Agriculture, Livestock, Fisheries and Cooperatives has got more money just for policy. Look at what you are getting here for fertilizer subsidy. I wish the Senator for Nandi County was here. This is money we are supposed to give to Nandi County, so that our food security is taken care of.

We need to give more money to fertilizer subsidies other than policy. We have heard about policies since Independence. We now need money to go to counties so that our farmers can be supported by county governments to have food security.

I am a bit sad with the way we are approaching this idea of industrial parks. The idea behind industrial parks was that we will have something like an aggregation of centres, where we can gain from the economies of scale. Homa Bay, Kisumu, Migori, Kisii and Kericho counties were to all have an industrial centre in Nyamira County. Nyamira County had been picked to represent the entire region.

Mr. Temporary Speaker, Sir, what I am seeing on this County Disbursement Schedule, is that we have now broken this money into a few million shillings, which we are giving to 18 counties. Let me ask this question to our Government of the day; what can Kshs250 million do to build an industrial park? It will do absolutely nothing.

We are speaking here as the people's representatives. The people who are advising the President should reconsider this idea of picking 18 counties, giving them Kshs250 million and tell them to contribute another 10 per cent which is Kshs25 million. You will set up no industry, especially the kind of industry that we are looking at; the manufacturing industries, the chemical plant industries and the likes. It cannot work.

Another requirement and we, as elected leaders in Nyamira County, whether from the UDA or Azimio, all agree that there is no way you will actualize an industrial park at Sironga Centre in Nyamira County, if you do not set up an airport. That is what the Ethiopians did.

The Ethiopian Government started by creating airports in areas where they wanted to set up industrial parks. They got support from the World Bank to put in

millions of dollars to set up the industrial parks. Not the 18 that we want to create. From there, that region can grow to become a centre.

We are looking at a situation where Sen. Tabitha Mutinda here goes to a shopping hardware in Nairobi City and she gets a panga made in Nyamira Industrial Park. That is what we wanted to see that we support manufacturing. You go to a hardware and buy a chemical written “made in Nyamira.” That is the kind of industrial park we wanted.

Mr. Temporary Speaker, Sir, I beg the Government to listen to me. This Kshs250 million cannot deliver an industrial park. We are going to give money to governors that will go down into their pockets and there will be nothing. It will be five years, you will go to an election in 2027 and there will be no industrial park.

Mr. Ndiu and others in Government, please reconsider this aspect of how much money you want to give to counties to set up industrial parks.

I am surprised that the medical equipment is still appearing on the Cash Disbursement Schedule. At least for once, I thought that the old administration was going to exorcise this devil. I am surprised when I look at Column D. Let me see so that I am factual.

(Sen. Omogeni referred to a document)

Mr. Temporary Speaker, Sir, in Column C, we still have a heading there called “Conditional Grant for Leasing of Medical Equipment.” I thought there was consensus that we should do away with this idea of leasing medical equipment.

In the last Senate, we spent five years debating this idea of stopping conditional grants for leasing medical equipment. I do not know how it has again found its way back to this schedule. It has been a big rip-off to our counties. I thought it was going to go away with the previous administration.

I hope something will be done so that this idea of giving this medical equipment to counties at exorbitant prices end. I have been against it. I do not support it and I will continue to oppose it because there is no value for money.

Mr. Temporary Speaker, Sir, I now want to address our governors. This money is now being released timely. So there can never be any excuses. The Governor of Bomet, Nairobi City and Nyamira counties cannot have any excuse now. They have received all the arrears up to June.

I stand corrected and now withdraw the remarks I made about Kiambu County. I have since learned that even Nyamira County Government have seen it. They have received their share for July. The people of Nyamira County should know that Kshs453 million has hit the bank account of Nyamira County Government.

Mr. Temporary Speaker, Sir, this money has not been sent to Nyamira or many other counties so that governors can walk around with huge sums of money doing harambees or completing their flats and whatever. Please, let our governors know that this money has been sent to counties so that we can have service delivered to the people who reside in our counties. We want drugs in hospitals.

I appeal to the people of Nyamira County that from tomorrow, if they feel *wako na malaria kidogo*, go to your hospital because there is enough money in Nyamira County to provide services. The blame can never be on the central Government now. If there is no medicine in our hospitals in Nyamira County, the person who should provide the answer is the county governor.

Mr. Temporary Speaker, Sir, there is no medicine in our hospitals in Nyamira County. The person who should provide answers is the governor of Nyamira County. That should be the case in all counties.

I have said it before here that this cancer called corruption will finish the country. We started building a stadium in Nyamira County in 2014. Nine years down the line it is incomplete. We have been constructing our county referral hospital, private wing for the last six years. It is not completed.

Our county headquarters have never been completed. Construction has been going on for more than five years. It is a shame. I hope that when we get a new Director of Public Prosecution (DPP) - because the interviews are ongoing - I hope the Committee shall pick the most competent person.

However, I do regret that Mr. Atwoli has been conducting interviews for all the DPPs. He now brags around town saying: "You know I am a very special person. I was abusing President Ruto but now he has appointed me to be the one to select the new DPP for him."

I hope we can relook at that law. We cannot have the same person being a fixture in an interview panel for an important position such as that of the DPP.

I congratulate the Committee on Finance and Budget for a job well done with the reservations that I have put across the Floor. I support the Motion and hope that our governors will now start service delivery.

We also appeal to our agencies, the Directorate of Criminal Investigation (DCI) and the Directorate of Criminal Investigations (DPP) to be on the lookout. We want to see the Judiciary doing something. Jail one of these governors so that there can be deterrence. We want this money to be for the benefit of our people and not for the benefit of a few.

I support.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Omogeni for your contribution.

Sen. Olekina, proceed.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to make comments which will probably lead to supporting this cash disbursement schedule. As I do so, I want to put a few things straight and also on the record.

Article 219 of the Constitution is quite clear. It gives guidelines on when funds should be disbursed to counties. In fact, it says a county share of revenue raised by the National Government shall be transferred to the county without undue delay and without deductions except when the transfer has been stopped under Article 225.

That Article is very clear. I believe that is the Article that the National Treasury read and went ahead and disbursed money to counties without getting the approval from the Senate.

The Public Finance Management (PFM) Act, Section 17(6) states as follows-

“The National Treasury shall at the beginning of every month and no later than the 15th day, from the commencement of the month disburse monies to county governments for the expenditures of the following months.”

Section 17(7) states as follows:

“The disbursement referred to in subsection 6 shall be done in accordance with a schedule prepared by the National Treasury in consultation with the Inter-Governmental Budget and Economic Council with the approval of the Senate and published in the Gazette as approved no later than 30th May in every year.”

Mr. Temporary Speaker, Sir, I rose on a point of order, and I questioned the statement of facts. Even without them being tabled, it is now quite evident that National Treasury proceeded and released money. Why did the National Treasury proceed to release the money? That is the question that we must ask. It is because this Government wants to appear very progressive and proactive in ensuring that they defend counties and they send money to counties to promote devolution? Or is it because even the National Treasury violated Section 17(6) and (7) of the PFM Act and they wanted to cure it by ensuring they send money in line with Article 219 of the Constitution?

I was beginning to blame our committee but when did the Committee receive this disbursement schedule from the National Treasury? Treasury sent it on the 27th June, 2023. I have looked at the report which has been submitted by the Committee and the Committee said that the reason why we are debating this issue of County Allocation of Revenue Act (CARA) right now is because there was a delay in passing CARA.

Was there really a delay in passing CARA? I have just consulted with the vice-chairperson of the Committee, and she has told me clearly that CARA was passed on 30th May. I know the Senate secretariat is very quick in ensuring that whatever is passed by this House is transmitted to the National Treasury. The question is why did the Treasury take a whole month to send the cash disbursement?

When they sent the cash disbursement to the Senate on 27th June, the Senate Committee took an additional 20 days so that brings it to 18th July. That is already past the time which is stipulated by law on when the funds shall be transferred to counties.

The question we must ask ourselves is this: If we are really attempting to do everything right, is it wrong for the Senate to come out and question why the Treasury released the money without the approval? I dare say it is not.

Although the end does not justify---what is it? The means does not justify the end-

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The Temporary Speaker (Sen. Wakili Sigei): It should be: The end does not justify the means.

Sen. Olekina: Thank you. It is important for us to do the right thing. If this Government wants to be on record in making sure that they send money on time, it

should make sure that in the next financial year CARA is passed before 30th May and the disbursement schedule is gazetted before 30th May, so that by the time we start the financial year you can release the money by 15th July.

Whoever made---I am very happy to be informed. I hear my sister wants to inform me.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Tabitha Mutinda

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir. It is normally rare for me to do a point of information especially to one senior Member and leader, Sen. Olekina. However, because I am the vice-chairperson of the Committee on Finance and Budget, I would like to inform the good Senator that for the schedule to be in place, it is calculated under the eight parameters on the different percentages that I stated yesterday, and these were determined in 2019/2020.

The parameters that we are currently using for this financial year are the 2019/2020 parameters. The formula normally changes after every five years. In 2024, we are looking forward to having different parameters. All said, at the end of the day, the amounts and figures that are in this Schedule are constant.

They were not to change at any particular time.

Our goal is to ensure that all counties have funds. I expected the Senator to be happy now that his County of Narok has received funds and the people that voted for him will receive services as required.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Tabitha Mutinda for that information.

Sen. Olekina, proceed.

Sen. Olekina: Mr. Temporary Speaker, Sir, I am not sure what the information was all about because it is not relevant to my arguments. I believe my arguments were on adherence to timelines. This is what I have been debating on.

I am among Senators who passed that formula in this House. So, I am aware of all those parameters such as poverty index, population, urban and rural. I even know the percentages. That is not the issue I was debating. The issue here is on timelines.

I called the Principal Secretary in charge of the National Treasury to confirm if the money has been sent to my county. I did that because there are contractors who cry on a daily basis. There are people who have committed suicide because counties have not paid them their money. I wanted to make sure that any contractor who calls and tells me their money has not been paid, I call the Governor and tell them to call that person because they have received their money.

The issue is violation of the law because money has been sent to counties without our approval. Did we just pass the Public Finance Management (PFM) Act which has Section 17(6) and (7), just to be mere words in the law or are they supposed to have a meaning?

The Committee on Finance and Budget has a duty to ensure that the National Treasury submits the disbursement schedules on time. It also has a duty to ensure that the County Allocation of Revenue Act (CARA) is assented to before 30th May.

We passed the Division of Revenue Bill way back in April. Why did we dillydally? Why does it take 20 days for the Committee on Finance and Budget to table this on the Floor of the House? Why does it take a month for the National Treasury to give us a schedule so that we go through, debate and approve? These are questions we should be asking.

It is not right to pass something which has been overtaken by events. The Constitution is clear. If the timeline had not been prescribed, we should have looked at Article 259(8) of the Constitution. In this case, it is quite clear that there are timelines and we must adhere to them.

Mr. Temporary Speaker, Sir, as I support this Schedule, albeit with a lot of reservations on how we are applying the rule of law, I also want to speak to Governors. The Senate sends them money, however little it may be. In these difficult economic times, I plead with them to make sure it is absorbed.

When I spoke to the officer at the National Treasury today, they told me that we have a serious problem. They released monies to counties, but all that money is still lying at Central Bank of Kenya (CBK).

County governments do not absorb all the money. However, when we go to all our counties, we find that our hospitals do not have drugs and feeder roads are dilapidated.

We talk about having a bumper harvest in some parts of Kenya, but drought is creeping in. In Maasai land, we are busy moving cows because drought is creeping in. Even the roads we use to move our cows are dilapidated, yet we sent them money.

I urge county governors. The National Treasury has behaved and sent all their allocations for the last financial year. They have gone ahead, in violation of the law, to send the money for July. I believe we will finish this process by next week, so that they get their allocations for August. Please, put that money to use and absorb all of it. Get people to work.

Let us not be quick in employing people and absorbing all the recurrent budgets but when it comes to development budgets, we do not touch it because it is a challenge. We have a serious problem.

I want to speak for the future. There will be no need to have a supermarket in this country or pay for medicine upfront.

In other developed nations, people just stay at home. Suppliers put all their goods in a portal. When an item is ordered, that is when a supplier is paid. I hope we will get to that point where someone in a hospital in Bomet will be able to go online and get the best medicine available worldwide without having to pay because of systems in place.

The way we are behaving now, where we send all the money before anything can be done, will not help us move forward. We have to think.

Finally, I appreciate the work of the Committee on Finance and Budget. Even though I pushed them to make sure that they do their work on time, I still appreciate what they have done. It is better late than never.

I am proud of the Vice Chairperson. Although she gave me wrong information, I will cut her some slack. I appreciate the work she is doing.

(Applause)

Mr. Speaker, Sir, I hope that when it comes to oversight, we will do our job diligently and hold hands to ensure that we follow up on the money that we send to our counties.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Ogola.

Sen. Ogola: Mr. Temporary Speaker, Sir, I support the Cash Disbursement Schedule for FY 2023/2024 that was presented by the Vice Chairperson of the Committee on Finance and Budget. I support this Schedule because it gives hope for timeliness in the disbursement of funds to our counties.

As the Constitution spells out, we have 47 counties. The Constitution also clearly talks about two levels of government. It is stated that counties should receive not less than 50 per cent of the revenue that we get in the country.

The disbursement impresses me because it means even services in the counties will be efficient and effective. Some of the critical services that our counties offer are health, water, and roads among others.

As Senators, we are pained that sometimes our hospitals lack drugs and the right infrastructure to serve our people at the counties. The development of water infrastructure and its distribution to our people at the counties is critical.

We also have a critical function in roads. We are talking of access to services once roads are constructed in the counties. Roads not only provide access in terms of transport but that also enable access to employment, health and food. All these critical services can only be made available when funds are availed to our counties for their operation.

Before I joined the Senate, I was a County Executive Committee Member (CECM) in the county Government of Homa Bay. What used to happen then, and it happened a few months ago, workers in county governments would go for months without salaries. When they do not pay salaries, it means that the children of the workers cannot be in school. This is because they will be sent out of school.

If they do not have their salaries on time it means workers are discriminated. This is why I am impressed by the fact that this Cash Disbursement Schedule will ensure there is timeliness in the disbursement of funds and offering of services by the counties. As a result, Kenyans will be happy with devolution.

In my county, Homa Bay Municipality has grown to the extent that the water system of Homa Bay town cannot be sustained because the system is old and needs rehabilitation. This can only be done with the availability of funds.

The county has got the support of a grant. However, this only went to the extent of enhancing the development of the system, but distribution is still lacking. If the County

can have money – the Governor hon. Gladys Wanga is willing and has shown real interest and effort in offering good services to the people of Homa Bay County.

As I speak, the governor is upscaling the health system. She has also finished the project that was left half way by the predecessor. This is a good indication to us as leaders to the people of Homa Bay.

We have Senators who have indicated that they have governors who do not finish projects that their predecessors initiated. Nonetheless, completion of these services, which my governor has been struggling to, needs money. Other than this Disbursement Schedule being provided by the Committee on Finance and Budget, I pray that disbursement by the National Treasury is timely.

In the last few months, we saw counties lack funds. I was surprised that Senators were excited on the Floor of this House that all the pending monies were sent to the counties at the end of the Financial Year in the month of July.

This is not a new phenomenon. In the last years I have worked in the county, this has been the practice by the National Treasury. Every Financial Year, counties are starved of money throughout the months. National Treasury has the habit of waiting until the end of the financial year to send all the monies to the counties.

If this cash disbursement is followed as the Schedule shows, it means the counties will follow their budgets, procurement plans will be in place and projects will be done in time. They will also pay suppliers and business people who do business with counties will be happy.

It is not news to say that in our counties there are people who have fallen sick, are depressed and others have died. In my county I have an example of business people who have closed because they did business with the counties and were not paid in time.

This is why I support this Cash Disbursement Schedule. If it can enhance the disbursement of funds to the counties, then we will have devolution running as expected.

However, I must mention some of the challenges we have noticed or continue to notice with disbursement of funds. One of the major challenges the counties have is with the Controller of Budget (CoB). There is something we mention about counties flying to Nairobi to get approval of the CoB.

The CoB has devolved her offices in each county. We wonder why counties have to line up in Nairobi. Some of the counties stay up to one week following up on approvals by the CoB. This is an area the Committee must look into.

The next challenge which I have mentioned is with the National Treasury. It is that National Treasury must live within the Constitutional requirements that counties are entitled to 15 per cent of all revenues. National Treasury does not need to wait until all these monies are collected. Whatever they get, 15 per cent should go to counties so that county Government are able to operate.

Another challenge that has been noticed in the counties is that costing of the functions that counties have was not done rightly by the Transitional Authority. A function such as health, even when money is disbursed, continues to lack adequate funds to offer services. If health lacks fund then it means it is our people that continue to suffer.

I support the Cash Disbursement Schedule and pray that it should be timely to enhance efficiency and effectiveness.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Ogola. Hon. Members, there seems to be no more interest on the debate. I ask the mover to reply.

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir. I take this opportunity, on behalf of the Committee of Finance and Budget, to thank all the colleagues who have had their inputs and talked about the concerns that they have raised. We note them as a committee. I am happy because they have been able to adapt and support this particular schedule.

One of the key issues that has come out is timely alignment as I raised yesterday when moving this Motion. You realize that by 30th April, after we had passed County Allocation of Revenue Bill, then the schedule should be able to follow in place.

I ask colleagues to ensure that we are in the House at the right time so that we achieve quorum and pass these Bills at the right time.

Finance Bills are many and are time based. So, as a committee, we really try so hard to ensure that we table them in this House on time.

Members have discussed and ensured that when the governors receive these funds, they are going to serve the people as required.

The funds are going to do what they are supposed to do. As one of the Senators said, currently the funds have been disbursed but they are lying at the Central Bank of Kenya (CBK). So, the governors and the Senators should also ensure that they pronounce themselves that money has already been disbursed so that the functions that need to take place are adhered to.

Mr. Temporary Speaker, Sir, I appreciate our secretariat who have been so much ahead. They have been preparing this schedule in liaison with the National Treasury so that it comes to this House.

Moving forward, we believe that matters of pending bills are going to be sorted and pending projects are going to be completed. We have also discussed matters of school feeding programmes. We are asking county governments to execute them and many other functions.

Right now, as we speak, there should be no excuse in regard to deliverables by the governors in the different counties. This is because, as a Senate, we have ensured that we passed the Division of Revenue Allocation Bill on time. We increased revenue from Kshs370 billion to Kshs385 billion. At the same time, we passed the County Allocation of Revenue Bill.

At this time, I am happy that we are concluding on this particular schedule. Monies have been allocated and everything is moving.

I applaud all colleagues and encourage them to understand how much is supposed to be remitted to their county each and every month. This schedule is available in the House.

The National Treasury has committed that by 15th July, the funds had been remitted. So, all is moving well. We believe that as we continue supporting devolution as the Upper House, we are going to achieve what we promised the citizens of Kenya.

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much, Senator.

Sen. Tabitha Mutinda: Mr. Temporary Speaker, Sir, allow me to request that pursuant to Standing Order No. 663, you defer putting of the question to a later date.

The Temporary Speaker (Sen. Wakili Sigei): That is in order, Senator Tabitha Mutinda. Thank you for your reply. We will differ voting to the next sitting of this House. That is on Tuesday next week.

(Putting of the question on the Motion deferred)

Hon. Members, remember we had earlier on rearranged the Order Paper. I would like to call upon the Clerk to call out the next Order.

BILLS

First Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 25 OF 2023)

*(Order for First Reading read – Read the First Time
and ordered to be referred to the relevant
Senate Committee)*

Next order.

Second Reading

THE EQUALISATION FUND (ADMINISTRATION) BILL
(SENATE BILLS NO. 14 OF 2023)

(Sen. Ali Roba on 27.7.2023)

(Resumption of debate interrupted on 27.7.2023)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Mumma, when this House adjourned, you had a balance of 16 minutes to make your contributions. You may proceed.

Sen. Mumma: Thank you, Mr. Temporary Speaker. This is a very important Bill. Before we adjourned last time, I had made a point that the law we are making, must align with the Constitution. The key issue that I had mentioned is that we must make this

law in a manner that reflects our responsibilities in Article 96 of the Constitution. We know that the Senate's role is to represent counties and protect the interest of counties. This law must be drafted in such a way that it does not violate the provisions of the Constitution in as far as devolution is concerned.

After we adjourned, I read this law. I feel that it may not have captured the basics of what we should be legislating. This is about implementing Article 204 on the Equalisation Fund. I would like to repeat that Article 204(2) states that the Equalisation Fund shall be deployed towards basic services including water, roads, health facilities and electricity to marginalised areas. Those words are very specific. Basic services include water, roads and health facilities, which are actually devolved functions.

Mr. Temporary Speaker, Sir, we must make this law in a manner that respects functions between national and county Governments. We must ensure that the law does not violate the Fourth Schedule of the Constitution, as we assign responsibilities to whichever structures we are going to establish within this law.

This is a national Government fund. It is reflected as such. Article 204(3) contemplates that in implementing these provisions, the national Government shall implement it either directly or indirectly through conditional grants.

I expected this law to provide for two alternatives, on how matters of the Equalisation Fund can be implemented. It should have a section that gives options. If we want the national Government to implement it directly, then the requirement of the Constitution is that we must operationalise Article 187 in this law. Article 187 provides for transfer of functions and powers between levels of governments. This law has not provided any mechanism that will allow for application of Article 187.

In the alternative, Article 204(3)(b) proposes that the funds can be given indirectly as conditional grants to counties. This Senate should have gone for this option because the functions that we are hoping to deliver are county functions.

We should have then mentioned in option two that, these funds will be given to county governments as conditional grants ring-fenced for purposes of delivering the services provided for under Article 204. I have not seen that provided here.

Mr. Temporary Speaker, Article 204 was never intended to reverse the functional assignment provided constitutionally in Schedule Four. As a Senate, we need to ensure that as we draft, we do not end up reversing the roles of national and county governments in this particular function.

The law has provided for an advisory board. In the setup of that advisory board, we have a national board, the county commissioners, then at the sub-county level, we have a sub-county commissioner. He is the one who is setting up this committee. At the village level, the national Government officer is the one setting up this team.

Mr. Temporary Speaker, if you read Clauses 17, 18, and 19 of this Bill, you will find that we are giving to the advisory board functions to implement the projects in the delivery of services such as water. It is my view, yes, we need an advisory board but that advisory board must not be this amorphous huge parastatal that we are setting up in this law. It must be an advisory board with a lean function.

One is the function of working with the County Revenue Authority (CRA) to determine or identify the areas that should benefit from the Equalization Fund.

Two, this advisory board should prepare the schedule of disbursement of funds from the fund to the areas that have been determined.

Three, this advisory board should go further to guide us on whether we are going to have one activity each or whether we are going to have a collection of activities. Let me demonstrate what I mean. If Tiaty area in Baringo County is marginalised; it is an area where people have to walk 100 kilometers to find a hospital or 50 kilometers to find a school, they do not have roads and water, it is my view that, if we say in one financial year, we are putting up a health facility, we will not have any impact. In order for us to be able to say we have lifted this marginalised area and brought them up in two years, this board may very well make the decision that, in the next two years, they are going to put up a Level Three or a Level Two facility, water infrastructure, a school or police stations in an area identified in Tiaty.

To do this, this law needs to imaginatively provide a proper chunk of resources to enable this to happen. It also needs to contemplate intergovernmental cooperation under Article 189 of the Constitution, where, it will be saying, even as we put up water, health, and electricity, the national Government must put up the school because that is a function of the national Government.

I would hope that those schools come from the funds allocated to the national Government; that the national Government will be putting up the police stations from the funds of the national Government. This means this will be a cooperative intergovernmental initiative to try and bring up this marginalised area to come to the level of other areas. This is the intention of Article 204.

Mr. Temporary Speaker, Sir, I have not seen that in this Bill. Apart from that, we have specific Clauses that I will request that the team looks at. You have Clause 6 which is the establishment of the Advisory Board, you have persons nominated by different groups. At 6(1)(d), it is suggested that we have one person from a pastoralist community nominated by the National Assembly.

In my view, that excludes other marginalised communities. I suggest that be changed to say 'one person from a marginalised area' because not all people from marginalised areas are pastoralists. If we put it that way, we are giving only one interest group among the marginalized priority within this law. I think we need to give equal opportunity to any other team.

I also suggest that the law clearly strives to make reference to how we will identify the marginalized areas to benefit from this objective. Possibly provide a criterion that is objective because the conversation on Article 204 has been delayed by the conversation that has been more political about who should control the fund rather than how we should deploy this. As a result, we ended up with the fund purportedly being deployed to every Constituency when we should have identified the truly marginalized areas and prioritized them.

Mr. Temporary Speaker, Sir, this law will need to also take into account the fact that this Fund was supposed to last 20 years and it has not been operationalised. I suggest that the Fund will still be relevant twenty years from when it is being implemented. I suggest that we have a Clause that can speak to those issues to ensure that the time is extended.

I suggest that the Clauses establishing many committees purportedly identifying projects, recognise that a number of those clauses are clawing away from county functions. There is no way a county can be planning for water and access to health; and another structure has been set up that is parallel in the county planning for water and health. That is how we get it wrong.

The County Integrated Development Plan (CIDP) was intended to be the one planning for that county. So, what this county should be telling us is that the health needs that I have for Baringo County are as follows. They possibly need Kshs.20 billion per year but I am only receiving Kshs.6 billion. Therefore, those particular three marginalized areas will continue to be marginalized because I am not getting enough.

We should then be able to pick an area and say this year, this particular area in Baringo is going to benefit and so on. We cannot set up a parallel government structure purportedly implementing county functions in the name of Article 204 in the county. In my view, that is a claw back on the Constitution of Kenya. As a Senate, I warn that if we pass the law as it is, it may not work well for us.

There are a number of details and I will be happy to engage the Members of the Committee.

(The amber light was switched on)

I am looking at the amber light. How many more minutes do I have?

The Temporary Speaker (Sen. Wakili Sigei): One minute, Sen. Mumma.

Sen. Mumma: One minute? Are you sure? Okay. So, to the Members of the Committee, I will be happy to give my detailed view on some of the clauses.

I thank you, Mr. Temporary, Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, pursuant to Standing Order No.34, we have two Statements which are very crucial. I will therefore extend the sitting for not more than 15 minutes to allow the two Statements to be read out before we rise.

Sen. Chute, Proceed.

STATEMENTS

STATUS OF ELECTRICITY CONNECTION IN MARSABIT COUNTY

Sen. Chute: Thank you, Mr. Temporary Speaker, Sir. I am glad you have added 15 minutes for this very important Statement. I will now proceed and read my Statement. I am requesting for a Statement on the status of electricity connection in Marsabit County

Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order 53(1) to seek a Statement from the Standing Committee on Energy on the status of electricity connections in various parts of Marsabit County. In the Statement the Committee should:

1. State plans by the Government, if any, to install a power backup generator in Marsabit Town to avert the incessant power blackouts in the town.

2. Provide an update on the status of electricity connection projects in Loiyangalani of Laisamis Constituency, disclosing whether the project was tendered for, who won the bid, the commencement date and estimated date of completion of the project.

3. Provide an update on the status of electricity transmission project from Lake Turkana to Marsabit Town disclosing whether the project was tendered for, who won the bid, the commencement date and the estimated date of completion of the project.

4. Indicate plans in place, if any, to launch an electricity transmission project from Lake Turkana to Mt. Kulal and Kargi areas in Marsabit County, stating the estimated commencement and completion date.

Thank you, Mr. Temporary Speaker, Sir.

OPERATIONS OF WORLD COIN IN KENYA

Sen. Chesang: Thank you Mr. Temporary Speaker. Standing Order 56(1)(a) provides that a chairperson of a committee may make a Statement relating to a matter for which the committee is responsible.

I rise to make a Statement on the matter of the cryptocurrency project world coin currently under consideration by the Standing Committee on Information, Communication and Technology.

We all witnessed the long queues on Tuesday, 1st August, 2023, at the KICC, Nairobi City County and other parts of the country where Kenyans were submitting their particulars on the world coin regardless of the potential risk this possesses to them.

The Committee is greatly concerned that Kenyans are volunteering to give their eye iris scans in exchange for a digital identification (ID) and free cryptocurrency coin for approximately US\$49.09 which is only about Kshs7,000.

This matter demands that we critically evaluate the potential impact on our Nation's economy, cyber security and data rights. The Committee is aware that the concept of world coin using biometric identification for distributing tokens raises significant privacy and data protection concerns.

We must ensure that any biometric data collected is securely stored and managed adhering to the highest standards of data protection to safeguard our citizens sensitive information. The adoption of a new cryptocurrency opens avenues for cyber criminals to exploit vulnerabilities in the system.

The committee will work with the relevant authorities to develop robust cybersecurity frameworks to counter potential threats and protect the financial assets of our citizens.

In the past, we have witnessed cryptocurrencies being associated with scams and fraudulent schemes. It is essential to implement stringent regulatory measures and protect our citizens from falling victims to fraud activities.

[The Temporary Speaker (Sen. Wakili Sigei) left the Chair]

[The Temporary Speaker (Sen. Mumma) in the Chair]

Madam Temporary Speaker, the committee, in undertaking this inquiry, will be concerned with *Worldcoin* activities and probe how the company intends to use the data collected.

In prosecuting the matter, the committee will seek submissions on this matter from the Ministry of Interior and National Administration, the National Treasury, the Ministry of Information, Communication and Digital Economy and the CBK.

The committee is scheduled to consider the matter tomorrow, Friday, 4th August, 2023, and will give an update to the House on the way forward in due course.

The committee will query the following:

(1) Whether the *Worldcoin* Project is compliant with the data privacy laws, its financial stability and security concerns.

(2) Whether the following security concerns have been certified by the company-

(a) Financial stability.

(b) Cybersecurity risks.

(c) Potential misuse and fraud.

(d) Inclusivity and accessibility.

(e) Privacy and data protection.

(f) The role of the CBK in cryptocurrencies projects.

Madam Temporary Speaker, the committee invites Members of this House, the public and relevant stakeholders to attend committee sessions once notified, so that together, we can come up with a way forward on the matter.

I thank you.

The Temporary Speaker (Sen. Mumma): Hon. Members, I wish to guide the House that when we resume debate, we will go back to Order No.11 because we still have Senators who wanted to contribute.

ADJOURNMENT

The Temporary Speaker (Sen. Mumma): Hon. Senators, it is now past 6.30 p.m., time to adjourn. The Senate, therefore, stands adjourned until Tuesday, 8th August, 2023, at 2.30 p.m.

The Senate rose at 6.39 p.m.