



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (THIRD SESSION)

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, OCTOBER 29, 2024 AT 2.30 PM

1. The Senate assembled at thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **QUORUM OF THE SENATE**

The Speaker, having counted the Honourable Senators present at the commencement of the Sitting and confirming that there was no Quorum, directed that the Bell be rung for ten minutes, pursuant to Standing Order 40;

And there being a Quorum before the expiry of the ten minutes;

The Speaker invited the Clerk to call the Orders of the day.

4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair –

(a) Visiting delegation from the Institute of Economic Affairs

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of a visiting delegation from the Institute of Economic Affairs. The delegation is undertaking an educational visit in Parliament.

Honourable Senators,

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

I thank you.”

(b) Substantiation of a statement made by Sen. Peris Tobiko, MP, during the Sitting of the Senate held on Wednesday, 18th September, 2024

“Honourable Senators,

As you may recall, at the morning sitting of the Senate held on Wednesday, 18th September, 2024, I directed Sen. Peris Tobiko, MP, to substantiate utterances made in the course of her contribution on a supplementary question to the Cabinet Secretary for Roads and Transportation. The direction was as a result of a point of order by the Senator for Uasin Gishu County, Sen. Jackson Mandago, MP, pursuant to Standing Order 105.

In the point of order, Sen. Jackson Mandago, MP, stated that –

“.....Sen. Tobiko has just mentioned the State House Comptroller. Is it in order for her to make that allegation? Unless she substantiates and brings evidence to this House....”

A reading of the Hansard indicates that the statement which required substantiation by Sen. Peris Tobiko, MP, was-

“....A rogue public servant has gone on record publicly to say that this road will never be constructed as long as the current Member of Parliament (MP) for Kajiado South, Hon. Parashina, is the MP. These utterances were made by the State House Comptroller....”

Honourable Senators,

Standing Order 105 (1) states that –

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.”

Further, Standing Order 105 (2) states that –

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 121 (Disorderly conduct) unless the Senator withdraws the allegations and gives a suitable apology.....”

Honourable Senators,

At the sitting of the Senate held on 18th September, 2024, Sen. Peris Tobiko, MP, was not able to substantiate her statements as required under Standing Order 105(1). Sen. Tobiko subsequently requested the Speaker to provide

the evidence at the next sitting day in accordance with Standing Order 105 (2).

Honourable Senators will recall that at the sitting held on Thursday, 19th September, 2024, I invited Sen. Peris Tobiko, MP, to table the evidence in support of her claims made on Wednesday, 18th September, 2024. Thereupon, Sen. Tobiko proceeded to table a document titled “*Katoo Anguruma*” and a flash disk drive containing a recording, as evidence to substantiate her claims. I subsequently undertook to review the evidence and to give a ruling on the matter, as it was not practical to make a determination then.

Honourable Senators,

As you may recall, in my communication to the Senate made on Thursday, 16th November, 2023, I indicated that any document/evidence tabled by a Senator in the Senate as evidence for substantiation of any allegations made under Standing Order 105 –

- i) must be evidence tabled from a source which by parliamentary practice is official and admissible; and
- ii) must relate to and verify the claim that was made and for which substantiation was required.

Honourable Senators,

That being the case, the first parameter to which I subjected the documents or material tabled was whether the evidence tabled was from a source which, by parliamentary practice, is official and admissible. A review of the document titled “*Katoo Anguruma*”, indicated that it contained a statement “*Ni Katoo tu anajua ni lini tutapata Amboseli na Barabara ya Illasit – Taveta, hayo mengine mnayosikia ni fununu*”. The document has the logo of Kajiado TV affixed on it. However, it is not authenticated by the TV station. Further, the document is undated.

With respect to the USB flash drive, it contained a one-minute video clip file, titled “*Amboseli*”. The undated video clip, ostensibly captured by Kajiado TV, featured Hon. Katoo Ole Metito addressing what appears to be an outdoor public gathering at an undisclosed location. The utterances by Hon. Ole Metito are in the Maa language, which unfortunately, I am not proficient in. There is no translation or caption from the Maa language to either Kiswahili or English.

Honourable Senators,

As you are aware, the established practice in the Parliament of Kenya and in comparative jurisdictions, is that extracts from newspapers and other media may not be tabled as evidence for substantiation of claims. This is buttressed at Standing Order 55 (1), which provides that “*the facts on which a request for Statement is based may be set briefly, but extracts from*

newspapers and other media or quotations from speeches shall not be admissible.”

Having subjected the evidence to the first parameter, I find that the evidence tabled, being the document titled “*Katoo Anguruma*” and the USB flash drive, to be inadmissible.

As regards the second parameter, which is - *does the evidence relate to and verify the claim that was made and for which substantiation was required*; this question does not arise in view of my foregoing ruling on admissibility of the evidence tabled.

However, I must point out to Honourable Senators the provisions of Standing Order 92 (1) of the Senate on the official languages permissible for parliamentary business. The Standing Order states *that all proceedings of the Senate shall be conducted in Kiswahili, English or in Kenyan Sign Language.*

Honourable Senators,

In light of the above, I find and rule that in respect of the point of order by Sen. Jackson Mandago, MP, Sen. Tobiko has not tabled evidence to substantiate the claim as required.

In accordance with my findings, and the failure to meet the threshold for substantiation pursuant to Standing Order No. 105 (2), I now direct Sen. Tobiko to withdraw the claim and apologize. I caution, as provided for in Standing Order 105 (2), that failure to withdraw and apologize will result in Sen. Tobiko being deemed to be disorderly within the meaning of Standing Order 121.

I thank you.”

Thereupon, the Senator declined to withdraw and apologise for the claims made;

And, pursuant to Standing Order 105 (2) and 121 (2), the Speaker ordered Sen. Peris Tobiko, MP to withdraw from the precincts of Parliament for the remainder of the sitting day.

(c) Resolution passed by the Senate on a Motion on the Current State of the Nation

“Honourable Senators,

As you may recall, on 24th July, 2024, the Senate passed a Motion on the Current State of the Nation. The Motion was necessitated by the pressing issues that emerged during the nationwide protests, which brought to light significant concerns affecting our nation.

The demonstrations highlighted the frustrations surrounding the high cost of living, rampant corruption, and the opulent lifestyles of public officials that was in stark contrast to the struggles faced by our people. Additionally, the public's outrage over wasteful expenditures in government institutions underscored the growing demand for accountability and reforms.

Consequently, the Senate sought to address these concerns through the Motion which made actionable recommendations aimed at addressing the root cause of discontent by the people.

In the resolution, the Senate resolved –

- (a) that the National Police Service acknowledges and apologizes for all the deaths resulting from the peaceful demonstrations;
- (b) that all victims of police brutality related to peaceful protests, between 2023 and 2024, be compensated by the Government of the Republic of Kenya;
- (c) that National Police Service extends amnesty to all the peaceful protesters who are unlawfully detained during the peaceful protests;
- (d) to call upon the Director of Public Prosecutions to withdraw all the cases in court involving peaceful protestors against the Finance Bill;
- (e) that the Independent Police Oversight Authority moves with speed to investigate and recommend appropriate action against police officers found culpable of brutality against peaceful protestors;
- (f) that the National Police Service submits to Parliament the revised standard operating procedures on the management of protests, demonstrations and the use of force to contain demonstrations;
- (g) that Parliament puts in place guidelines on actualization of Article 37 of the Constitution with respect to how citizens can enjoy the right to picket without resulting in the loss of life or property.

In the same resolution, the Senate directed the following Select Committees of the Senate to urgently engage relevant stakeholders including members of the public and consider the following issues –

- (a) Public Debt and Public Finance Management

The Standing Committee on Finance and Budget –

- i) in consultation with the Parliamentary Budget Office to independently audit the national debt and present the actual status to Parliament;

- ii) engages the National Treasury to submit a roadmap on its strategy to reduce the public debt to not more than 55% of the Gross Domestic Product (GDP) in present value terms in compliance with Section 50(2C) of the Public Finance Management Act; and
- iii) engages the National Treasury to identify and implement sustainable strategies to reduce the high cost of living.

The Standing Committee on Justice, Legal Affairs and Human Rights–

- i) repeals Sections 2 and 12A of the National Government Administration Laws (Amendment) Act that establishes Chief Administrative Secretaries;
- ii) introduces a legislation to cap the number of Principal Secretaries appointed pursuant to Article 155 of the Constitution of Kenya;
- iii) establishes a legal mechanism for the merger of parastatals and state agencies that perform duplicate functions with a view to achieve a lean government.

(b) Security Sector Reforms

The Standing Committee on National Security, Defense and Foreign Relations –

- i) engages with the National Police Service on matters of security and standard operating procedures for handling demonstrations;
- ii) engages the government to compensate all persons whose property, both movable and immovable, were damaged or lost due to the demonstrations;
- iii) engages the National Police Service to fast-track insurance compensation to police officers who either lost their lives or suffered injuries, as a result of the demonstrations;
- iv) engages with the Directorate of Criminal Investigations to have investigations undertaken to ascertain the identity of persons or organizations funding and coordinating the violence during protests and demonstrations in the country.

(c) Fighting Corruption

The Standing Committee on Justice, Legal Affairs and Human Rights engages the Ethics and Anti-Corruption Commission on matters

corruption and action to be taken to scale up efforts to deal with corruption, especially in county governments.

(d) Equal opportunities for all Kenyans
The Standing Committee on National Cohesion, Equal Opportunity and Regional Integration –

- i) engages the Public Service Commission and the National Cohesion and Integration Commission to audit the state of employment in the public service including county governments and propose strategies to adhere to meritocracy, equality and equity of opportunities across the public service as espoused in Article 232 of the Constitution on the values and principles of public service; and
- ii) engages the Public Procurement Regulatory Authority to audit compliance with Section 53(6) of the Public Procurement and Assets Disposal Act by all public procurement entities with a view to establish a roadmap to ensure compliance of the said provisions of the Act.

(e) Effective Public Participation and Stakeholder Engagement

The Standing Committee on Justice, Legal Affairs and Human Rights–

- i) puts in place mechanisms to ensure that broader concerns for citizens especially the youth are received, considered and taken into consideration in making decisions on public affairs; and
- ii) puts in place mechanisms that integrate “new media” as a medium for public participation in legislative processes.

(f) Health Sector Reforms

The Standing Committee on Health to –

- i) expedite and facilitate public participation in the re-enactment of the Social Health Insurance Act, the Digital Health Act and the Primary Health Care Act in compliance with the judgement of the High Court Petition No. E473 of 2023; and
- ii) engage with the Cabinet Secretary for Health and the Council of Governors with a view to standardize human resource policy for health workers across all counties.

(g) Education Sector Reforms

The Standing Committee on Education to liaise with the Ministry of Education and other stakeholders with a view to resolving the

concerns raised regarding Junior Secondary School (JSS) education, the new funding model for university education and the acceptability of Competence-Based Curriculum (CBC).

Honourable Senators,

Pursuant to Standing Order 225, on 24th July, 2024, the Senate resolution was conveyed to the relevant Standing Committees of the Senate and other government agencies.

Honourable Senators,

Standing Order 225 states-

“(1) The Clerk shall, within seven days of a resolution of the Senate or adoption of a report of a Select Committee, convey the resolution and where applicable, a copy of the report, to the relevant Cabinet Secretary, independent Commission or holder of an independent office under whose portfolio the implementation of the resolution falls.

“(2) Within sixty days of a resolution being conveyed to the relevant Cabinet Secretary, independent Commission or holder of an independent office under paragraph (1), such persons shall provide a report to the relevant Committee of the Senate, in accordance with Articles 153(4)(b) and 254(2) of the Constitution.”

In view of the above, Honourable Senators will note that the sixty (60) days period from 24th July, 2024 expired on 12th September, 2024. In this regard, I direct the said Standing Committees to follow up on the status of implementation of the recommendations with the government departments, agencies, commissions and independent offices to which they oversight and also prepare reports to the Senate on the status of implementation of the recommendations of the resolution by utilizing the mechanism provided for under Standing Order 56 (1) (aa) and report to the Senate between 29th to 31st October, 2024.

I thank you.”

(d) Report by the National Treasury and Economic Planning on the 2024 Budget Review and Outlook Paper

“Honourable Senators,

As you may recall during the afternoon Sitting of the Senate held on Wednesday, 23rd October, 2024, the Senate Majority Leader laid on the table of the Senate, a report by the National Treasury and Economic Planning on the 2024 Budget Review and Outlook Paper.

Section 26 of the Public Finance Management Act, 2012 states-

“(1) The National Treasury shall prepare and submit to Cabinet for approval, by the 30th September in each financial year, a Budget Review and Outlook Paper, which shall include:

- a) Actual fiscal performance in the previous financial year compared to the budget appropriation for that year;*
- b) Updated macro-economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent Budget Policy Statement;*
- c) Information on how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles or the financial objectives in the latest Budget Policy Statement; and*
- d) The reasons for any deviation from the financial objectives together with proposals to address the deviation and the time estimated to do so.*

(2) Cabinet shall consider the Budget Review and Outlook Paper with a view to approving it, with or without amendments, not later than fourteen days after its submission.

(3) Not later than seven days after the Budget Review and Outlook Paper has been approved by Cabinet, the National Treasury shall:

- a) Submit the paper to the Budget Committee of the National Assembly to be laid before each house of Parliament; and*
- b) Publish and publicize the paper not later than fifteen days after laying the Paper before Parliament.”*

The 2024 Budget Review and Outlook Paper provides an overview of the Government's financial performance for FY 2023/24 including compliance with the fiscal responsibility principles and the financial objectives spelt out in the PFM Act. It also presents macroeconomic projections and the sector ceilings for FY 2025/26 and the medium-term budget as well as information on variations from the projections outlined in the 2024 Budget Policy Statement.

Honourable Senators,

In accordance with provisions of Standing order 228 (4) of the Senate Standing Orders, I refer this report to the Standing Committee on Finance and Budget for consideration.

I thank you.”

(e) Substantiation of Facts that a Senator alleges to be True

“Honourable Senators,

As you may recall, at the sitting of the Senate held on Thursday, 24th October, 2024, I directed Sen. Godfrey Osotsi, MP, to substantiate utterances made in the course of his contribution to a Statement sought by Sen. Samson Cherarkey, MP, concerning the status of Moi University. The direction was as a result of a Point of Order by the Senator for Uasin Gishu County, Sen. Jackson Mandago, MP, pursuant to Standing Order 105.

Standing Order 105 provides that –

“(1) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

“(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 121 (Disorderly conduct), unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Honourable Senators,

In the Point of Order by Sen. Jackson Mandago, MP, Sen. Godfrey Osotsi, MP, was required to substantiate claims that –

“... We remember one Prof. Laban Ayiro, who is my constituent and a very renown Professor who wanted to turn around Moi University. However, he was ejected from that university because of tribalism.”

“...The Senator for Uasin Gishu should first of all declare conflict of interest in this matter. When the good Professor was being ejected from the university, he was the Governor of Uasin Gishu and was among the politicians who ejected the good Professor from that university...”

Honourable Senators,

Sen. Godfrey Osotsi, MP, was not able to substantiate his statements as required pursuant to Standing Order 105 (1), and subsequently requested the Speaker to provide the evidence at the next sitting day in accordance with Standing Order 105 (2). Having acceded to the request, I directed that the Senator substantiates the allegations at the next sitting day.

Pursuant to Standing Order 105 (2), I now invite Sen. Godfrey Osotsi, MP to forthwith substantiate the claims, as raised in the Point of Order by Sen. Jackson Mandago, MP, failure to which, the Senator shall be deemed to be

disorderly within the meaning of Standing Order 121. In the absence of such substantiation, the Senator will be required to withdraw the statements and apologize to the Senate.

I thank you.”

Thereupon, Sen. Godfrey Osotsi, MP tabled document titled “Video Evidence to Substantiate the 2016 dramatic ouster of Prof. Ayiro from Moi University” and an accompanying flash disk containing 8 video clips.

5. **PAPERS**

The following Papers were laid on the Table of the Senate –

- i) The Controller of Budget (COB) Annual County Governments Budget Implementation Review Report for financial year 2023/2024.
- ii) Ministry of Interior and National Administration Report on the Strategic Framework for the Implementation of Reforms in the National Police Service, Kenya Prisons Service and the National Youth Service.

(Sen. Gloria Orwoba, MP on behalf of the Senate Majority Leader)

- iii) Document titled “Video Evidence to Substantiate the 2016 dramatic ouster of Prof. Ayiro from Moi University” and an accompanying flash disk containing 8 video clips.

(Sen. Godfrey Osotsi, MP)

6. **NOTICE OF MOTION – SENATE SITTINGS IN BUSIA COUNTY**

(The Senate Majority Leader)

THAT, AWARE that on 11th July, 2024, pursuant to Article 126 (1) of the Constitution, the Senate resolved to hold its Plenary and Committee sittings in Busia County, from 23rd to 27th September 2024;

FURTHER AWARE THAT on 18th September, 2024 the Senate resolved to alter the dates for the *Senate Mashinani* in Busia County from 23rd to 27th September, 2024, to 28th October to 1st November, 2024;

ACKNOWLEDGING THE recommendation of the Senate Business Committee to defer the holding of the sittings in Busia County;

NOW THEREFORE, the Senate resolves to defer its plenary and committee sittings (*Senate Mashinani*) in the counties until the Fourth Session in 2025.

7. **QUESTIONS AND STATEMENTS****Request for Statements pursuant to Standing Order 53 (1)**

- i) Nominated Senator (Sen. Hezena Lemaletian, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the land ownership dispute over Oljorai Farm in Nakuru County.
- ii) Request for a Statement by the Senator for Meru County (Sen. Kathuri Murungi, MP) from the Standing Committee on Labour and Social Welfare regarding internship opportunities by the Public Service Commission was **dropped** in the absence of the Senator.

8. **MOTION - REPORT OF THE KENYA DELEGATION TO THE EXTRAORDINARY SESSION OF THE SIXTH PARLIAMENT OF THE PAN-AFRICAN PARLIAMENT (PAP) HELD AT THE GALLAGHER CONVENTION CENTRE, MIDRAND, SOUTH AFRICA, FROM 20TH TO 27TH MARCH, 2024**

Order read;

Motion made and Question proposed;

THAT, the Senate notes the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention Centre, Midrand, South Africa, from 20th to 27th March, 2024, laid on the Table of the Senate on Wednesday, 24th April, 2024.

(Sen. Danson Mungatana, MP – 09.10.2024 (Morning Sitting))

Debate interrupted on Wednesday, 23rd October, 2024 (Morning Sitting) resumed for the Question to be put;

Before the Question was put and pursuant to Standing Order 84(1), the Speaker ruled that the Motion does not affect counties;

And the Speaker having ascertained that there was Quorum, pursuant to Standing Order 42 (1);

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, the Senate notes the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention Centre, Midrand, South Africa, from 20th to 27th March, 2024, laid on the Table of the Senate on Wednesday, 24th April, 2024.

9. **THE COUNTY GOVERNMENTS ELECTION LAWS (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2024)**

Order for Second Reading read;

Motion made and Question proposed;

THAT, the County Governments Election Laws (Amendment) Bill (Senate Bills No. 2 of 2024) be now read a Second Time.

(Sen. Crystal Asige, MP – 23.10.2025 (Afternoon Sitting))

Debate interrupted on Wednesday, 23rd October, 2024 (Afternoon Sitting) resumed;

And there being no other Senators wishing to contribute;

Mover replied;

Pursuant to Standing Order 66 (3), the Mover requested for the deferment of the putting of the Question to a later date;

And the Temporary Speaker (Sen. Catherine Mumma, MP), acceding to the request, deferred the putting of the Question to a later date.

10. **THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL (SENATE BILLS NO. 39 OF 2023)**

Order for Second Reading read;

Motion made and Question proposed;

THAT, the County Public Finance Laws (Amendment) Bill (Senate Bills No. 39 of 2023) be now read a Second Time.

(The Senate Majority Leader on behalf of Sen. Kathuri Murungi, MP)

The Temporary Speaker (Sen. Catherine Mumma, MP), for the convenience of the Senate, pursuant to Standing Order 34(2A), adjourned the Senate at forty-five minutes past Six O'clock, without Question put.

11. **SENATE ROSE** – at forty-five minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, October 30, 2024 at 9:30 am*