

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 21st May, 2024

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

[The Deputy Speaker (Sen. Kathuri) in the Chair]

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Deputy Speaker (Sen. Kathuri): Clerk, kindly confirm if we have quorum. My eyes cannot see well. Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Hon. Senators, we now have quorum.
Clerk, call the first Order.

COMMUNICATION FROM THE CHAIR

MEMBERSHIP TO MEDIATION COMMITTEE ON DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)

Hon. Senators, I have a Communication No.21 of 2024 on the membership to the Mediation Committee on the Division of Revenue Bill National Assembly Bills No.14 of 2024.

As you may recall, at the sitting of the Senate held on Tuesday 14th May, 2024, I conveyed a Message from the National Assembly, that on Monday, 13th May 2024, the National Assembly by resolution, rejected the Senate amendments to the Division of Revenue Bill (National Assembly Bills No.14 of 2024).

Consequently, the Bill was committed to a mediation Committee in accordance with the provisions of Article 112(2)(b) of the Constitution.

Hon. Senators, you can have your seats.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(Several Senators entered the Chamber)

In the Message, the Speaker of the National Assembly appointed Members of the National Assembly to the Mediation Committee to consider the Bill in accordance with Article 113 of the Constitution.

Hon. Senators will recall that while conveying the Message, I indicated that at an appropriate time, I would appoint Senators to the Mediation Committee.

Hon. Senators, pursuant to Article 113(1) of the Constitution and Standing Order No. 166(2) of the Senate, and in consultation with the Majority and Minority Party Leaders, I appointed the following Senators to the Mediation Committee-

1. Sen. Kathuri Murungi, MGH, MP
2. Sen. (Dr.) Boni Khalwale, CBS, MP
3. Sen. Fatuma Dullo, CBS, MP
4. Sen. Jackson Mandago, EGH, MP
5. Sen. Mohamed Chute, MP
6. Sen. Edwin Sifuna, MP
7. Sen. Moses Kajwang', MP
8. Sen. Agnes Kavindu Muthama, MP
9. Sen. Eddy Oketch, MP

Vide letter, Ref: SEN/L and P/MC. 2024(03), dated 16th May, 2024, the aforementioned names were communicated to the National Assembly. The Mediation Committee may begin its work.

I thank you.

Next Order.

(The Clerk-at-the-Table consulted the Chair)

Hon. Senators, I will allow two or three comments, starting with the Deputy Minority Leader, Sen. Wambua. Is it Kiio or Kihio?

Sen. Wambua: Mr. Deputy Speaker, Sir, it is Kiio.

Thank you for indulging us to just make brief comments on the procedural Communication from the Chair.

I think the Senate has put its best foot forward with the names of the Members that have been appointed to this Mediation Committee. In fact, when you look at that list from No.1 to No.5, they are all titled leaders.

As we release this team to go and mediate, the expectation of this House is that they should go with a firm position. Not an inch more or less because the amount of money that this Senate has passed to go to the counties has been arrived at scientifically. It was not guesswork.

We are taking care of basic, but important aspects in the counties such as inflation, statutory deductions and non-discretionary decisions that have been made by the national Government that will have an effect on the spending of the counties.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Mr. Deputy Speaker, Sir, I am happy that Sen. Mandago is part of that team because he was in the counties. We expect this team will deliver Kshs415 billion to the counties.

I wish this team all the best. I am very sure that devolution will be better served.

Thank you.

The Deputy Speaker (Sen. Kathuri): Sen. Munyi Mundigi, proceed. Just a comment for two minutes is enough.

Sen. Munyi Mundigi: Bw. Naibu wa Spika, nikiwa Seneta wa Embu Kaunti, naunga mkono kamati ambayo imetengenezwa inayojumuisha Maseneta kutoka upande wa walio wengi na walio wachache. Ni kamati ya watu mashujaa, walioelimika vizuri na wameona matatizo yaliyoko katika kaunti zetu 47.

Hii haimaanishi kwamba Maseneta wengine hawawezi kufanya kazi hiyo kikamilifu. Najua tuko Maseneta 67. Lakini, hiyo kamati iko na Seneta wa Kaunti ya Meru, Sen. Kathuri na Sen. M. Kajwang', Seneta wa Nairobi Kaunti na wengine mashujaa.

Ningeomba waende wazungumze na watulutee matunda kwa sababu katika kaunti zetu zote 47 mambo ya *devolution* yameleta shida. Kaunti nyingi, kwa mfano, Embu haipati pesa za kutosha ilihali magavana wanataka pesa nyingi.

Agenda yetu kama Maseneta ni kupeleka mambo ya *devolution* mashinani kama vile kilimo, elimu na maji. Tunajua magavana waliochaguliwa wakati huu wa Serikali ya Kenya Kwanza wako na ujuzi wa kusaidia mwanachi hadi mashinani.

Sen. M. Kajwang', mkienda mjulishe kamati kwamba ile pesa tunataka iende mashinani ni ile ambayo mwananchi ametafuta kwa jasho na kulipa ushuru.

Naomba muongee na wale viongozi wa Bunge ya Kitaifa ili tuweze kuona kaunti zetu zitapata pesa za kutosha ili zisaidie watu wetu. Naunga mkono hiyo kamati. Nina matumaini wataleta ripoti nzuri.

Ni mimi daktari Alexander Munyi Mundigi.

The Deputy Speaker (Sen. Kathuri): Asante, Seneta wa Embu.

Proceed, Sen. Maanzo Daniel.

Sen. Maanzo: Mr. Deputy Speaker, Sir, thank you for your communication and the appointment of very able Senators to the Mediation Committee.

The Senate is here to defend devolution. The moment, we make a proposal for monies to go to the counties, it is not upon the National Assembly to say that money can be scooped from the National Government Constituencies Development Fund (NG-CDF). The money for NG-CDF is fixed by the Constitution and cannot be touched. All we are asking is for sufficient monies to be added and sent to the counties.

Mr. Deputy Speaker, Sir, many county functions have since been stuck to the national Government. We want health and agriculture to be fully devolved. Recently, there are markets allegedly being built in the counties by the national Government.

It puts the counties in a very difficult position because these markets have to be designed from Nairobi, but the land where they are going to be erected belongs to counties that seems as if they have no role. We want the counties to take their rightful place of taking development to the people at the grassroots level.

I am urging that team that there is no budging or going back, but to ensure this money goes to devolution functions. We have not yet met the constitutional threshold. Therefore, there must be sufficient monies to make sure that devolution works and that the counties get their rightful share so that they can develop.

Most of what has been going to counties are just expenses and very little money for development. It is high time that this Senate insisted for development money to go to the counties. I believe it will happen because it is our constitutional duty to ensure devolution is achieved through sending more money to the counties.

I support.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. William Cheptumo.

Sen. Cheptumo: Thank you, Mr. Deputy Speaker, Sir. I agree with my colleagues who have spoken before me. On the membership whose names you have read, I have no doubt in my mind that they have the capacity to match the team from the other side.

When the debate on this Bill was done in the National Assembly, I had a moment to listen to the discussions. There is a very serious concerted effort to mislead the country that governors do not deserve more money. The reason which I know my colleagues heard is because they claim that there is corruption.

I do not deny there is corruption in our counties. However, the solution for that vice of corruption is not to deny the county governments resources, but to put in place measures to deal with the corruption.

Secondly, they only spoke about two things in the entire debate; that if you increase the money for counties, you will be reducing NG-CDF. Secondly, when you increase the money for counties, you reduce the money for the Women Representatives.

Mr. Deputy Speaker, Sir, that is very narrow because the argument here is the budget allocation. I call upon my colleagues who will represent us in that committee to make leaders from the other side to understand that our push for more resources to counties is not about reducing NG-CDF money.

It is a constitutional requirement---

The Deputy Speaker (Sen. Kathuri): Maybe I should add you one minute.

Sen. Cheptumo: Mr. Deputy Speaker, I have been away for long.

The Deputy Speaker (Sen. Kathuri): You have been away for long. Let me compensate you.

Sen. Cheptumo: Thank you, Mr. Deputy Speaker. I have been indisposed for some time, but I thank God that I am back now.

In 2010, when I was serving as an Assistant Minister for Justice, there was a serious cry to have county governments so that we take our resources back there. Let us not kill that very important principle.

I support.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. Okioti Andrew Omtatah.

Sen. Okiya Omtatah: Mr. Deputy Speaker, Sir, I thank you for the opportunity to contribute to this important issue. I listened to the list you have read out and I have my

total confidence in them at 100 per cent. They will represent the true position of the Senate on the question of funds going to the counties.

Our counties are underfunded; irrespective of how the money is being used. Many services cannot be provided. Therefore, we need more funds to go down to counties.

As I have observed before, even the calculation of the revenue has been manipulated to leave out a very big chunk of national Government revenue. The “at least 15 per cent” we are talking of is not even pegged on the true picture of the revenue raised nationally. It is the revenue that the National Assembly decided should go to the counties.

Mr. Deputy Speaker, Sir, I am very happy you have chosen a team that I have no doubt will not blink. There is no room for blinking. This is a case whereby if they do not want to give us the money for the counties, let the budget sink. The time when we were being taken for a ride is over.

We must get the counties at least the very minimum they require to survive. The figures we have were arrived at through a study. They were not random and cannot be randomly varied. Let the counties have their cake. What they do with the cake is the work of the Senate. We will go down there to ensure that the money is used according to the law.

The Deputy Speaker (Sen. Kathuri): There is a lot of interest on this matter. I am afraid I might stop this at some point. Let us hear from Sen. Joe Nyutu.

Sen. Joe Nyutu: Thank you for the opportunity, Mr. Deputy Speaker. First, I congratulate the Members named by the Deputy Speaker of this honourable House, to go to the mediation talks. Like everybody has said before me, these are members whose capacity and commitment cannot be doubted by anybody.

One thing I would want to ask our colleagues in the committee to carry with them is to let the members of the National Assembly understand that we do not have any fight between counties and constituencies. Money going to the counties is the same money that goes to constituencies that these Members of the National Assembly serve.

We need to impress upon the Members of the National Assembly that no hostility should be entertained between counties and constituencies. When looking at the monies that will be sent to the counties, they should be friendly.

Mr. Deputy Speaker, I have heard many members of the National Assembly complaining in their constituencies of inadequate health facilities and medical care. If this is a concern that they have for their constituents, the only way to address such a problem would be to give in to our request of Kshs415 billion since the biggest responsibility of counties is health.

Mr. Deputy Speaker, Sir, this is so that our facilities may be sorted. Since there is a reason that was given by the Members of the National Assembly, when these Members go to the negotiation table---

The Deputy Speaker (Sen. Kathuri): You know, once you get an opportunity, you should engage what you can do in two minutes. Otherwise, the message was very clear and the team has been advised accordingly.

Sen. Osotsi, proceed.

Sen. Osotsi: Mr. Deputy Speaker, Sir, I congratulate the Members appointed to the Mediation Committee. I say that the task ahead is important as far as Article 96 of the Constitution is concerned. The National Assembly Members, whom I used to serve with, must understand that the most progressive thing that happened to this country since Independence is the promulgation of the new Constitution that provided for devolution. There is an attempt to fight devolution. Unfortunately, the National Assembly is the House that is being used to fight devolution.

I listened to the deliberation of the National Assembly on this matter. I think in the mediation committee meeting, the first agenda should be for the Majority Leader and the Chairperson of the Finance and Budget Committee in the National Assembly to apologise. They gave the impression that we, as Senators, were going to deduct money from the NG-CDF and money for roads. That was not the case.

We are not talking about the actual budget process. We are simply talking about the division of revenue between the national Government and the county governments.

So, even as we talk about that, we need also to talk about the bigger issue here. On this Order Paper today, there is Order No. 9, which talks about Bicameral relations between the two Houses. This Bill is unconstitutional. I wonder why we are rushing it through ---

The Deputy Speaker (Sen. Kathuri): Can you reserve your energy until we get to Order No.9?

You know, Sen. Tabitha Keroche is conspicuously sitting in the Senate Majority Leader's seat today. Is it like you are a Temporary Senate Majority Leader, or what is it?

Two minutes for you.

Hon. Senators, whenever you get time this afternoon, you can make your comment on that matter. So, let us make some progress.

Sen. Tabitha Keroche: Thank you, Mr. Deputy Speaker, Sir. It is true, I am now the Temporary Senate Majority Leader for one week. My boss is in the United States of America (USA). So, anything that you want to report to the Senate Majority Leader's office, this is the office you should report to now. You should clap for me for that.

I take this opportunity to congratulate the Speaker for the appointment of this committee on the Division of Revenue Bill. The lovely people of Kenya elected and sent us to this House, the 'Upper' House. One of the assignments was to ensure that we fight for more revenue and send it to our counties.

I know the team that has been elected has what it takes to achieve one of the assignments that we have been sent to do in this House which is to ensure that we fight for more revenue and send it to our counties. I think the other part is to ensure that money is used for the development of our counties. We should also ensure that our governors use this money for the development of our counties so that our people across Kenya can benefit.

The counties rely on the Chief Executive Officer (CEO) who has been appointed to represent the county, and that is the governor.

So, the next person who should do the oversight to ensure that money is utilised well, ensure that it benefits our people, is us, the Senators. So, let us do our work. I am

sure the people who send us here will celebrate to know that they put the right leaders in this House.

Thank you.

The Deputy Speaker (Sen. Kathuri): Thank you. Thank you. Let us go to the next Order.

The Senate Majority Leader?

Sen. Tabitha Keroche, you are the Principal Assistant of the Senate Majority Leader.

PAPERS LAID

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF EMBU WATER COMPANY

Sen. Tabitha Keroche: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the table of the Senate today, 21st May, 2024.

Report of the Auditor General on financial statements of Embu Water and Sanitation Company Limited, for the year ended 30th June, 2023.

(Sen. Tabitha Keroche laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): The Chairperson, Standing Committee on Trade and Industrialisation, Vice Chairperson or a Member?

Sen. Wakili Sigei, you have some papers to lay as the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights.

REPORTS OF THE JLAHR COMMITTEE ON ITS CONSIDERATION OF VARIOUS BILLS

Sen. Wakili Sigei: Thank you, Mr. Deputy Speaker, Sir. I beg to lay the following papers on the table of the Senate today, 21st May, 2024.

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Statutory Instruments Amendment Bill (National Assembly Bills No. 2 of 2023).

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Constitutional of Kenya (Amendment) Bill, No. 2 (Senate Bills No. 52 of 2023).

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Statutory Instruments Amendment Bill, (National Assembly Bills No. 3 of 2024).

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Statutory Instruments (Amendment) Bill (Senate Bills No. 10 of 2024).

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Thank you. I lay.

(Sen. Wakili Sigei laid the documents on the Table)

The Deputy Speaker (Sen. Kathuri): Let us have the Senate Majority Leader again lay the Paper on Trade, Industrialisation and Tourism.

REPORT ON THE COOPERATIVE SOCIETIES
(AMENDMENT) BILL, 2023

Sen. Tabitha Keroche: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the table of the Senate today, 21st May, 2024.

Report of the Standing Committee on Trade, Industrialisation and Tourism on its consideration of the Cooperative Societies (Amendment) Bill, (Senate Bills No.53 of 2023)

(Sen. Tabitha Keroche laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Thank you. Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

The Deputy Speaker (Sen. Kathuri): Hon. Senators, we have a statement under Standing Order No. 53(1).

Senator for Kirinyaga County, Sen. (Dr.) James Murango has two statements.

One to the Standing Committee on Devolution and Intergovernmental Relations. The other one is to the Standing Committee on Justice, Legal Affairs and Human Rights. So those two statements are dropped.

STATUS OF UNBUNDLING AND TRANSFER OF
DEVOLVED FUNCTIONS TO COUNTIES

(Statement dropped)

ESTABLISHMENT OF A LAW COURT IN
MWEA WEST SUB-COUNTY

(Statement dropped)

Next Order. I am following the Order Paper, those were the only two registered Statements by the Senator for Kirinyaga.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Clerk, who has the Statement on International Tea Day? Any other statement will be read tomorrow because they must be scheduled. Who has the statement on International Tea Day? Is it Sen. Cherarkey? Sen. Kisang' proceed to read it. Where is your Statement?

(Sen. Kisang' spoke off record)

Okay. Sen. Chute, proceed.

PAYMENTS MADE BY MARSABIT COUNTY
GOVERNMENT TO VARIOUS SUPPLIERS

Sen. Chute: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a statement from the Standing Committee on Finance and Budget regarding payments made by Marsabit County Government to various suppliers for the financial years 2021/2022 and 2022/2023.

In the statement, the committee should:

(1) Establish the ownership and registration status of the following companies: Dreamzone Company Limited, Bukhu Holding Limited, Kobe Construction, and Water Services, Sowel Trading Company Ltd, Al Miran Investment Ltd, Northface Investment, Bismil Ltd, Noxveel Ventures Ltd, Qolcha Taxib Services, Al Haleem(K) Ltd, Nexus Development Ltd, Bismal Enterprise, Kachacha Company Limited, Tula Salgan Limited, Bluetick Solutions Ltd and Kasemu Tech Ltd companies, which have been providing services to Marsabit County Government.

(2) State when Marsabit County Government started contractual engagements with the aforementioned companies, outlining the nature of services each company has rendered to the county, further verifying payments of approximately Kshs1,013,480,731.95 made to these companies during the financial years 2021/2022 and 2022/2023.

(3) Identify the bank accounts held by the Marsabit County Government in KCB Bank Kenya Limited and Equity Bank Kenya Limited and furnish bank statements for the financial years 2021/2022 and 2022/2023 for county government operations.

(4) Cause the Financial Reporting Centre (FRC), the Assets Recovery Agency (ARA), and the Ethics and Anti-Corruption Authority to investigate any suspicious financial transactions conducted by Marsabit County Government about payments for goods and services and hold to account persons responsible for misappropriation or pilferage of county funds.

The Deputy Speaker (Sen. Kathuri): Next Order.

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

Hon. Senators, by invoking Standing Order No 45(2), I hereby defer Order No. 8 we have no numbers for the Division.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

BILL*Second Reading*

THE METEOROLOGY BILL
(SENATE BILLS NO.45 OF 2023)

(Sen. Cheruiyot on 15.5.24)

(Resumption of debate interrupted on 16.5.24)

(Bill deferred)

We will proceed to Order No.9. Clerk, proceed to call Order, No. 9.

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

Sen. Cherarkey, proceed to read your statement. Today, you are not well organised.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, I have been on the top of the mountain. Thank you for your indulgence.

INTERNATIONAL TEA DAY

Mr. Speaker, Sir, I rise pursuant to Standing Order No.52 (1) to make a statement on an issue of general topical concern namely, celebration of the International Tea Day.

In 2005, tea-producing countries, including Sri Lanka, Nepal, Kenya, Indonesia, Malaysia and Uganda, came together to celebrate the International Tea Day. Later, in 2019, the Intergovernmental Group on Tea decided to celebrate International Tea Day every year on May 21st, the United Nations accepted this celebration, and the first U.N. International Tea Day was celebrated on 21st May, 2020.

Today, being 21st May, 2024, we join the rest of the world in celebrating International Tea Day. We encourage Kenyans to not only produce tea, but also to be consumers of it. Besides its taste, tea has several health benefits, such as reducing the risk of heart attack and stroke, aiding in weight loss, protecting bones, preventing tooth decay and loss, boosting the immune system, soothing the digestive system, helping to battle cancer and helping to relax the body.

According to the latest data from the Food and Agriculture Organization (FAO), more than seven million tonnes of tea are produced worldwide. Kenya is the third leading producer and the biggest exporter, accounting for about 28 per cent of the world's tea exports.

Small-scale tea farming in Kenya accounts for about 65 per cent of the total tea production in the country, with the rest being produced by multinationals. Over the years, the tea sector in Kenya has continued to be a major foreign exchange earner for our country and has become a catalyst for the growth of rural economies.

With the right political goodwill from His Excellency the President and the Deputy President, currently from the Kenya Kwanza Government, which is fronting tea reforms--- We had a tea engagement and reform sector meeting in Kericho County last year – that has started to take root, smallholder farmers will see higher market dividends.

As we entrench these tea reforms, mostly targeting small-scale tea farmers and local farmers, we recognize that the sector is one of the key drivers of Kenya's socio-economic development. It is a key pillar in economic growth and provides a direct source of livelihood to over 750,000 farmers and employs millions of people.

In Nandi County, for example, out of six sub-counties, four sub-counties grow tea. Some of the reforms already in place include the introduction of a minimum market price, the fertilizer subsidy initiative, an increase in monthly payments to farmers, timely payment of bonuses and a reduction of interest rates to farmers by financial institutions.

Mr. Deputy Speaker, Sir, with the increase in rainfall this year, we expect an increase in monthly payments to farmers, timely payment of bonuses and reduction of interest rates to farmers by financial institutions. With the increase in rainfall this year, we expect tea production to increase significantly.

It is worth noting that some tea factories are no longer picking tea, for example, in Bomet and many other counties, because tea production is too much because of heavy rainfall and subsidised fertilizer by the Government.

Mr. Deputy Speaker, Sir, we call upon relevant authorities to ensure steady market and price stability for our tea farmers. We also assure our tea farmers that we will support and assist in legislating. As you are aware, there is a Tea (Amendment) Bill on the Floor of the House proposing necessary reforms to ensure maximum production and better returns.

It is also a call to Kenyans, especially those who take hard drinks like alcohol, to reduce its intake and consume more tea to ensure we improve on local consumption and protect our farmers. I know a number of us take other types of drinks, but I urge Kenyans to drink tea in the morning and evening.

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, I am afraid that some of the issues you are now raising are not in your statement.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, tomorrow is International Tea Day. So, I request---

The Deputy Speaker (Sen. Kathuri): Please read the statement as approved.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, just in 30 seconds, since we will celebrate International Tea Day, if people who take other drinks take tea, we will make progress as a country.

Thank you for your indulgence.

The Deputy Speaker (Sen. Kathuri): I want to allow two or three Senators to comment on the Statement on International Tea Day, starting with the Senator for Bomet County, Sen. Wakili Sigei.

Sen. Wakili Sigei: Mr. Deputy Speaker, Sir, as we prepare to celebrate International Tea Day tomorrow in Nandi County, we take pride as tea growing zones because tea is one of the major foreign earners for this country.

Where I come from, I grow tea in four out of five sub-counties. If I may say, 90 per cent of all cash crops is tea. Therefore, I support the statement by Sen. Cherarkey who will be the host of the conference tomorrow.

I believe this will go a long way in enhancing the reforms, which have been running for a couple of years. This began with the first attempt by the Majority Leader of this House when he brought the Tea (Amendment) Bill of 2020. Unfortunately, people went to court to challenge various clauses of that Bill.

Fortunately, following the efforts which were picked up by the current administration, agriculture was identified as one of the five major items in its delivery to the people of Kenya and tea has been given a lot of attention.

Mr. Deputy Speaker, Sir, as you are aware, I am also spearheading additional amendments to the 2020 Act. As I speak, all the parties that had filed various cases in court have agreed to a compromise. We have withdrawn all those cases and reached a position where many of the issues which had been raised towards reforms in the tea sector have been resolved.

I believe the outcome of the conference tomorrow will highlight specific aspects to ensure that the tea sector in Kenya is improved to make sure that we enhance not only foreign earnings from tea, but also direct benefit to the farmers. I encourage Members from tea growing zones to participate in the conference and contribute toward ensuring that our farmers not only get support from the Government, but also have that personal commitment to ensure the sector is improved and supported.

Mr. Deputy Speaker, Sir, I thank you. Once again, I encourage Sen. Cherarkey to make sure that he fully engages the farmers, so that it is not a white-collar engagement, but a farmer-based kind of engagement on the ground.

The Deputy Speaker (Sen. Kathuri): Hon. Senator, ensure you make comments in two minutes. Clerk, kindly ensure it is two minutes.

Mombasa County is the highest beneficiary of tea that is produced in other counties. Sen. Faki, what do you have to say about this?

Sen. Faki: Asante, Bw. Naibu wa Spika, kwa kunipa fursa hii kuchangia taarifa hii kuhusu Siku ya Kimataifa ya Chai iliyoletwa Bungeni na Sen. Cherarkey.

Mombasa ndio soko kubwa kabisa la chai ulimwenguni. Ni faraja kubwa kwa watu wa Mombasa kwamba kwa miaka mingi sasa, wamekuwa wenyeji wa soko la chai ulimwenguni. Sio chai ya Kenya pekee ambayo inauzwa katika soko la chai la Mombasa. Kuna chai kutoka Burundi, Rwanda, Tanzania na sehemu nyingi ambapo chai hizo huchanganywa na chai ya Kenya – kwa sababu chai ya Kenya ni bora zaidi – ili kuboresha chai zingine ambazo zinauzwa ulimwenguni.

Jambo la kusikitisha ni kwamba hivi karibuni kumekuwa na hujuma ya soko la chai katika Kaunti ya Mombasa. Hujuma hizo zimechangia mataifa mengine kufungua masoko yao ya chai. Kwa mfano, nchi ya Tanzania imefungua mnada wao wa chai. Chai yao haiji tena Kenya kwa sababu ya masuala kama haya ambayo ninayazungumzia.

Tunapozungumzia jinsi ya kusaidia kuinua uchumi wa chai, ni lazima tuangalie pande zote mbili. Chai bila soko haitaweza kusaidia mkulima. Lazima chai ipate soko bora ambayo itaweza kumsaidia mkulima na yule ambaye anauza chai hiyo.

Hapa katikati kuna Shirika la Kenya Tea Development Agency (KTDA). Juzi tulikuwa na mkutano wa Kamati ya Labour and Social Welfare ambapo kuna suala lililotokea. Shirika moja la chai ambalo linaajiri wafanyikazi limekataa kulipa mfanyikazi kwa muda wa miaka mitatu sasa.

Viongozi wa KTDA walipoitwa kuja mbele ya kamati yetu, walisema kwamba huyo sio mfanyikazi wao ilhali kampuni ya chai ambayo inahudumu kule inasema huyo ni mtu wao. Mara nyingi, mashirika kama KTDA ndio yanahujumu juhudi za mkulima.

Katika soko la chai la Mombasa, wengi wanatumia wakati wao kufanya utafiti ili kuboresha chai. Kwa mfano, wiki iliyopita, niliwaambia baadhi ya Maseneta watumie chai ya *hibiscus* ambayo ni mojawapo ya chai ambazo zimebuniwa. Siku hizi kuna ladha tofauti tofauti za chai ambazo zinauzwa. Hii inachangia pakubwa kuipa Kenya fedha za kigeni.

Tunaposherehekea Siku ya Kimataifa ya Chai, ni lazima pia tutambue mchango unaofanywa na Shirika la East African Tea Trade Association (EATTA) kule Mombasa pamoja na soko la chai la Mombasa kwa sababu pale ndipo wale wanaonunua chai wanakutana na wale wanaouza ili kuhakikisha kwamba soko la chai linaendelea kupanuka.

The Deputy Speaker (Sen. Kathuri): Hapa naona Deputy Speaker *Emiritus*, Prof. Kamar.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to say a few words as we prepare to celebrate the Internatinoal Tea Day.

Tea has not only been a moneymaker for this country, but also a beverage that every Kenyan loves. We have our own way of making tea. Even when we are out of this country, people talk of Kenyan tea and the way Kenyans mix their tea. This is something worth celebrating.

As we prepare to celebrate, we know that there are areas in this country with no cash crops. We encourage tea growing zones to spread because tea is one of the crops that grow in most corners of this country.

I was in Embu the other day and I have shared this with Sen. Munyi Mundigi. I discovered something that I did not know. There is a plant that looks like tea called *muguka*.

Mr. Deputy Speaker, Sir, my discovery of *muguka* was interesting because, as we were driving, we met many vehicles being driven at a supersonic speed. I asked what was being rushed by in those vehicles. I was told it is something called *muguka*.

I then asked to be taken to a farm to see this plant. I saw the plant and it looked like a very healthy tea crop. I am saying this---

The Deputy Speaker (Sen. Kathuri): Sen. Tabitha Mutinda, what do you think you can inform a Professor who has a lot of knowledge?

(Laughter)

She must accept first that she needs your information.

Sen. Mutinda: Thank you, Mr. Deputy Speaker, Sir. I am also following the rules of becoming one. However, you and I come from the great County of Meru and it is good that the Professor notes that we also have tea in Meru County. She may only have seen *muguka*, but we also have tea.

The Deputy Speaker (Sen. Kathuri): She saw *muguka* in Embu and not in Meru. She mentioned Embu County.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir. I also thank Sen. Mutinda for that information because she read my mind that I wanted a replacement of *muguka* with tea. Not only in Embu, but also in Meru.

When I saw this plant in the farm that I went to, it was a very healthy bush and I told them that it was tea. They told me it was not. I then asked the lady who was the owner of that small acre. She told us that the only problem was that her son had also become an addict to *muguka*. They had been planting it, but the son became an addict and started causing problems.

Mr. Deputy Speaker, Sir, tea does not cause any problem. It is the best drink. I encourage that if we can plant tea and replace these other plants that seem to mess and be addictive to our youth, then we should spread out.

When I came back, I reported the same to my colleague Senator from Embu, that there was a plant that looked like tea, why not go for tea. I encourage him that as we celebrate this, he should go to the ground and encourage his people. This is because where *muguka* grows, we can have the best variety of tea. That plant is very healthy, except for the idea that it is very addictive, and our youth are derailed because of that.

Mr. Deputy Speaker, Sir, I thank you. I can see my colleague wants to respond to that.

The Deputy Speaker (Sen. Kathuri): Sen. (Prof.) Kamar, you have mentioned Sen. Mundigi five times. He must get two minutes to say something.

Sen. Munyi Mundigi: Asante, Bw. Naibu wa Spika. Ninaunga mkono siku ya kesho ya wakulima wa majani chai. Katika Kaunti ya Embu tuko na kaunti ndogo nne na Manyatta na Runyejes hupanda majani chai.

Mambo ya maajabu ni kuwa miaka mingi wamekuwa wakipanda majani chai. Wakati tulizaliwa, tulikuta watoto wakiripiwa karo na pesa za majani chai. Lakini, wakati huu kuna aibu kubwa sana. Hii ni kwa sababu, kilimo cha majani chai kinaendelea kuzoroteka na bei inaendelea kwenda chini.

Wakiendelea na siku ya kesho, wataongea vile kilimo cha majani chai kifaa kuchukua ile njia inafaa ili bei iweze kuimarika na kusaidia wakuliwa wa majani chai. Kama kuna mtu anaumia ni mkuliwa wa majani chai. Yeye huamkwa saa kumi na moja wakati mvua inanyesha. Hawa ni wazee, akina mama na watoto.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Wakati wa kuchuna majani chai na kuuza, wakulima hawa huwa na hasira nyingi sana. Ninaunga mkono hii siku na pia bei iangaliwe.

Barabara katika maeneo ya majani chai huwa hazipitiki. Magari mengi hukwama. Hizi barabara zinaweza kuimarishwa kupitia NG-CDF.

Bw. Naibu wa Spika, ningetaka kukosoa Sen. (Prof.) Kamar kwa kutaja mambo ya *muguka* na *miraa*. Upande wa Mashariki wa Mlima Kenya – Embu, Meru na Tharaka Nithi, hii mimea ni kilimo yetu kutoka zamani. Watu wa chini walikuwa masikini lakini kwa sasa, tungetaka kuwe na *value addition*, ili tuweze kutengeneza juisi, gamu ya kutafuna na vitu vinginevyo.

Ningeomba huyu Seneta ile wakati tutaleta huu Mswada hapa, vile nimekuwa nikisaidia kuunga mkono miswada yao, pia wao wanisaidie tufike Maseneta 27 au 30.

Ningetaka kumwambia Sen. (Prof.) Kamar tena kuwa *muguka* na *miraa* ilikuweko kutoka zamani za mababu wetu.

Ni mimi, *Deputy Party Leader*, Alexander Munyi Mundigi.

(Kicheko)

The Deputy Speaker (Sen. Kathuri): Sen. Faki, hoja ya nidhamu ni juu ya nini?

Sen. Faki: Bw. Naibu wa Spika, ningetaka kuuliza kama ni haki kwa Sen. Mundigi kusimama ndani ya Bunge hili kutia sherehe kwa mmea ambao kulingana na Narcotic Drugs and Psychotropic Substances Control Act, ni dawa ya kulevya?

Inahusiana na dawa ya kulevya. Na hata hapa Bungeni---

The Deputy Speaker (Sen. Kathuri): Hoja yako ya nidhamu ni nini?

Sen. Faki: Sen. Munyi Mundigi anapotosha taifa kwamba ni mmea ambao unafaa watu. Hii ni kwa sababu, mihadarati imepigwa marufuku kuambatana na Narcotic Drugs and Psychotropic Substances Control Act.

Huu *muguka*---

The Deputy Speaker (Sen. Kathuri): Sen. Faki, ningependa kukujulisha ya kwamba huo mmea----.

Order, Sen. Mundigi.

(Sen. Munyi Mundigi stood up)

Resume your seat.

Huo mmea unatoka Mbeere kule Kaunti ya Embu umehalalishwa na Serikali ya Kenya katika Crop Act, 2013. Labda ulete sheria nyingine ya kuutoa kama mmea maalum kwa taifa la Kenya. Hapo ndio itakuwa kweli sio halali.

(Sen. Faki spoke off record)

(Sen. Munyi Mundigi and Sen. Faki stood up)

No, both of you are out of order. You executed your point of order, Sen. Mohamed Faki.

(Sen. Faki spoke off record)

Sen. Faki, nimekuwa na wewe wikendi mzima na sitaki kukuhujumu ama iwe sikupi ruhusa kuongea. Lakini, ninaomba tupige hatua kwa sasa. The issue at hand is about tea, not *muguka*, pyrethrum or coffee. It is about the International Tea Day.

Sen. Tabitha is it on tea? Okay.

Sen. Tabitha Keroche: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I also want to join the world at they celebrate the Tea Day tomorrow.

I know the Nakuru County people are farmers of tea. As one of the Senators has said here, this is to ensure that the farmers are taken care of so that they can benefit. Internationally, tea crop is one of the crops that is highly regarded. However, when you see the people who plant and pluck it, they do not match to the standards given globally.

I do not imagine how the world would be without tea. Every morning we take a cup of tea so that we are able to have a good day. People should also know that tea is medicine. We should all celebrate international tea day and consume a lot of tea.

We should not replace it with wine or beer for our food the way Sen. Cherarkey was trying to say. The thirst of beer and wine when we take our meals is different from the one for tea. Let us not mix the issues. Just market your tea and ensure that the tea people understand that tea is medicine. They can consume a lot of it in morning and evening. One can have more than 10 cups of tea, if possible.

The Deputy Speaker (Sen. Kathuri): Sen. Sifuna, proceed.

Sen. Sifuna: Thank you, Mr. Deputy Speaker, Sir. First, I am aware that the entire Government is in the USA. I was looking across the aisle and seeing some of the most vociferous defenders of this Government. I thought they would be on that trip, but they are here celebrating International Tea Day with us. This should be a clear lesson that shouting hoarse from the other side will not endear you to the presidency.

Mr. Deputy Speaker, Sir, I am a bit confused on this International Tea Day. Should it be---

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

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

Sen. Cherarkey: Mr. Deputy Speaker, Sir, you cannot allow Sen. Sifuna to be cantankerous. Parliament is an independent arm of Government. The trip is undertaken by the National Executive. Is it in order to try and cast aspersions by indicating that any trip that is taken outside Parliament by the Executive should be taken with parliamentarians, yet we have our own budget and are an independent arm of Government? Is he making it in good faith or is he jealous that he was left out of the trip? Can he be clear?

Sen. Sifuna: I want Members of this House to reflect on their own standing. When you are only invited to trips to the goat auction in Mogoshu, but others are taken to the U.S.A, you should reflect on your standing within your own party.

Mr. Deputy Speaker, Sir, the second point I want clarity on is whether in celebrating this International Tea Day, we are celebrating the growers or the drinkers. If it is the drinkers of tea, that debate should be properly anchored by Sen. Osotsi from Vihiga County and I as the leading Luhya leaders in this House, who are known to be the highest consumers of this product.

I do not know what Sen. Cherarkey knows about tea more than Sen. Osotsi because Sen. Osotsi both grows and drinks tea heavily. So, my concern is that clarity. Maybe the originator of the statement can tell us whether we are celebrating the drinkers or the growers of tea.

Thirdly, I was a bit surprised hearing the Head of State speak the other day. He said that he is not aware of any Kenyan tea brand. I have grown up drinking KETEPA knowing it is Kenyan tea. I would like some clarity on these matters from the maker of this statement. Does Kenya have a Kenyan brand of tea? What is this I have been drinking? Is KETEPA from Sri Lanka?

Finally, I want to encourage the leadership of Nandi and Bomet counties, where this tea is grown, to also reflect on the resolution of the disputes that we have seen, especially regarding foreign companies that have been holding land in those areas and have been growing tea all these years.

At the beginning of this term of Parliament, there were very serious incidents in Bomet and Nandi counties, where people even lost their lives, and machinery and property of immense value was destroyed. We never heard from Sen. Cherarkey how that matter was resolved.

In fact, the protests were more violent and we did not see the sort of police action being taken on the people in Nandi and Bomet counties who were burning and destroying property owned by these companies.

As we celebrate this International Tea Day, please let us reflect on all these matters so that as a country, we protect this very key source of foreign exchange and this industry that employs thousands of Kenyans.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Sen. Wamatinga, proceed.

Sen. Wamatinga: Thank you very much, Mr. Deputy Speaker, Sir. I rise to make a comment on this statement. Indeed, I come from a tea-growing region and we produce some of the best quality tea in Kenya. The problem that we have been facing as farmers across board is that we have never taken a firm position on how we can empower our farmers, be it on tea, coffee, avocado or macadamia.

Indeed, tomorrow, as we reflect on tea consumers and growers, we must ask ourselves what is it that we have done for the tea farmers. I am happy to report that for the first time before this House, we dealt with the Tea Bill in the Agricultural Committee and improved on it to ensure that we empower the farmers by involving the county

Government. More important, is creating mechanisms where farmers can seek and access markets internationally directly.

As we do so, it is also important to ask ourselves whether we have been doing enough to ensure that there is value addition in our produce; be it tea, coffee, macadamia or avocado and whether it does justice to our farmers. With a bit of attention and the diversity of knowledge in this House, we can enrich our farmers by ensuring that the value chain gets down there.

As we do so, it is also important to report that for the first time, we have a Government in place that is and has come with a lot of political goodwill. They have ensured that the farmers of this country do not only get their rightful dues, but access and are represented in the boards and their voice is heard.

(Applause)

Mr. Deputy Speaker, Sir, for a long time, farmers have been left in the periphery. Decisions have been made in Nairobi and have been implemented down there. However, with a transformative bottom-up economic approach, farmers are now participating in a collaborative manner by being engaged so that they become decision-makers for the decisions that will influence them.

Additionally, we have seen the Kenya-Kwanza Government strengthen the cooperative movement through its leadership. That will ensure that farmers are able to reap from their collective bargain by ensuring that they pull together their resources so that they can make better bargains and also achieve economies of scale.

Finally, we have also seen that the Government has endeavored to bring an affordable subsidised fertilizer, though there are some people who have tried to abuse the mechanism. It has indeed improved the yield, and that is evidently clear. We can see that from the previous harvests. We have had better yield and of better quality. Most importantly, the farmers have been able to increase their income.

I support. Thank you.

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Oburu, proceed.

Sen. (Dr.) Oburu: Thank you, Mr. Deputy Speaker, Sir. I used to grow coffee in Nandi and I am still a farmer there. I want to comment on this International Tea Day because Kenya produces very high-quality tea. Internationally, Kenyan tea is used for blending other low-quality teas, so much so that countries like the Great Britain, which do not grow even a single tree of tea, have what is called 'English Tea.' This tea is sold as one of the best teas in the world. Yet Britain does not even have a single tree of tea. This is because of the trade barriers.

Mr. Deputy Speaker, Sir, when it comes to protectionism in the World Trade Organisations (WTOs), it is a very big argument. The developed countries where we export our goods, want us to continue supplying raw materials to their industries thus creating jobs in their own countries. They want us to be exporting raw tea.

That is why Sen. Sifuna was asking, what is the brand of Kenyan tea internationally? We might not have. We only have KETEPA locally. However, when you

want to process and export high-quality tea of Kenya, they put very high tariff barriers on the teas so that you cannot access their market. They want when they come to Mombasa, to see tea being auctioned raw. Our farmers do not get value for their sweat from that.

It is high time that we negotiated jointly as Africans and as the third world and agree on how to pressurize that market because they bring their goods here with very low tariffs.

We give them good terms under the European Union (EU) agreement. We do not have many industries so our only exports are agriculture. They just want us to supply raw materials without value addition. They make it extremely difficult for you to access their markets if you process and do value addition.

Mr. Deputy Speaker, Sir, we should work together on this area with other countries so that we can access those markets with the value-added goods in order for our farmers and people to benefit for their sweat and money.

I thank you.

The Deputy Speaker (Sen. Kathuri): Let us proceed to Bungoma County.

Sen. Wafula: Asante, Bw. Naibu Spika, kwa kunipa nafasi hii. Wengi wametaja na kusifia kubugia aina nyingi ya chai. Lakini katika kizazi hiki cha Serikali ya Kenya Kwanza, japo tunasherehekea siku ya kimataifa ya chai, ni lazima tuhakikishe kwamba katika vitongoji vya nchi hii wakulima na wanywaji wa chai wanajivunia vinywaji hivi.

Bw. Naibu Spika, katika bonde la ufa na sehemu ya Mlima Kenya miundo mbinu na msingi imewekwa imara ili kuwalinda wakulima pamoja na viwanda vya majani chai. Katika Mkoa wa Magharibi mambo ni tofauti. Japo tunasherehekea kimataifa, kimashinani watu wana maswali ya kuuliza. Katika mkoa huu, hususan Mlima Elgon na vitongoji vya kaunti ya Bungoma, tulikubaliana na Serikali kwamba ni lazima au ni sharti kuwe na viwanda au kiwanda ili wakulima wa majani chai katika eneo hilo wafurahie kama wenzio kutoka sehemu mbalimbali za nchi ya Kenya.

Hadi sasa, mfumo wa makadirio ya kifedha umepita lakini bado tunaishi kwa matumaini. Tunataraji kuwa isiwe hadithi ya matumaini ya mbwa kutamatika pale ule mlango wa jikoni unapofungwa.

Sasa, tunajadili umuhimu au ubora wa majani chai lakini hatuwezi kuwa na majani chai ya hali ya juu iwapo pembejeo ni gushi na watu wanaohusika hawawajibiki wala kuhakikisha kuwa wakulima wa majani chai, pareto na kahawa wanapata mbolea ambayo inastahili na hivi kwamba ni ya kiwango cha kimataifa.

Japo tunafurahia haya, kama Serikali tuna changamoto kuhakikisha kwamba tunaendelea kufurahia kwa pamoja kwa jasho la haki. Wasio wakulima wanatoa jasho, na wachache wanakula manufaa ya jasho la wakulima katika nchi ya Kenya.

Sasa, ni jukumu letu sote kama Maseneta katika Bunge hili kuhakikisha kuwa tunawatendea haki wakulima, wanywaji wa chai na vile vile washika dau katika sekta nzima ya chai.

Asante sana. Nawatakia sikukuu njema ya chai.

The Deputy Speaker (Sen. Kathuri): We have very few minutes left to wind up this Order.

Proceed, Sen. Maanzo.

Sen. Maanzo: Thank you, Mr. Deputy Speaker, Sir. Tea is a very important plant in the country. I want to take the direction of the tea growers; the farmers. In the last 10 years, there have been issues, although most of them have been sorted out either by legislation, management or the Government, especially where the tea farmers were not getting a proper deal for their sweat.

Mr. Deputy Speaker, Sir, my first trip to Meru County was with you. We were going to sort out a very urgent matter on tea growers. We went to your constituency with quite a number of Members of Parliament and the farmers come out strong. With your leadership, a solution for the farmers was to be found within 24 hours. They had threatened to uproot all the trees and they were going to plant plants that are more profitable.

This country should never find herself in such a situation where there are delays in payment after farmers sell their tea. Farmers should be paid the right value for their tea once they sell it. The tea is marketed in Kenya and all over the world. For many years, I have been in the Standing Committee of Agriculture, Livestock and Fisheries. I am very familiar with what is happening in Mombasa County's tea market and abroad in the tea auctions.

The tea coming from Meru County and Mt. Kenya region in general is highly sold in Russia through Dubai. Our marketers have found huge and new markets in Russia. Therefore, we should make sure that at all times the farmers get value for their sweat, work and commodity.

I thank you and support.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. Kisang'.

Sen. Kisang': Thank you, Mr. Deputy Speaker, Sir. I also rise to make comments on the International Tea Day and to confirm that Elgeyo Marakwet County is also a tea-growing county. We are known for other things, but we also grow tea and we have one factory. We are in the process of getting a second one.

Kenya produces high quality tea as our colleague and senior Sen. (Dr.) Oburu has said. The biggest challenge we have is that we export raw tea. The United Kingdom (UK) acquires our tea, processes and packages it as 'English tea.' If you go there, you will purchase it very expensively yet the beneficiaries are not the Kenyans who are growing the tea.

It is very important that if there are any barriers that do not allow us to export our processed tea, then we approach it the way the President has with Toyota the Japanese brand. They are coming to Kenya to set up a factory to manufacture spare parts. If they do not open up these barriers, we should make them process the tea in the country so that we can generate employment opportunities for our youth.

In the early 1980s and 1990s, when there was a lot of deforestation, the late President Daniel Arap Moi came up with the Nyayo Tea Zones. The reason was to ensure we conserve our forests. I believe that we also need to encourage our communities because in the process of planting and growing 15 billion trees, we need to partner with the Kenya Forest Service (KFS) so that we ensure that instead of fencing our forests, we

grow a few metres of tea around them. This will generate employment, promote foreign exchange and employ our youth. It is very important.

People have talked about addiction to certain substances such as *Miraa*. I believe that the tea we consume such as KETEPA and Fahari is very pure. Maybe we need to put something in it so that our youths will get addicted to the tea instead of other substances. Sen. Sifuna, you stated that you are the highest consumers of tea in Western Kenya. Majority of us from the Rift Valley consume tea and milk not the other substances you do.

Let us encourage our people to grow a few acres of tea where there is fertile land so that we can have more cash crops across the country. I support this day. We need to celebrate; even so our farmers and consumers the most.

I thank you. I support this statement.

The Deputy Speaker (Sen. Kathuri): Last but not least, Sen. Abass.

Sen. Abass: Thank you, Mr. Deputy Speaker, Sir. The tea growers think they have the rights for tea only while we know that Kenyans are the highest consumers of tea. Therefore, Sen. Cherarkey should appreciate that we take a lot of tea and we are marketing it.

Much has been said, but the Kenyan tea is of high value. The unfortunate thing is that it is being monopolised by the multinationals that are growing it. The Kenyan farmers are disadvantaged because they rarely access the market and most of the tea is now auctioned.

Another thing is that Kenyan tea is one of the best. Countries such as the UK and Pakistan do not grow tea. However, they import tea from Kenya then repackage and rename it as from their countries. For example, KETEPA tea is grown in Kericho by multinationals. However, when you go to other parts of the world, you will find that it is known to come from the UK. I know the same thing is done by Pakistan and other countries.

The problem we have is the middle men. Most of the farmers are not getting value for their product. They are disadvantaged because of brokers. The KTDA has not been giving good services to our small-scale farmers. Therefore, we need to review the tea auctions and the other things.

Another thing is that instead of Kenya selling the raw material, we need to add value to tea so that, at least, we can get value for the farmers.

The Deputy Speaker (Sen. Kathuri): There is a Member who is on and off. Sen. Tabitha Mutinda, do you want to comment on this tea day or on another matter that is coming in the next order?

Sen. Tabitha Mutinda: Mr. Deputy Speaker, Sir, I have really been waiting to make a comment.

The Deputy Speaker (Sen. Kathuri): You are on and off.

Sen. Tabitha Mutinda: I do not know what is happening with my microphone.

(Sen. Sifuna spoke off record)

Sen. Sifuna, you are out of order.

The Deputy Speaker (Sen. Kathuri): Can you speak on behalf of all the people of Meru, including myself?

Sen. Tabitha Mutinda: Exactly, Mr. Deputy Speaker, Sir. I want to speak on behalf of Meru County where you also come from. This is one of our cash crops. Meru should stop being seen to only deal with *muguka* and *miraa*. We are blessed with different cash crops that have international markets. That is why I encourage many people to visit. It is very hard to find people suffering from hunger or any other challenging issue because when it comes to job opportunities and cash crops, we lead in these two.

Mr. Deputy Speaker Sir, all said, I ask Sen. Cherarkey why this invite was not extended to this Senate. This is because some of us would pride in celebrating, especially with the growers.

Sen. Sifuna had raised a concern on who is to be celebrated. It is good to know that without the farmers, we will not have the end product. Being the consumers of the end product, it is always very critical to celebrate these farmers and ensure that they continue expanding the agricultural sector.

From my business perspective, I support the tea industry very much. I know that the Government has also put ahead matters of fertilizer, the correct seedlings and research centres. We, therefore, believe that as we move forward, farmers will have direct markets for their products.

Thank you.

The Deputy Speaker (Sen. Kathuri): Thank you.

Next Order, Clerk.

BILL

Second Reading

THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILLS NO. 44 OF 2023)

(Sen. Cheruiyot on 9.5.2024)

(Resumption of debate interrupted on 9.5.2024)

The Deputy Speaker (Sen. Kathuri): Sen. Wakili Sigei, you have 19 minutes. You can utilise them if you are ready.

Sen. Wakili Sigei: Thank you, Mr. Deputy Speaker, Sir. Sen. Tabitha is already complaining. I am indicating to her that I will not do more than 19 minutes, it could even be less.

Thank you for giving me the opportunity to speak to this very important and sad Bill that has been brought before this House.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

To start with, I ask the hon. Members of this House to read the report that the Justice, Legal and Human Rights Committee (JLAHC) tabled on this particular Bill so that they understand the extent of the provisions the Bill is seeking.

While the Senate Majority Leader was moving this Bill, he indicated to the House that over time, efforts have been made to ensure that the bicameral relations; the relationship between this House and the National Assembly is harmonized, so as to ensure that the legislative mandate of the two Houses is aimed at advancing their role.

Mr. Deputy Speaker, Sir, you went ahead to also confirm to the House that previously, there have been efforts to pass legislations that would govern this particular relationship. However, in the 12th Parliament, there was a Bill that was passed by this House; The Determination of the Nature of Bills, (Procedure Bill), Senate Bills No. 30 of 2018. This hon. House debated and passed it, but it was not considered by the National Assembly. The reason behind that inability to have it considered is what in the view of our Committee, informed the contents of the present Bill.

As I have said, I ask the Members to read the report whose ultimate decision made by the committee is to reject this Bill in its Second Reading. The justifications are running through from the provisions of the first clause to almost the last clause, which in a short while, I will explain and justify.

Article 94(1) of the Constitution of Kenya provides for the mandate of this House. That mandate is exercised for and on behalf of the people who elected the membership to this House. Article 94 (1) read together with other provisions of the Constitution provides for the Bills that must come through this House; whether emanating from the National Assembly or from this particular House and it goes down to the National Assembly.

The provisions of this particular Bill have tampered with that particular mandate of the House and in the process, will largely affect the legislative process. As a result, this House will definitely have failed in its role of protecting devolution and the other relevant additional mandates of the county governments, pursuant to the provisions of Article 96.

Mr. Deputy Speaker, Sir, in essence, in our report which is running through three chapters, the committee has analysed each and every provision of the Bill and given its recommendation on whether or not they support the mandate of this House.

One of the very critical provisions, which we must analyse and the reason why we are saying we reject this Bill, is Clause 6(2) of the Bill. It seeks that the question about interpretation of whether or not there is an issue that must be determined by the Speakers, is after it has been read in the National Assembly.

Allow me to refer to the provisions of Article 110(3) of the Constitution for purposes of stressing the extent of the attack on the mandate of this House by this particular Bill.

Article 110(3) Constitution starts by the words, “Before either house considers a Bill---,” the bold provision is, “before either house,” whether it is this particular House or the National Assembly.

The provisions under Clause 6(2) says:

“a Bill can be considered by the National Assembly---” A question only arises, when it says “Whenever a Bill is published in the Gazette---”

This means the Bill, first of all, will have already been published by the time such consideration is given in accordance with section 4 of this Act. "A Speaker may subject to Section 7 and at any time before the period specified for the second reading---" That is very critical because what the Bill is saying is that you can consider a Bill regardless of whether there is a question as to whether it affects counties or not. It can only become a question after the Second Reading stage.

In this case, it only becomes something that the Speaker can now be referred to have been seized of a question. We are saying that particular interpretation under this provision of Sub-clause (6) (2) is completely and fundamentally different from what the Constitution under Article 110(3) says.

On that basis alone, we are saying this Bill has taken away the mandate of this House without considering the fact that the Bill in itself ought to have enhanced the relationship between the Houses to ensure that the legislative mandates of the two Houses and as per the Constitution is supported to be as broad and as inclusive as it should be.

Another very peculiar provision is the clause that provides under Clause 11. This is on conciliation in the event of a disagreement. Remember earlier on in this House, you gave communication on formation of a mediation committee because of the disagreement that arose out of the Division of Revenue Bill.

This Act is stating that it does not matter where there is disagreement. The wording of it is "Where the Houses of Parliament are unable to reach a joint resolution on a question after invoking the provisions of sub-section 1, the originating House may proceed with the consideration of the Bill, notwithstanding the disagreement."

That particular proposal is making nonsense of the mediation process because the House, or rather the Speaker, can decide to say, "it does not matter the fact that we are supposed to go for mediation, we will proceed to consider the Bill notwithstanding that existing disagreement."

That is one of the reasons why the committee felt that instead of curing the lacuna that is in law, the Bill seeks to disregard the role of one of the Houses; either this House or the other.

Mr. Deputy Speaker, Sir, when we have such a provision being put in law, it plays completely contrary to the provisions of Article 96 that gives this House an unfettered role and mandate to protect the Counties. As it is framed, the Bill generally violates the provisions of the Constitution that derogates in terms of judicial pronouncements.

You recall that we have had cases all the way to the Supreme Court with some of them pending. As a matter of fact, the cases have been suspended for the sake of facilitating negotiations in the two Houses. When the National Assembly passes this Bill; it is a direct indictment on the fact that the two Houses had desired to resolve the disputes which are before the court.

In essence, the position that has been taken by the National Assembly to pass this Bill is a direct indictment on the pending cases on the goodwill that this House had and the goodwill that the leadership of this House had in considering an accommodation of negotiations prior to the cases being resolved by the court.

One other very particular provision of this particular Bill is the one that states that if one House has considered the comments and submissions by the public in the course of a public participation, another House is under no obligation to do public participation in the case of any particular legislative process that they are undertaking. That is completely against the provisions of Article 118 of the Constitution.

Mr. Deputy Speaker, Sir, this is the provisions of Clause 5 of the Bill. Clause 19(6) says:-

“In considering a Bill or a matter on which a committee of a House of Parliament has conducted public participation, a committee of the second House may-

(a) elect not to undertake a similar exercise and rely on the findings of the committee of the first House.”

Mr. Deputy Speaker, Sir, the provisions of Article 118 of the Constitution gives it a mandatory term that before you consider any particular legislation, you must engage in public participation. By approving or passing this Bill, we are basically saying we are not going to be under an obligation to conduct public participation because the National Assembly could have or has already conducted public participation and have submitted a report.

That is one aspect that we are saying the Constitution had provided for the public fully participating when dealing with matters to do with legislation and on aspects that the public are expected to participate in.

Lastly, quite interesting, there is the provision that they have said we are supposed to participate in mediation, reconciliation or negotiating as the two Houses to ensure we arrive at a common ground when considering Bills. However, it has gone ahead under the miscellaneous provision to say that if by a report of, let us say, Justice and Legal Affairs Committee (JLAC), or any other committee, a recommendation is made to this House that a judicial process be undertaken. Members of that committee or an official of this House, whether from the secretariat, or otherwise, advises the House to go to court to protect the mandate of this House, such a person commits an offence and will be surcharged.

Any cost that, for example, the Senate incurs in litigation will be charged upon that particular individual. That is telling us that if we were to sit back as a House and decide that we must defend the mandate of the Senate in court, they will have committed an offence. The offence attracts a penalty. That penalty on our part will be met by the person who advised the House, whether it is a committee, an elected member or a member of the secretariat.

That is one such draconian provisions. It is something that I am very sure did not get into the consideration of the House. If it did, indeed, then how low a House can go in giving such provisions in law? This is what the National Assembly gave us. This is under the provisions of Clause 20(5) and (6).

Mr. Deputy Speaker, Sir, this is very important, you will allow me to read so that the House and Members can understand the extent to which the mandate of this House

was aimed at being curtailed. They have attempted to define what wasteful expenditure means under provision of Subclause 5. It says-

“The cost in respect of the wasteful expenditure under Subsection 5 shall in accordance with a prescribed procedure, be recovered without delay from a public or a state officer, including a holder of a political office.”

In this case, whether they are members of this House who are members of certain committees or who are members of certain groupings that have decided to advise the House lawfully to take action in court or who caused the House of Parliament not to comply with the requirement of this section.

Even if we desired to say we are under an obligation to ensure that we enact law and, therefore, we amend the provisions of this Bill, that is one such provision the committee could not appreciate. We cannot understand why the membership of the National Assembly could include in a Bill and allow it to go through the process until it is passed and forwarded to this House for consideration.

Mr. Deputy Speaker, Sir, as I had indicated earlier on, in principle, this Bill seeks to fundamentally restrict the legislative and representative mandate of the Senate as provided for by Articles 94, 96, 109, 110, 112, 114 of the Constitution in almost 80 per cent of its provision.

Secondly, the Bill violates the Constitution by derogating from provisions of the Constitution and judicial pronouncements on the procedure of introduction and proceedings of legislation in the two Houses. The case in point is the existing cases in the Court of Appeal and the High Court where certain pronouncements have been made on whether a Bill is a Money Bill or not.

This Bill is completely derogating from that pronouncement. As I have already submitted, Article 118 of the Constitution of Kenya, which mandates public participation has been taken away by the provision that if one House has considered this, the other House has no obligation to do the same.

Lastly, as I have said, the provision that restricts us from exercising the right as a House or as individual Members to advise the House on certain actions that can require going before a court of law has been restricted. That in itself is equally unconstitutional.

Mr. Deputy Speaker, Sir, as a whole, however much you would have desired to support and amend this Bill even if it means going for mediation and enhancing the bicameral relationship, this Bill is fundamentally wrong, unconstitutional and unfair to the provisions of the Constitution and the mandate of this House.

Therefore, I do not support the passage of this Bill and its provisions. I ask that this Bill be rejected and taken to mediation so that the proper mandate of this House, the provisions of Article 93 and the provisions of Articles 94 and 96 are protected.

Let the Bill be drafted as it had previously been requested by the joint session of the Members of this House and the National Assembly led by the respective Speakers and where the Office of the Attorney General was involved. A whole inclusive Bill that contains the text that protects the mandate of this House that has been given by the representation that is in the House should be drafted.

Mr. Deputy Speaker, Sir, I, therefore, reject and ask the membership of this House to read the report so that they internalise and understand that the only way that we will protect this House is by making sure that whatever legislation that is debated and passed in this House are those that protect the mandate of the Senate.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Thank you, Chairperson Justice, Legal and Human Rights Committee (JLAC).

Next is Sen. Chararkey.

Sen. Cherarkey: Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I would have expected even Sen. Sifuna to take note that I have worn an orange tie. Therefore, as the Secretary-General of the ODM, he should at least be fair today.

I do not know what we need in our Standing Orders when the chairperson and the committee reject a Bill, or what becomes of it. However, let me give my Solomonic injection to this conversation. I know today in the afternoon you had a communication where we are going for mediation under the Division of Revenue Bill. However, what we are even requesting for counties is modest. It is only Kshs415 billion against the Kshs4.2 trillion budget.

While at least we accept that there are challenges with the running of counties, including wastage of resources and corruption, that should not be a reason to deny them money.

This bicameral parliament has come a long way from 2010 to now. I did not see the need for this Bill. The Constitution and legal precedence, even on Petition No. 3 of the Senate of this Republic in 2013 on Division of Revenue, was pronounced by the Supreme Court.

The Senate must be part of the budget-making process because it is in the Constitution. From the word go, I do not see the need for this legislative proposal. This legislative proposal has been made in a manner likely to make the Senate a rubber stamp of the 'lower' House.

The Senate is in its rightful place and should and must be respected. We are not an appendage of the National Assembly or any other entity. We are elected by the people. We are entrenched in the Constitution. That is why when a Bill comes to the Floor of the House, the life of a Bill as it is in the Constitution 2010, if it is passed in either of the Houses with amendments, it goes for mediation. I did not see the reason why we introduced it.

On that note, I want to celebrate my successor, Sen. Hillary Sigei, who is now coming of age. If you remember in my era, I used to shoot straight from the hip. That is why by the third year as the Senate's JLARHC chairperson, I was de-whipped.

If you look at my history, the HANSARD can bear me witness. My prowess is known for running JLAC in the last Session. Sen. Maanzo and yourself, the Chairperson of JLAC, and Sen. Cheptumo were there. We worked closely.

I want to encourage him. Being a chair of JLAC is not easy sometimes. We even went ahead and investigated the disappearance and extrajudicial killings.

So, I want to thank the Senate's Chairman of the JLAC and the committee for providing guidance. This is leadership. We will take a cue from the report of the committee and reject this Bill in totality. In toto! I do not know whether there is such a name in English.

I am happy, at least with the secretariat that we have. Allow me to celebrate our finest drafters and legislative drafters in this House. Dr. Johnson Okello, Director of Legal Services has been elected the President of the Multinational Association of Legislative Council (MALC). He is the first African jurist to sit. That body was formed 40 years ago. However, we have Dr. Johnson Okello, our Director of Legal Services, who holds a PhD in law.

He has practiced law for over two decades. I know where he comes from, having an education is not a problem. However, we celebrate him. For us who have interacted with Dr. Johnson Okelo, Director of Legal Services of the Senate, he is a man of immense knowledge, wisdom and guidance at any given opportunity. So, allow me to celebrate him and wish him well as he serves for the next two years as the President of the MALC.

If we were using meritocracy as a yardstick, these are people who should be occupying the highest offices in the land. However, since we use other measurements like night running and other issues, then it is always a complicated story.

Mr. Deputy Speaker, Sir, allow me to make five comments. Thank you and your office for supporting our secretariat.

Our secretariat is the best. Dr Johnson Okelo has led. I know several secretariats from our Clerk, Mr. Nyegenye, the Deputies and the Table Officers here. We always celebrate and have tremendous respect for all our staff, even the gatemen and the people who serve us tea and food.

All our staff, even the Serjeant-at-Arms are doing a tremendous job. I know this is the sum total of what you are doing in terms of leadership of the Senate and the Parliament of Kenya. However, you should not also gag us when we have reservations on some of the services in the House.

Clause 7 talks to Article 118 on public participation. How can you say if one House holds a public participation, the other should not? It is a constitutional requirement that public participation by members of public must be done. That is where we get the second opinion. Even on the Finance Bill now, public participation is mandatory.

You saw there were advisors that were paid Kshs1 billion. However, the only advice they gave us was to add Kshs10 to a loaf of bread. It is causing hue and cry. This is why we need to go back to the people in public participation.

It is in bad faith to say that if the National Assembly has had public participation, we should not hold ours. We have a symbiotic relationship. We are distinct, but we must do our jobs. Let the Senate and the National Assembly do public participation separately.

On the Sugar Bill in the mediation committee, the National Assembly conducted public participation. We should propose that if the National Assembly conducts public participation in Makeni County, the Senate can do it in Siaya County. They can do it in Nairobi and we can do it in Nandi County. We could also conduct public participation in

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Vihiga, Bomet, and Meru counties so that we can complement each other. However, this is not a competition.

On public participation, this proposal falls flat on its face. It must fall on its sword. I have seen a proposal about the Joint Sitting of Parliament in this Bill. Why would you call us – when the South African Parliament has a Presidential address referred to as South Africa's State of the Nation Address (SONA), they use joint sitting rules. Why are you calling us for a joint sitting and using the National Assembly Standing Orders? Then make the Speaker of the Senate to be like the Deputy Speaker of the National Assembly?

This Bill has been drafted to demean, disparage and eradicate the Senate's standing. This is why we, as a Senate, can pride ourselves on indicating for the first time that we need Kshs415 billion to be allocated to counties. We stand by this. Our stand will not change.

The other day, when they were handling the issue of fake fertilizer, they could not rise to the occasion and put the wrongs into right. We discussed the issue of joint resolutions in the Supreme Court. The ruling was that we must have a concurrence signed by the National Assembly.

Clause 10 says-

“(1) Whenever the Speaker of the second House disagrees with the question raised as contemplated under section 8(2)(b), the Speaker shall immediately refer back the question to the Speaker of the originating House for reconsideration, noting the specific clauses of the Bill subject to the disagreement and the specific reasons for the disagreement.”

My worries on this on Clause 10(3). It says-

"If the originating Speaker causes the Bill to be modified to accommodate the observations and recommendations of the Speaker of the second House, the question shall be deemed to have been resolved for purposes of Article 110(3) of the Constitution."

We have removed legislation from Members of Parliament to the two Speakers, which is dangerous. This would result in the creation of draconian laws. Speakers are human beings and can mislead the country and create draconian laws. You are a person of the Solomonic organization. This is why we have tremendous respect for the Speaker. Nonetheless, the law does not envisage a Speaker or Speakers being part of the law-making process.

Clause 12(3)(b) says-

"The relevant departmental committee of the Assembly is at liberty to take up the origination of the Bill or motion in question in co-sponsorship with the Senator who sponsored the Bill or motion, and the process of consideration of the Bill be deemed to begin afresh in the Assembly pursuant to the provisions of Article 109(5) of the Constitution."

The National Assembly has become a graveyard of our Bills. Under Article 110(3), they always refer our Bills to the Parliamentary Budget Office and their

departmental committees and declare Bills originating from the Senate as Money Bills. Therefore, they should not originate from the Senate.

We have lost many Bills and amendment Bills. I made an amendment on the issues of diaspora. The National Assembly is telling me that it is not a function of the Senate. A county like Busia borders Uganda, so does it mean it cannot be affected by international law? A county like Mombasa and Turkana border other countries. Also, counties like Kajiado, does it mean these counties cannot be affected by international laws? We need to be careful with Clause 12(3). Members will be struggling hard to develop a Bill, which you will approve. However, when it goes to the National Assembly, it is declared as a Money Bill.

Clause 14(2) says-

"The Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of Members of each House."

This is straightforward. This is like the communication you read today on the appointment of Members to the Mediation Committee. This is a procedure that the Constitution has provided.

Clause 16(1) says as follows-

"A committee of one House may hold a joint sitting with the corresponding committee of the other House to deliberate on matters of mutual interest and concern."

My worry is on Clause 16(4). It says-

"The National Assembly and the Senate shall, upon commencement of this Act, prescribe under their respective Standing Orders joint rules for the conduct of the sittings under subsection (1)."

Clause 16(3)(a) says-

"The Houses may, on a motion, prescribe rules for the conduct of a proposed joint sitting by committees of the Houses."

Clause 17 says-

"At any Joint Sitting of the Houses, the Standing Orders of the National Assembly shall apply with such modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate."

Clause 17(2) says-

"At any Joint Sitting of the Houses, the Standing Orders of the National Assembly shall apply with such modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate."

We can have a Joint Sitting of Parliament for the State of the Nation Address. This law proposes that the Standing Order that shall apply in that Sitting is that of the National Assembly, which is dangerous. This is joint Sitting. I have used an example of the Parliament of South Africa. Whenever they have a joint sitting, they use joint rules. What is the purpose of Clause 17? To demean and make us look like Members of the County Assembly (MCAs), which we should not allow. I am not saying the MCAs are less. However, the standard of the Senate is high.

Clause 17(3) says-

"The Speakers of the Houses of Parliament shall enforce any directions given during a joint sitting in relation to the conduct of a Member of Parliament in accordance with the applicable provision of the National Assembly Standing Orders."

You heard the other day and this is in the public record, I raised questions relating to Bunge Tower. The Speaker of the National Assembly wanted to refer me to the Committee on Powers and Privileges. If this rule was applied, yours truly could have been crucified like Jesus Christ, yet I am doing the Lord's work. When using the Very Important Person (VIP) lift, you meet with tea, tissue papers and chapatis, yet the lift is for the VIP.

I would have been crucified by Speaker Hon. Moses Wetangula because I questioned Bunge Tower. He said that I could not access the certificate of occupation because I was a nobody.

Clause 18 says-

"The Speakers of the Houses of Parliament may, in consultation with the Leaders of the Majority Party and the Minority Party, arrange for a joint sitting of Parliament for purposes of an address by a visiting Head of State or dignitary."

This is okay. It is in our Standing Orders; I do not know why it is here. Our Standing Orders state that if we want anybody, including the President, to address this side, it is the prerogative of the Minority and Majority parties in Parliament. Why are we becoming perspicacious?

Lastly, on public participation, which is Clause 19, I agree with the Chairperson Committee on JLAC. This clause is in violation of Article 118 on public participation.

We are considering the Public Participation Bill. Remember the case of the Kiambu County Executive Committee Member and others who were taken to court for not holding public participation in the Kiambu County Finance Bill of 2013. For the first time, a ruling was made---

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

Mr. Temporary Speaker, Sir, call the Deputy Speaker out of order for distracting me while I am making my submissions or consulting loudly.

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

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

Sen. Kathuri: I forgive Sen. Cherarkey. He is my junior. Sen. Cherarkey, proceed.

The Temporary Speaker (Sen. Wakili Sigei): Deputy Speaker, you are out of order.

Sen. Cherarkey, proceed.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I am giving him instant justice, the way he does.

We need to be careful on this issue of public participation. I was using the Kiambu case in 2013 where they did a Public Finance Bill without public participation.

The courts have made themselves clear. How can you say here that the committee of Parliament shall consider views from the participating parties and go ahead and say that it is not an offence not to consider? It is self-defeating because there is a precedent that has been set.

Mr. Temporary Speaker, Sir, I agree with your committee that this Bill does not hold any water. Therefore, we should not be part of it.

I would like to inform Members of this House that in my Constitutional (Amendment) Bill of 2024, I have tried to distinguish the role of a bicameral Parliament. The Senate should be given the same powers as the Senate of the USA, where they are involved in impeachment and appointments by the President, including the Cabinet, and many other decisions.

For instance, why would a war emergency be declared by the National Assembly? It should be by Parliament because that is a serious issue that affects even the counties.

On this bicameral issue, I agree with your committee that during the Second Reading stage, we should reject this Bill in totality. Let it go to mediation. I do not see why we should prescript something that is already in place.

I am happy that some of Members of the House leadership are in the USA with the President. They should visit the Congress and the Senate to learn a few things about a bicameral Parliament. That is especially the Majority Leader of the National Assembly. The other day I heard him talking about division of revenue. Can he take time off to learn how a bicameral system operates before he starts fighting the other House?

I want to assure Sen. Sifuna that the reason some of us are invited to Mogotio for goat eating is because we are the people who plan many things in this country. We travel and even have interests in those countries. You do not need to travel to see many things. It is better to go to Mogotio. You should be happy that I always go to Mogotio because I save public money, unlike when I travel abroad.

(Sen. Sifuna spoke off record)

Mr. Temporary Speaker, Sir, Sen. Sifuna is trying to bring up another issue. You should rule him out of order. I have never used a private jet. Perhaps other people have used, but I have never used it.

(Sen. Sifuna spoke off record)

Mr. Temporary Speaker, Sir, you need to protect me.

In conclusion, let us take the position we have taken and reject this Bill in totality.

I support. Thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much, Sen. Cherarkey. Let us now listen to Sen. Maanzo.

Sen. Maanzo: Mr. Temporary Speaker, Sir, I had an opportunity to look at this Bill. I think Sen. (Dr.) Oburu, the Senator for Siaya, and the Senator for Meru understand the genesis of this Bill.

When we were in the National Assembly in 2013, there was this culture, which developed where the National Assembly used to bash the Senate whenever an opportunity arose. Similarly, the Senate would bash the National Assembly. Eventually, some ideas developed. That is why you see this Bill seeking to deal with bicameral relations. However, I do not think it initially came out in good faith.

The Constitution of Kenya is very clear and one cannot seek to amend or direct it through an Act of Parliament. This Bill has come to the Senate in bad faith. If we reject it, there is a possibility of mediation. I do not think that mediation should lie at all. The moment we reject a Bill in the Senate, that should mark its death. Any efforts to revive it are also unconstitutional.

First and foremost, the role of the Senate is clear in the Constitution. Luckily for myself, Sen. Kisang and the Senator for Meru, we never disrespected this House all the years we were in the National Assembly and eventually we found ourselves here.

Mr. Temporary Speaker, Sir, I just want to be kind enough. If you compare the two Houses, it feels different to be in the Senate. It is a little bit apprehensive in the National Assembly. You are also not sure whether you will have an opportunity to speak.

In the National Assembly, many people queue from 2.30 p.m. but it gets to 7.00 p.m. before even getting an opportunity to speak and that can run for months. Do you know what that does to a Member?

(Sen. Nyamu received a phone call)

The Temporary Speaker (Sen. Wakili Sigei): Order! Sen. Nyamu, the other day, the leadership of the House made a resolution that we should not do what you are doing while someone is on the Floor. You are on a call. Kindly respect the House and allow Sen. Maanzo to be heard in silence.

Proceed, Sen. Maanzo.

Sen. Maanzo: Mr. Temporary Speaker, Sir, this Bill had its origins on the wrong footing. During the Parliament that was there after 2017, there was a little bit of improvement in those frosty relationships. It was the House leadership, which used to lead the bashing from the 'Lower' House to the 'Upper' House and that would go unchecked. It happened until the time the Speakers agreed to be comparing notes on whether a Bill is a money Bill or not according to Article 110 of the Constitution.

I agree with the Senator for Nandi. That is why you see some of us are not anxious to process Bills, especially if you are in the Opposition. You come up with a Bill, but as soon as it is passed here, when it gets to the National Assembly, it finds its gravesite.

That happened to Sen. (Dr.) Zani's Bill on co-operatives. She really worked on it, but when it got to the National Assembly, it underwent a natural death. Now that she is no longer in Parliament, it is very difficult to revive it. However, I have seen a new co-operatives Bill and I think that is a blessing.

While in the National Assembly, I sponsored a Bill to deal with snakebites because people from Lower Eastern and Coastal regions experience many snakebites and many of them die. Snakes have gone unchecked by the Kenya Wildlife Service (KWS) and neither has it provided the necessary first aid medications for snakebites. That Bill never even got to the Senate. Time passed despite a lot of pushing for five years.

We have passed many Bills here, but I can assure you as soon as they get to the National Assembly, they will never be processed. They begin with the question; is it a money Bill? Almost every Bill has a money element. Unfortunately, out of that biasness, it is declared a money Bill, which should have originated from the National Assembly. The effort of a Member of the Senate ends up being in futility.

I had a lot of hope when Hon. Wetangula became the Speaker of the National Assembly. I thought he would do something because he understands this House and the National Assembly because he has been in both. I believe he is going to be instrumental in bringing the right interpretations. During his tenure, those attacks have reduced.

We have our Speaker and the Deputy Speaker. Hon. Kingi is an experienced lawyer and administrator, having been in the National Assembly and having been a Minister and governor before ending up in this House. He too carries the experiences of the two Houses. That has provided a lot of peace in many things, especially when it comes to where the two Speakers have to sit and agree on the way forward on a Bill.

Mr. Temporary Speaker, Sir, that notwithstanding, I do not know how this unfortunate Bill has found itself getting voted at the National Assembly and being forwarded here. I believe the two very-experienced lawyers should have ruled it unconstitutional on the face of it.

I have seen this practice over the years where Speakers allow the Houses to have their day and make decisions instead of making the decision for us. We are now at the right position to make a decision. I also believe that the decision will make in this House will not be contested elsewhere, even at the National Assembly.

Mr. Temporary Speaker, Sir, I would like to point out one issue only although, I do not know what Sen. Sifuna thinks of it. When we were dealing with the Affordable Housing Bill, we raised the issue of the public participation of this House. We said that whenever public participation takes place in another House, we should also do public participation when that bill comes to this House as well. I expect that when a Bill originates from here and goes to the National Assembly, it should get public participation there in accordance with Article 118.

Mr. Temporary Speaker, Sir, there was an unusual situation and I guess that is why we are at the constitutional court on the Affordable Housing Act because when it came here, we did not do public participation. Probably, we would have gotten more ideas and improved it, but that is in the past. We left it to the courts now that it has already become law and we have a hearing date to litigate on the same.

It is important when the law is followed on the face of it, especially, the Constitution. When the constitutional provisions are as clear as they are now, in relation to the bicameral status and when the Constitution has made it clear what the role of each House is, then there is no need to have a Bill of Parliament that seeks to interpret the Constitution or amend it in one way or another.

The spirit of the law of the Constitution must remain so that we leave the Constitution and the letter of the law as it was enacted by the people. The people of Kenya wrote the 2010 Constitution. Anyone wanting to amend it knows that there are provisions that go back to the people through a referendum and that there are provisions the two Houses can also amend.

Mr. Temporary Speaker, Sir, I can assure you from my experience that there have been many constitutional Bills seeking to amend the Constitution and they have never met the threshold required of two-thirds, even at the National Assembly. Those bills never made it here.

That should be the standard and that is why I support you and the Committee of the Justice, Legal Affairs and Human Rights (JLAC) that this Bill fails the constitutional test and it should die here, get buried in the Senate and should never be resurrected at any one time.

Thank you, Mr. Temporary Speaker, Sir, and I oppose.

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

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir. Allow me to begin by giving my disappointment for this type of Bill in this time and era. As a country, we pride ourselves in being a bicameral Parliament unlike other countries. Like when you go to Uganda, they only have the National Assembly. However, we are privileged to have these two Houses.

I am also disappointed because if the Senate was not there and we only had the National Assembly, putting in mind the positions the nominated Senators have on this side of the House, then this room would not be in place.

Mr. Temporary Speaker, Sir, I listened to your earlier contribution as the Chair of JLAC and I would like to compliment all Members of this Committee for a very good job that is well done. You have been keen to look at this Bill. In a nutshell, this Bill is trying to firstly demean the powers of the Senate and ignoring where these powers come from.

We did not just wake up and find these powers. There was a constitutional process that took place for us to be where we are. As colleagues have said, Articles 95 and 96 of the Constitution has stipulated clearly the roles of the two Houses – the National Assembly and the Senate. They have defined their exact roles and hence each and every Senator among the 67 know their mandate and roles. Why then do we need to embark and waste Government and taxpayers' resources on trying further to do what has been done?

I have looked at this Bill, Article 3 on the objectives of this Act. From (a) to (j), all the classes mentioned here range from Article 109(4), 110(3), 107(2) and 109(5) of the Constitution of Kenya. This indicates that all these have been factored and considered.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Looking at issues raised in this Bill, it is a monopoly that the National Assembly wants to acquire and yet the Constitution is very clear that we are the 'Upper' House. I will give an example with Nairobi County, which I also represent. Our elected Senator for Nairobi has 17 constituencies. Tell me, how one person in the National Assembly, a Member of Parliament (MP) who has only one constituency would want to come and demean a Member who has over 17 constituencies and 85 wards?

Mr. Temporary Speaker, Sir, that is trying to ignore what this House is doing. We are representatives of counties and we have our mandate. You and I and other Members sit in the Senate Business Committee (SBC). It is sad that I can now tell the root cause of all these problems.

This is because when we joined Senate and started serving this committee, we found court cases that were even there before. This is an indication that this is something that has existed for long and it is time, through the Leadership of both Houses to have closure on these issues and all these court cases. There are court cases for both Houses. It is time we put a stop to them.

If at this time we are discussing a bicameral Bill, then it is because we have given room for that. I challenge the Leadership of both Houses to take the lead and ensure that some of these issues are sorted.

On Article 118, public participation is a key and a constitutional role. It says-
"Parliament –

(a) shall conduct its business in an open manner, and its sittings and those of its committees shall be open to the public."

Mr. Temporary Speaker, Sir, although it has not taken off, but with the current Bunge Tower, there is provision of live airing of all committee proceedings in both the National Assembly and the Senate for members of the public to see and understand the work that goes on in those Houses.

Public participation was not done according to what the committee has mentioned. If this process was not conducted, then why are we having this Bill at this particular point?

The Bill talks about when a committee or a Member raises these issues, they will be committing an offence. Those are what we call mere threats. I do not find these kinds of provisions that threaten the Members constitutional from where I sit. It is sad that we can have Bills trying to give threats instead of offering long-term solutions.

We have seen that the Senate budget is the lowest in the whole Parliament, and yet some of these costs, like the court cases, are borne by the Senate. This is an unnecessary cost because some of the issues are already in place within the Constitution. If they are taken care of, we do not need to have legal costs still in place that need to be taken care of. Otherwise, those funds should be used in other ways in ensuring that we have maximum public participation as per Article 118 of the Constitution.

Mr. Temporary Speaker, Sir, with those few words, I beg to disagree completely with this Bill. If you would allow, because soon we are going on recess, we could even close on this Bill today, and vote on it as early as tomorrow. Let us focus on Bills that will help us move forward.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Tabitha Mutinda. Sen. Sifuna, proceed.

Sen. Sifuna: Thank you, Mr. Temporary Speaker, Sir. First, allow me to commend Members of this committee. As you know, the committee is chaired by my former classmate. It is such bold decisions that make me proud of being a Member of this House. That we can look at legislation objectively and say we have issues with this proposed legislation, and that we cannot support it. In fact, some of us have taken a position on previous legislation that has been sponsored to this House or originated from the National Assembly.

That if a Bill is unconstitutional, you should not even entertain the thought of subjecting it to a Third Reading, where you then introduce amendments. This is because, our position in the Minority side is that you cannot introduce any amendments to breathe life into an unconstitutional Bill. It should be dealt with forthright from the beginning as an unconstitutional Bill.

I see that the Members of this committee are people that I would take their position very seriously. I see Sen. Mumma, Sen. Veronica Maina and Sen. Okiya Omtatah. These are people whose advice on the constitutionality or otherwise of any piece of legislation I take very seriously.

There are three or four examples that I wanted to give. I saw that the Chairperson of the Committee himself ran us through some of those unconstitutional provisions as a House. This is what led to the conclusion by the committee that we, as a House, cannot abide by some of these proposals.

One of the problems we allow ourselves to get into is to allow such Bills to originate from the National Assembly. How do they beat us to originating such legislation?

In the historical relationship between these two Houses, the Senate has always complained of being the one that is sidelined and undermined at every turn. If we going to legislation to repair that relationship, we as the wearer of the shoe, should honestly be the ones originating the legislation that we believe will cure this problem. I know that a Bill originating from this House to cure this relationship would be far much purer because we are motivated in this House by the desire to see these constitutional institutions working and nothing else. I would trust this House to prescribe the medicine to this problem than any other place.

Mr. Temporary Speaker, Sir, even as we reject this Bill, I would very much challenge the Members of the JLAC to move with haste, put out our own version of a Bill to guide the relationships between these two Houses.

It is unfortunate that the Senate Majority Leader is not in the House with us today. Sen. Cheruiyot has walked this journey of the relationship of these two Houses, including the interpretation of Article 110, the matter that is before the Supreme Court and what needs to be done. He has cautioned us that during debate of this matter, we should not make it as if the entire National Assembly is, in fact, at odds with the Senate.

The best example was during the debate on the Division of Revenue Bill that was passed by this House. It was clear that, in fact, it is only a small section of Members of the National Assembly who think that everything should be perceived through the lenses of conflict between these two Houses. However, a vast majority of the Members of the National Assembly are people who believe in devolution and making sure that these institutions of devolution, including the Senate, work. You will see this demonstrated when we go to mediation over the Division of Revenue Bill.

Mr. Temporary Speaker, Sir, you as the chair of the committee, rightfully pointed out that if you look at a provision such as the one you referred to, relating to when a dispute can be said to have arisen, or when it needs to be dealt with, is in accordance to Article 110(3).

Section 6 of that Bill wants to rewrite Article 110 (3) of the Constitution. The wording of Article 110 (3). I have my copy of the Constitution here, presupposes that any dispute will be dealt with prior to any of the Bills being introduced in any or either of the Houses. However, Section 6 of the Bill proposes to rewrite that to mean a Bill can go before the House and undergo the First Reading, but then the timeframe at which point we can raise objection to that Bill or declare a dispute under Article 110 (3) to move just before the Second Reading of the Bill.

Mr. Temporary Speaker, Sir, the resolution of those questions needs to happen jointly and in the language of the Constitution under Article 110 (3), before either House considers a Bill. I do not know what the National Assembly defines ‘consideration’ as, or when consideration of a Bill begins. However, by the time you are introducing a Bill at the First Reading, that is consideration of the Bill. All matters must have been resolved before that is done.

Secondly, you and hon. Colleagues who have spoken before me, have made reference to the provisions of Section 19(6) of the Bill on the question of public participation. Again, under Article 118 of the Constitution on public access and participation, there is a requirement that every single piece of legislation that is being considered by either House goes through public participation. In fact, my argument is it does not matter where this Bill originates.

If a Bill is introduced into this House from the National Assembly as far as the Senate is concerned and as a legislative body, that is the first time we are interacting with it. Therefore, a key component of our consideration and passage of that Bill is public participation so that as a House, we can never have an excuse to abdicate that responsibility and go through a Bill or any proposal before this House, without subjecting it to the constitutional requirement of public participation.

When Sen. Maanzo was speaking, he made reference to the Housing Bill that was introduced from the National Assembly as well. The HANSARD will bear me witness that we in the Minority side ---

(Sen. Nyamu consulted loudly)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Sifuna, kindly hold.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. Nyamu, the Chair had earlier on cautioned you against what you are doing. You are out of order.

Proceed, Sen. Sifuna.

Sen. Sifuna: Mr. Temporary Speaker, Sir, if you look at the HANSARD, we in the Minority side during debate on the Housing Bill, were of the opinion that housing is a devolved function and it is the legislative mandate of this House to deal with questions of housing. Moreover, we needed to subject that Bill to our own independent public participation to find out the views of Kenyans.

The word of caution results from the fact that previously we have seen very shambolic public participations before the National Assembly. In fact, one of our biggest shames as a nation was where public participation was conducted on The Finance Bill 2023 in the National Assembly and 99 per cent of the people who appeared before the relevant committee opposed its provisions. However, in the end, all the proposals and suggestions from ordinary Kenyans; the Kenya Association of Manufacturers (KAM), the civil society and other quarters, were ignored. The Bill was passed anyway.

We hear that leaders from the National Assembly pronounce themselves at funerals and other public events that Bills will be passed and not even a coma shall be amended. I am happy that given the noise we made, especially as members of the opposition or Minority side in this House, I am now seeing stories in the newspapers that Members of the National Assembly are insisting on being taken through provisions of Bills before they vote.

That is progress although we have set ourselves an extremely low bar, where a Member of Parliament (MP) can admit to passing a Bill without reading it. We are now making progress. By the time we get to the 2027 election, we might have a different story.

The courts have spoken on this matter of public participation; that it cannot be a cosmetic exercise of checking boxes and saying that we have complied with the law on public participation. It has to be substantial and the views of the people must reflect in the final document. As a House, together with the National Assembly, we can never avail ourselves of power to do away with the views of the people on any particular legislation.

There is a very interesting provision under Clause 20 (5) and (6) of the Bill. Allow me to just read it out verbatim because I believe this is meant to intimidate professional staff of the Senate and the National Assembly from actually advising this House to avail itself with the option of going to court whenever there is a matter we believe is not right. We have enough matters in court to prove that it is also an option that is available to us as a House. Although we are the lawmakers in the land, injustice can also be visited on us, especially as the Senate.

Clause 20(5) states-

“If a court is satisfied that a House of Parliament, in an attempt to resolve a dispute, has not exhausted all the mechanisms of alternative disputes resolution as contemplated under this Section, and refers the dispute back for the reason that the House of Parliament has not complied with this Section, the expenditure

incurred by that House of Parliament in approaching the court shall be regarded as wasteful expenditure.”

It goes on to state under Sub Clause (6) that-

“The cost in respect of wasteful expenditure under Sub Section (5) shall be in accordance with a prescribed procedure be recovered without delay from a public or state officer including a holder of a political office who caused the House of Parliament not to comply with the requirements of this section.”

Mr. Temporary Speaker, Sir, you and I have the privilege of sitting in the SBC. You have seen numerous examples of attempts to resolve matters internally, but have failed due to various issues. I can see Sen. Tabitha Mutinda knows exactly what I am talking about. It is possible for us to fail to agree internally. There are people who sabotage attempts to resolve matters between the two Houses amicably.

If an officer of the Senate advises the House that at the stage which we are, the only place we can find a resolution is with the courts, then they say that it is Sen. Sifuna; a holder of a political office, elected Senator of Nairobi City County and member of the SBC who refused mediation and insisted we must go to court, then they should recover the money from me. This is meant to intimidate people from availing themselves of the option and exercise of the right to approach the courts for dispute resolution.

On the basis of that, I shall be objecting. In fact, today we received very good news as leaders of political parties. I am sure even the secretary generals of all the other political parties are happy that the High Court has agreed with us. The National Assembly cannot just unilaterally through a supplementary budget, remove all the money that has been allocated to Political Parties Fund.

I am happy with Justice Mwita. He has said that once the money is appropriated by the National Assembly, it cannot be reduced through an Appropriation Act as it happened in the first Supplementary Budget of September, 2023, which reduced the Political Parties Fund by almost Kshs800 million when we only had Kshs1.6 billion.

Going forward, I have taken the liberty of sharing that decision with Members of the National Assembly at least those from my party who sit on the Justice and Legal Affairs, the Finance and National Planning and Budget and Appropriations Committees of the National Assembly. They need to take note of what the court has said.

One of the most frustrating things is that at least for us in the Orange Democratic Movement (ODM) and with the Political Parties Fund, we have more than enough court orders. We have a court order that awarded us Kshs6 billion a few years back. It is now at Kshs10 billion. Nobody is bothered about honouring that court order.

When we hear people pontificate out there that they are a rule of law government and yet they have active court orders that they are ignoring, we know these are hypocrites.

On this particular one, I support the committee that we cannot have a situation where members of the secretariat are threatened with sanctions for advising this House to go to court when there is obvious injustice that has been meted on this particular House.

Lastly, is a matter that Sen. Cherarkey, the Senator for Nandi County, spoke about. On the question of Joint Sittings, this is why I have always pleaded with my

colleagues in this House that when matters such as these come before us, we must show a united front as Senators. When you see a member of the National Assembly disparaging the entire Senate, it includes you.

Mr. Temporary Speaker, Sir, what right does the National Assembly have to say that in a Joint Sitting we shall be subject to the rules or the Standing Orders of that House? I am sure if these proposals originated from the Senate, we would have special joint sitting rules that accommodate both Houses because that would be the fair thing to do.

Mr. Temporary Speaker, Sir, as you know, I do not attend those joint sessions because they are chaired by the Hon. Moses Wetangula. If Sen. Cherarkey thinks may be the Speaker of the National Assembly will not be too kind to him, I can assure him that when it comes to myself, I would even receive harsher punishment. I have seen some people online say that may be during the debate on the Finance Bill, I should go there grab the Finance Bill and run away with it, the same way it happened in Taiwan.

Those people do not know the Speaker of the National Assembly. I would be expelled from Parliament for five years without even thinking. We want the same rules that we use to debate here in the Senate to be applied during the joint sessions. It essentially means that we, as members of the Senate, have to start learning the rules of the National Assembly, yet we are not members of that House.

Those rules are not necessarily too different, but there are small differences here and there. I am sure that you have seen members struggling with our own rules in this House. Imagine subjecting some of them who just shout ‘points of order’ for nothing to the rules of the National Assembly. To protect the slow learners in the House and those who are still acclimatizing with the Standing Orders down the line, you must not subject these members to the rules of the National Assembly. They will fair far worse than they have been doing for the past two years here.

Mr. Temporary Speaker, Sir, you can see that when you speak about bones, the old people start crying thinking you are talking about them.

I oppose this Bill.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Sifuna.

Sen. Munyi Mundigi, proceed.

Sen. Munyi Mundigi: Asante, Bw. Spika wa Muda. Napinga Mswada huu unaohusu mamlaka ya Senate na National Assembly. Hii ni kwa sababu wakati tulienda kwa uchaguzi, kila Mkenya alichagua Seneta na Wabunge.

Tuko na maeneo Bunge 290 yanayowakilishwa na Wabunge na kaunti 47 zinazowakilishwa na magavana. Kwa mfano, kaunti ya Embu iko na maeneo Bunge manne na Kaunti ya Nairobi iko na 17. Pia kuna kaunti zingine kama vile Kiambu ambazo zina maeneo Bunge 12.

Kwa hivyo, ni aibu kubwa kwa sababu Wabunge wako na hasira na ile kazi kaunti 47 zinafanya. Tunajua ya kwamba wanapewa pesa nyingi. Kwa mfano, eneo Bunge moja linalowakilishwa na Mbunge mmoja linapata shilingi milioni 160, shilingi milioni 60 za barabara na marupurupu mengine kwenye *budget*. Kazi anayostahili kufanya ni kulipa

karo ya wanafunzi wa shule za msingi na sekondari. Ingawaje, tunaunga mkono hiyo kazi.

Kazi nyingine ya hizo pesa ni kutengeneza barabara. Wamekuwa wakipigana na kusema kwamba wanafanya kazi zote. Ni aibu kubwa sana kwa sababu sisi kama Maseneta hatuanguka kazi wanayoifanya. Tukipeleka Miswada yetu, wanatungalia kwa macho mabaya. Kwa hivyo, yale mambo wanayosema kuhusu huu Mswada ni ya aibu.

Tunajua ugatuzi ulikuja ili mwananchi aliye mashinani aweze kufaidika. Kwa sasa, wanataka kuturudisha kule tulikotoka miaka iliyo pita. Kwa hivyo, napinga. Wanafikiria kuwa wanatembea mbinguni wengine wetu tukiwa huku duniani. Nawaambia kuwa sisi sote tuko hapa ulimwenguni na wakati wa kwenda mbinguni, Mungu atakuja kutuchukua.

Jambo la pili ni kuwa wiki jana nilimsikia Mbunge mmoja akisema kwamba ati pesa ya MCAs ikipitishwa, iwekwe kwa NG-CDF. Hii ni aibu kwa sababu hata hawana heshima kwa MCAs.

Waheshimiwa Wabunge wa National Assembly wanaleta aibu. Hatuna haja na kazi zao na wasisikie vibaya kutuhusu. Pengine kile kitu kinacho tuunganisha ni mshahara tu. Kutoka leo, ninawaambia kuwa tuko Maseneta 67, 47 wanaongoza kaunti 47 na 20 wameteueliwa na vyame mbalimbali. Tunaangalia vile magavana wanafanya kazi na tumeona wanafanya kazi inayofaa. Ndio maana wiki jana, tulisema serikali za kaunti zipatiwe shilingi bilioni 415, ili watu wafanyiwe kazi ya kutosha katika ugatuzi.

Magavana kule vijijini wana kazi nyingi. Ndio maana tunawatetea waongezwe pesa. Wako na kazi kama vile ya kilimo, afya, maji na mambo mengine ili mfanyi kazi na watu kijijini waweze kujisaidia kwa sababu wanalipa ushuru.

Ni aibu kubwa sana kuwa Wabunge wanatuchokoza ilhali hatuna haja na pesa zao na hatujawachokoza. Waliotengeneza Katiba na kusema kuwa Maseneta wawe 'Bunge Kuu' walikuwa na akili ya kutosha. Wao waliangalia vile mwananchi alivyokuwa akiteseka. Ndio maana ugatuzi ulikuja na sisi tunafanya kazi inayofaa. Pia, walitunyima pesa hata ya mradi wowote ili tuweze kuangalia kazi kule vijijini.

Bw. Spika wa Muda, hawa Wabunge wamezoea vibaya sana. Ukienda kaunti zingine wakati kuna mkutano wa Raisi au gavana, Wabunge wanapewa muda mrefu wa kuongea lakini Seneta haheshimiwi hata na naibu wa gavana. Naomba Kenya nzima itafsiriwe kiwango cha Seneta. Kulingana na Katiba katika mikutano Seneta anahitajika kuzungumza kwanza, kisha MP, Women Representative, gavana na mwisho naibu wa gavana. Kwa hivyo, Maseneta wanadharauliwa lakini wanafanya kazi ya kutosha ya kuangalia vile gavana anavyofanya kazi.

Ningeomba wakituingilia hivyo, sisi pia tupitishie sheria itakayohakikisha pesa za NG-CDF zinakaguliwa ipasavyo. Wanajipiga kifua kwa sababu hakuna mtu ana uwezo wa kukagua pesa hizo. Ni aibu kubwa sana kwa hawa MP kutudharau, lakini watajua kuwa sisi ni 'nyumba ya juu' na wao wako kwenye 'nyumba ya chini.'

Kwa hivyo, naomba turudi kwa Katiba tena ili tujuwe vile kuko, kutoka kwa MP, Women Representative, Seneta halafu gavana. Kuna Maseneta hawawezi kuongea hapa kwa vile wamenyanyaswa na MPs. Ndio maana tumepitisha vile tutakuwa tunafanya.

Upande wa gavana, Seneta na MP ni kama shule ya msingi na sekondari. Sijawahi kuona mwanafunzi ametoka shule ya sekondari na kurudi shule ya msingi. Kwa hivyo, sio sisi tuliwaambia MPs walio na chuki na kiburi watafute kiti cha Seneta au gavana. Lakini wakitaka kiti cha Seneta wangoje miaka mitano ijayo.

Kuanzia siku ya leo, Wabunge wote 290 wajue kuwa kuna Maseneta 67 na kaunti 47. Tuna uwezo wa kuangalia vile magavana wanafanya kazi katika kaunti zote. Sio vizuri ati Wabunge kusema kwamba pesa ya gavana inaliwa. Kwani wao ni Maseneta?

Kwa hivyo, napinga Mswada huu kwa asilimia mia moja kwa sababu ni wa aibu katika Kenya yetu. Hakuna mtu mkubwa kama Seneta. Seneta ni mkubwa kuliko MP akifuatwa na gavana.

Asante.

Ni mimi Seneta wa Embu County, daktari ambaye ni deputy party leader wa Kenya Kwanza.

The Temporary Speaker (Sen. Wakili Sigei): Order, hon. Members.

Sen. Osotsi, proceed.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I am surprised as to why we are debating this Bill because it is unconstitutional in almost every clause that I have gone through.

Secondly, in the tradition of bicameral Parliament, bicameralism is managed without a specific legislation. It is the norms, traditions and Standing Orders. For one to decide to come up with a piece of legislation to manage the relationship between the two Houses, I think it is in itself a new standard that the owner of this Bill is trying to come up with.

Mr Temporary Speaker, Sir, probably one of the reasons the owner is trying to come up with this Bill is because of the power struggles that the two Houses have had in the past. You remember Petition No.284 of 2019 which led to the High Court nullifying a record of 23 pieces of legislation, including the Tax Laws Amendments Act, which the court declared a nullity.

When you read through this Bill, you will see an attempt to try and patch up things, so that we do not have an opportunity of going to court when we feel that there has been some form of discrimination or unfairness on the part of the Senate. I look at this Bill from that precinct.

We are in a bicameral Parliament. Maybe we need to reflect as a House whether we are truly in a bicameral Parliament or something in between. Bicameralism has to have an Upper House. That is the case in other jurisdictions such as the United Kingdom (UK), USA, France and even here in Africa, a country such Nigeria in West Africa.

Bicameralism must have a House that is reasonable and small that looks at issues with expert scrutiny and provides further democratic check on the Lower House. That is bicameralism.

In this country, we basically have two Houses where one pretends to be an Upper House, when it is supposed to be a Lower House. We must have a relook at the way bicameralism is structured in this country.

I had an opportunity last year to visit the Federal Republic of Nigeria, where I visited the House of Representatives and the Senate. When you visit the two Houses, even before someone tells you that this is a Lower House and this is an Upper House, you would see for yourself how the Senate of the Federal Republic of Nigeria is strong and effective.

You will remember that it is the Senate House that recently rejected the presidential request to send the military to Niger and other countries which had problems. The House acts with some firmness and cannot be intimidated. I think the same should happen in Kenya.

I thank the Senate for we have tried. In the eyes of the public, we have come out as a more reasonable House that stands with the people and is effective. Our colleagues on the other House where I served for five years have become a disgrace to this society. It was shameful how the National Assembly managed the impeachment Motion against the Cabinet Secretary, Hon. Linturi.

That should be a wake-up call to Kenyans that we need the Senate to veto the decisions of the National Assembly. At this rate, we are not going to have a parliament in this country.

I was so disappointed when the Finance Bill 2023 was passed by that House. The Members of the National Assembly were cheering like schoolchildren as they passed a Bill that was to punish the people of Kenya. Then a few months later, an MP stands somewhere and says, “we passed that Bill without reading”. That is a reason enough for that House to be vetoed by this Senate.

Someone here, I think Sen. Sifuna, suggested that the Senate should also initiate Bills to try and correct these wrongs in our parliamentary system, so that we get things to be done in the right manner.

Mr. Temporary Speaker, Sir, if you look at the history of bicameralism, the Senate in our case is a House of calm, has experts and takes time to scrutinize matters before they pass. If this person who came up with this Bill meant well for this country, he should have looked at other jurisdictions where we have bicameralism and understand that our problem is not how we relate with the National Assembly, but the lack of clarity as to which House is higher than the other.

We say we are the ‘Upper’ House because that is the global best practice. However, we need to put it in our laws, so that it is very clear which House is bigger than the other. If you read through this Bill, you will notice that the intention is basically to cripple the Senate and make it weak.

I have gone through the provisions of this Bill. Clause 7 is listing a number of laws and basically trying to say that this particular Bill should be--- For example, 7C says the annual county allocation of revenue Bill will be considered by both Houses. However, they go ahead and deny us the powers to participate in the appropriation Bill. The Constitution is very clear that the Houses of Parliament should be involved in the budget-making process.

Why should we be denied an opportunity to participate in appropriations Bill and Finance Bill? After all, we pass two major instruments in the financial process; The Budget Policy Statement and the Medium-Term Debt Management Strategy.

Why are we involved in passing these two important financial instruments when we cannot participate in appropriations Bill, Finance Bill or any other that is a money Bill? This is a bigger question that we want answered.

Mr. Temporary Speaker, Sir, Clause 14(1)(a) of this Bill says-

“If one House passes an ordinary Bill concerning county government and the second House rejects the Bill, it shall be referred to a Mediation Committee appointed under Article 113 of the Constitution”

On one hand, they want to make sure that the Senate does not handle some Bills, while on the other hand, they want to curtail the Senate, so that if it passes any Bill that concerns counties, then they can veto it and take it to the mediation committee. I have noted mischief.

Also, it does not make sense at all to say that this Bill affects counties and the other Bill does not. We are in the same country. There is no Bill that you can say does not affect counties or affects counties. All Bills are the same. They affect counties in one way or another because we are in the same country. So, if you want to legislate the issue of which Bill affects counties and which one does not should not apply.

I also find Clause 17 of this Bill very unconstitutional. Clause 17(2) says-

“At any joint sitting of the House, the Standing Orders of the National Assembly shall apply with such modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate.”

So, what do we do with our Standing Orders in the Senate? They are invalidating the Standing Orders of the Senate; that they are inferior to the Standing Orders of the National Assembly. It goes further to say-

“The Speakers of the House of Parliament shall enforce any directions given during a joint sitting in relation to the conduct of a Member of Parliament in accordance with applicable provisions of the National Assembly Standing Orders.”

Mr. Temporary Speaker, Sir, what this implies is that it elevates the Speaker of the National Assembly to someone even above our Speaker; that this Speaker of the National Assembly will have the power to punish a Member of the Senate on a matter that has come up before the joint committee. So, this is unconstitutional and should not see the light of the day.

On public participation, this Bill now goes beyond the main objective of managing bicameralism. It goes beyond that by trying to put roadblocks on the public participation. Clause 19(3) says-

“A committee of a House of Parliament shall have a broad measure of discretion in conducting public participation on a matter referred for its consideration.”

What is that? The courts have already ruled on this matter. Public participation should not be cosmetic, but be done adequately. However, in this clause, those who like rushing Bills through will now be able to rush through Bills without adequate public participation. Then it goes ahead and hides behind duplication to deny the other House an opportunity to conduct adequate participation on a Bill.

Clause 19(7)(viii) talks about the validity of the Bills which are processed by these Houses. Again, this section is unconstitutional.

It says-

“A committee of Parliament shall consider the views received from public participation broadly.”

This means that the specific views received from the public will not be given adequate attention. This law will facilitate that.

Clause 19(8) says-

“An Act of Parliament is not invalid on account of failure to incorporate any views submitted during public participation.”

You have seen the National Assembly go to the public, 90 per cent of the views that are given by the public are never implemented in the final Bill that is passed. One case is the Finance Bill and the Housing Bill. All the things that the public said were never factored in the final Bill that was passed by that House.

This Bill is trying to introduce other provisions using bicameralism to make it easy for the other House to pass Bills without being questioned in a court of law as to the adequacy of those Bills in terms of public participation.

Clause 20(1) of the Bill says-

“Before formally declaring the existence of a dispute between the Houses of Parliament, the Houses of Parliament shall in good faith make every reasonable effort and take all the necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary.”

This is stopping either House from taking any other measures like going to court on a matter. We shall not be able to take our disputes to court when we are required to do so as it has been done in the past.

Generally, this Bill is unconstitutional. It goes against the tenets of bicameralism that is not known globally and it should not even be passed by this House at this stage of the Second Reading. This Bill should be rejected in totality. This Bill is another attempt at killing devolution in this country. We know that the House that has been persistently used to kill devolution is the National Assembly.

Everything they do, even the way they behave on the ground in the management of rural roads in our counties. The National Assembly is an existential threat to devolution in this country. We thought that now that we have a Speaker who has been a Senator, things will be different. I am concerned that, in fact, under Speaker Wetangula, the National Assembly has become a very serious threat to devolution.

I served in the National Assembly under the current Attorney General (AG), who was against devolution, but not to the extent of the current Speaker. He has basically demonstrated that he cannot---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, your time is up. Thank you.

Sen. Orwoba Gloria.

Sen. Orwoba: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to stand and weigh in on this Bill. I want to take this time to also inform the public of what it takes to have a Bill get to First Reading.

Sometimes as legislators when we are out there advocating and trying to sensitize the public on the work that we do here, the public thinks you are lying when you say that getting a Bill to First Reading can cost an arm and a leg.

As we discuss this Bill, you realize that it further hinders or highlights the hindrances we deal with when legislating amendments that can impact the public in terms of changing their lives.

Mr. Temporary Speaker, Sir, I pride myself on being an amateur politician. In this sense, I get to learn a lot of things. I get to learn from those who carry themselves as veteran politicians, the electorate and the staff of Parliament. I am proud to say that I do not know much about Standing Orders. Every day for me is a lesson. With the six Bills I have tabled in the 21 months we have been here, I have learned.

First, I have learned that in the Senate, you can have a Bill that touches on devolution, you are passionate about it, draft it, and work with the legal clerks who help you. You get the first draft, go through the Committee stage, publishing, public participation, First Reading and Second Reading, and get to a point where your fellow Senators might want to punish you because they do not like you, so they want to drop your Bill. You get past this, only to find out that after all this and the Bill passes in the Senate, the National Assembly will quash it.

I would like to give you statistics of what it looks like right now. Sometimes, when we speak, I like to use data. In the 13th Parliament, the Senate has had 94 Bills that have been published. Out of the 94 Bills, the Senate Bills that are undergoing concurrence are 22. From the 22, you will find the Senate Bills passed and referred to the National Assembly, but have not been concluded are 18.

If you go through the statistics and compare the Bills, the Senate is passing with the ones the National Assembly is passing and bringing to our House for concurrence, you will see that, as a House, we are friendly towards the National Assembly. This is from the data put out on the number of Bills the Senate has concurred with the National Assembly and gone ahead to pass.

Nonetheless, one of the things we do not highlight enough is that there are Bills that originate from the National Assembly and come to the Senate. The Senate does not give concurrence because certain issues need to be discussed as they touch on devolution, and others have to be dealt with by the Senate. Those Bills are passed in the National Assembly and concluded. To anyone shocked out there, even without the Senate concurring and agreeing to those Bills, they are passed. The National Assembly quickly takes those Bills to the President to assent them into law.

An example is The Land Laws (Amendment) Bill (National Assembly Bill No.65 of 2023) sponsored by the National Assembly Majority Leader. This Bill did not get

concurrence from the Senate, which wanted to participate in certain issues. However, the National Assembly took the Bill to be assented into law.

Another example is the Statute Law (Miscellaneous Amendment No.2) Bill (National Assembly Bill No.68 of 2023) sponsored by the National Assembly Majority Leader. This Bill was assented into law without the participation and concurrence of the Senate. The Senate is the 'Upper' House.

I find it difficult to understand how then a proposed Bill from the National Assembly by a National Assembly legislator can be brought to this House to try and correct the wrongdoings that the National Assembly is participating in. In this same data, no Bills have come from the Senate that have not sought concurrence in the National Assembly and have been assented to law. The bad behaviour is coming from the National Assembly.

In the last Parliament, 73 Bills signed into law by the President were repealed because someone went to court and took the court through the process of a Bill passing into law. This meant that there should be concurrence from the Senate. The courts repealed 73 Acts because they did not go through that procedure or come to the Senate.

The National Assembly was asked to sit with the Senate and regularize those 73 Acts. In their usual manner, the National Assembly did not want to come and sit with the Senate to regularize, follow the procedure and have those Acts properly passed into law. Instead, they returned to the Supreme Court to appeal and argue that the 73 Acts should remain law. They simply did not want to sit with the Senate.

At that point, since the President had already signed the 73 Bills into law, it was an embarrassment to the Republic of Kenya, showing how disorganized we are, as a Parliament. In an aim to save face, the Supreme Court ruled by giving a timeline for the Senate and the National Assembly to sit down and fix what needed to be fixed. To date, nothing has happened.

This should tell you that the Senate is not the aggressor or the people going out of their way to do the wrong things. As a matter of fact, I will give you an example of what happens. I am glad that I got this opportunity. Of the six Bills that I have tabled, one of the Bills I have is the Whistleblower Protection Bill, which I inherited from a previous Senator who had been pushing this Bill through the Committee on JLAC.

We fine-tuned the Bill to fit what is happening currently in the country. I went through the African Parliamentarians Network Against Corruption (APNAC) caucus, where I sit and passed it through the JLAC. The committee said the Bill is proper and should proceed in the House procedure.

If you look at the summary of the Bills from the Senate that are going through concurrency in the National Assembly, the Whistleblower Protection Bill is one of the Bills that is waiting for the National Assembly to state that the Bill is not a Money Bill, drafted constitutionally and I can go ahead with other procedures. As I await, if you look at the summary I have, it is a public document of the legislative agenda for both Houses.

As I wait for my Bill on Whistleblower Protection to be approved and get concurrence from the National Assembly to continue, I will draw your attention to a Bill by Hon. Irene Kasalu, a Member of Parliament in the National Assembly. She has a Bill

called the Whistleblower Protection Bill (National Assembly Bill No.56 of 2023), a copy-paste of my Bill.

I am waiting for the National Assembly to tell me that the Bill I inherited, which originated from the Senate, I did not inherit from the National Assembly, but from a former Senator working on it in the Senate. I tabled it. The JLAC approved it because they were familiar with it.

As I am waiting, Hon. Kasalu has inherited the Bill. Other Senators pride themselves in knowing the Standing Orders. I do not know much, but I know my Bill will not get concurrence in the National Assembly. However, Hon. Irene Kasalu will be allowed to proceed with the same Bill.

As much as we do not like shouting about the mess that we have internally, either within the Senate or the National Assembly, you get to a point where the frustration of what you are dealing with, such as basic logistics of running your business in Parliament and new changes because of the Bunge Tower, become too much. The fights become too many such that by the time you want to fight for a legislative agenda, you ask yourself if it is worth it.

Mr. Temporary Speaker, Sir, my Bill on sanitary towels that I tabled and even officially launched on the Menstrual Hygiene Day on 27th May, 2023 was acknowledged by the Cabinet Secretary and the Principal Secretary. It is a public document that I launched and have been waiting for it to be processed internally.

There are a number of Bills waiting to be approved. That is seeking concurrence with the National Assembly. One of the Bills is mine and it seeks to provide free sanitary towels to all school-going children.

Since May last year, I am still waiting to be told whether it affects counties and whether it is not a money Bill. I am still waiting for the National Assembly, which is slowing down a legislative proposal that is supposed to permanently cure period poverty. At the same time, the same women representatives are crying that they are not receiving sanitary towels. That is the irony of the things that we do here in Parliament.

Mr. Temporary Speaker, Sir, I can go on and on about examples that are personal to me in terms of my Bills. They include the Konza Technopolis Bill and the Data Protection Bill. At this point, I feel that if not for anything, I can come back here as a consultant on legislative agenda because there is no office that I do not know in terms of pushing your legislative agenda.

I have knocked on doors and camped on corridors waiting for whoever I need to wait for to ensure that our draft is moved from one point to another. However, it does not matter because even if I do all that within the Senate. Once we are done at the Senate, a National Assembly committee will sit and say the Bill does not affect counties.

When a Senate Bill is taken to the National Assembly, they go through it thoroughly with whichever internal processes they have. They then tell us that they will reject or not give concurrence because the Bill does not affect counties. The fundamental question is: if a Bill does not affect counties, when it is passed into law, should counties take up the law?

If from the legislative agenda they are saying a Bill does not affect counties, fine, you can pass it. However, do not expect counties to take the law as any other law. To me, the issue of a Bill not affecting counties is neither here nor there.

Another issue is whether a Bill is a money Bill or not. Every single Bill that originates from this House touches on resources in one way or another. There is no Bill that we will amend here that does not touch on money in one way or another. This is like a lazy kind of thinking where someone just wants to make sure they shoot down your Bill by saying that it is a money Bill, but all Bills touch on resources and all resources are tied to money.

Excuse me for saying this. In as much as I am calling out people in the National Assembly, can I also just call out our SBC? We are prioritising Bills from the National Assembly and our in-house Bills in the Senate are pending. At the end of the day, we are losing the war. We could be winning these small battles, but we are losing the war.

From the perspective of the Senate, can we first understand that if the National Assembly is waking up day and night to kill devolution and fight the 'Upper' House, why do we prioritise debating what is an unconstitutional amendment or proposal of a legislative agenda?

When I say "we", I mean the veteran politicians have allowed for a long time many things to go wrong and we have been sitting on the sidelines. I came here only 20 months ago. The logistical issues we are having with our own offices is because we have allowed it.

We are Senators, but we are being governed by people who are not elected in any way; whether specially elected or even through the ballot. Those are the people running the business of this House. I do not know how to say it better. Nonetheless, I will say it.

Before we start pointing fingers, let us clean up our own House, starting by asking ourselves whether we need the Joint Services, or whether we are governed by our commissioners. We have many in-house problems that we need to deal with before we start debating a Bill that has originated from the National Assembly.

Mr. Temporary Speaker, Sir, this Bill in itself is a paradox. I oppose it strongly and suggest to the SBC that you continue to insult us by prioritising Bills from the National Assembly.

I thank you.

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

Sen. Faki: Asante, Bw. Spika wa Muda, kwa kunipa fursa hii kuchangia Mswada huu kuhusu uhusiano wa Bunge zetu mbili. Naona Naibu wa Kiongozi wa upande wangu ana ghadhabu kidogo. Anataka nichukue dakika chache.

Kwanza kabisa, Bw. Spika wa Muda, ningependa kuipongeza Kamati yako ya Haki, Masuala ya Kisheria na Haki za Kibinadamu kwa kupendekeza kwamba Seneti ikatae Mswada huu. Najua kwamba katika kamati yako, kuna Maseneta wenye tajriba kubwa. Kuna mawakili ambao wamesoma na kushauri Bunge hili kwamba Mswada huu hauna nia njema kwa Seneti.

Ningependa kuchangia mambo matatu ili nimpe nafasi Sen. Wambua azungumze kabla ya kikao hiki kukamilika wakati utakapofika.

Kwanza kabisa, Mswada huu ulichapishwa kinyume na Kifungu cha 113 cha Katiba yetu. Kabla ya kuchapishwa, Mswada huu haukupelekwa kwa Spika wa Seneti ili kuuidhinisha kama anakubali kuwa hauathiri kaunti. Hii ni mojawapo ya taratibu ambazo zinazingatiwa na Katiba kuhusiana na Miswada ambayo inapelekwa katika Mabunge yote.

Itakumbukwa kwamba mwaka wa 2019, Seneti ilikwenda mahakamani, Mahakama ikabilisha karibu sheria 25 ambazo zilikuwa zimepitishwa na Bunge la Taifa bila kuletwa katika Seneti. Kwa vile Mswada huu unaathiri Seneti na ulichapishwa, ukajadiliwa na kupitishwa katika Bunge la Taifa bila Spika wa Seneti kuuidhinisha, hiyo ni kinyume na Katiba. Hilo ni jambo la kwanza. Kwa hivyo, lazima tuukatae Mswada huu.

Jambo la pili ni kuwa Mswada huu unakiuka Katiba. Kuna maamuzi mengi ya mahakama ambayo yanasema kwamba ni kinyume na Katiba sheria kupitishwa na Bunge la Taifa bila kuhusisha Spika wa Seneti. Ikifanyika, sheria hiyo inafaa kubatilishwa. Maamuzi hayo yote yanasema kwamba lazima ushauri upatikane kutoka kwa Seneti kama Mswada unaathiri kaunti au la.

Jambo la tatu ni kuhusiana na swali la uhusishaji wa umma, yani *public participation* kwa Kiingereza. Wakati Seneti inaangalia Miswada inayoletwa katika Bunge hili kutoka Bunge la Taifa, pendekezo katika sheria hii ni kwamba haifai kurudia uhusisaji wa umma. Uhusisaji wa umma katika Seneti unaangalia zaidi masuala ya ugatuzi. Kuna mambo mengi ambayo Bunge la Taifa huangalia lakini sio masuala ambayo yanahusiana na ugatuzi.

Bw. Spika wa Muda, juzi katika Kamati ya Delegated Legislation, tualiangalia masuala ya kanuni za uhamiaji, yaani *refugee regulations*.

Bw. Spika wa Muda, ijapokuwa Kanuni zile zilikuwa zimepitishwa na Bunge la Kitaifa na wakasema walikuwa wamefanya uhusishaji umma kwa upana, lakini hawakuhusisha umma kwa zile gatuzi zimekuwa zikipokea wakimbizi. Kwa mfano, gatuzi za Garissa, Turkana, Mombasa, Busia na kwingineko, hazikuhusishwa kuangalia Mswada huu. Kwa hivyo, ikawa mawazo yaliyotoka pale yalikuwa kinyume na yale ambayo Bunge la Taifa ilikuwa imepata. Swala hilo la uhusishaji umma tulilijadili juzi katika Kamati hio wakati tulipokua tukiangalia kanuni mpya za *Affordable Housing*. Swala la uhusishaji umma ni swala la kikatiba na haliwezi kuondolewa na sheria kama hii ambayo tunaizungumzia.

Mwisho, mahakama ilisema kuwa ni lazima Mswada wa sheria lazima upelekwe Bunge la Seneti kwa uamuzi wa Spika kama sheria hiyo inaadhiri kaunti au la. Iwapo sheria hii itapita, suala hili la kikatiba litakuwa limeondolewa kwa mlango wa nyuma. Hii ni kwa sababu, sheria zote wangetaka kupitisha ambazo wameziorodhesha hapa katika Kifungu cha 12 zitakua hazina faida yeyote kwa Seneti.

Bw. Spika wa Muda, tunapinga Mswada huu kwa sababu ni lazima Mabunge yote mawili yatoe wawakilishi, wakae chini na waangalie ni mambo gani yatawekwa kwa Mswada huu ili ukubalike katika Bunge zote mbili. Hatuwezi kutunga sheria ya kusimamia Bunge la Seneti wakati Maseneta hawajahusishwa na utungaji wa sheria hiyo.

Kuja hapa kujadili Mswada huu wakati hatujahusishwa ni kinyume na maadali yanayofaa kutumika wakati tunaangalia sheria kama hii. Kwa hivyo, tunapinga Mswada huu na kama Seneti, tunaukataa. Tukiupitisha, itakuwa ni kujitia kitanzi wenyewe, sisi kama Maseneta.

Asante, Bw, Spika wa Muda.

Spika wa Muda (Sen. Wakili Sigei): Asante, Sen. Faki.

Sen. Karen Nyamu.

Sen. Nyamu: Mr. Temporary Speaker, Sir, this Bill is a blatant display of audacity by the National Assembly. This Bill seeks to restrict our representative and our legislative mandate as a Senate by going against provisions of Articles 94, 96, 109, 111, 112 and 114 of the Constitution. This amounts to killing devolution.

The proposal that one committee of one House electing not to conduct public participation on account of public participation conducted by another House is in contravention of Article 118 of the Constitution. The over-emphasis of coordination between the two Houses, the census and clear guidelines on how we should coordinate interferes with the autonomy and independence of each House. It also interferes with the representation of different interests in our different constituencies. We do not represent the same thing in both Houses.

Mr. Temporary Speaker, Sir, they have outlined how the two Houses should coordinate and this will create bureaucracy. Already, we have a backlog of laws and this will further delay our legislative roles and the churning out of laws from both Houses.

I, therefore, call upon Members of this House to reject this Bill in totality and preserve the place of the Senate and devolution in this country.

I thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Karen.

Sen. Wambua?

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I also thank Sen. Karen and Sen. Faki for yielding their time to enable me make a contribution to this Bill. I will yield my time to Sen. Tobiko, so that she can also contribute.

From the onset, let it go on record that I stand in complete opposition to The Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No.44 of 2023) for the following reasons:

To begin with, this is a Bill conceived and drafted in utmost bad faith. If indeed the drafters of this Bill wanted the smooth operation of both Houses of Parliament, then naturally, the Senate should have been part and parcel of the thinking around this Bill. This is to the extent that a Bill from the National Assembly has landed to us purporting to smoothen the operations between the two Houses of Parliament. This to me, speaks of utmost bad faith.

In the 13th Parliament, devolution has come under attack so intensely than at any other time in the history of devolved units in this country. I say this because just the other day, we were debating the Division of Revenue Bill and this country was treated to blatant untruths – I will not call them lies – from the National Assembly.

A chairman of a committee would want the world to believe that the revenue allocation in the equitable share to counties in the 2023/2024 Financial Year was at Kshs374 billion. However, we all know that we passed Kshs385 billion making it the baseline for the decision on how much to allocate in the 2024/2025 Financial Year.

Mr. Temporary Speaker, Sir, secondly, this Bill is drafted in utmost bad faith because it purports to give a roadmap on how both Houses of Parliament should operate. I will take a minute to educate the drafters or promoters of this Bill on the provisions of Chapter 8 of the Constitution.

Chapter 8 of the Constitution on legislature is clear on the roles and functions of Parliament. The Senate is established by the same line and article that establishes the National Assembly. Therefore, the National Assembly cannot purport to lecture anyone, least of all the Senate on how both Houses should conduct their businesses.

It is a matter in the public domain that there is contestation on the interpretation of Article 110(3) of the Constitution. I find it extremely pretentious of the National Assembly to purport to resolve that matter through a Bill, which is very partisan to interpret what Article 110 means for both Houses of Parliament.

Mr. Temporary Speaker, Sir, I have listened to Sen. Orwoba make a presentation. I want to say two things about the presentation made by her. One, I agree with her that, perhaps, it is time to reflect as a House because we have endured blow after blow from the National Assembly. We have had an attack every passing day. Every time a Bill lands in the Office of the Speaker of the Senate of the Republic of Kenya, I do not know whether it is by virtue of us being the true leaders in this country, or a demonstration of our efficiency in conducting our business, but we are in so much hurry to process Bills from the National Assembly. However, for them, Bills emanating from the Senate do not make sense. In fact, those Bills are always an afterthought.

Mr. Temporary Speaker, Sir, perhaps we should go by the Roman principle of an eye for an eye, so that if they want us to consider any Bill, including this Bill drafted in utmost bad faith, then they must demonstrate that they are also considering Bills emanating from the Senate. In the absence of that, let us deal with our Bills. We have Members here who have drafted hundreds of Bills. Let us keep piling our Bills to them and not consider Bills that emanate from the National Assembly unless they consider our Bills as well.

On the second matter raised by Sen. Orwoba, I was just going through this Bill. I was shocked that the National Assembly has already started implementing Clause 12 of this Bill that we are going to reject, even before we pass it.

How is it that a Senator would think of a legislative idea, nurture it, go through the drafting stages, lobby Members to support it, push it through the stages and processes in this House, then it finds its way in the National Assembly. Just by the opinion of the Speaker or a Committee of the National Assembly, they decide that the Bill is a Money Bill. For that reason, a Member of the National Assembly can just adopt the Bill and it becomes a Bill of the National Assembly. How ridiculous could that be? That the work of Senators is to think and to put in so much to develop Bills and push them through all the

stages, only for somebody in the National Assembly to adopt. That should never be allowed.

Since I want to give some time to Sen. Tobiko to also contribute, allow me to say these two last things. One, as a leader in this House, I will be having a conversation with my side on how going forward, we are going to be treating Joint Sittings of Parliament. I hope the leaders on the other side will also have a conversation with Members on their side.

In those Joint Sittings, we will insist that the Speakers of both Houses preside over those joint sittings. That each side of the House of Parliament will have their Standing Orders applying to their Members. You cannot subject Senators to the Standing Orders of the National Assembly in a Joint Sitting. We are going to reject that.

On the last matter of public participation, we shall carry out public participation on every Bill that comes into this House, whether it has originated from the National Assembly or wherever it has originated, because that is the law and what is expected of us.

Mr. Temporary Speaker, Sir, I yield the remainder of my time to Sen. Tobiko.

With those many remarks, I oppose this Bill.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Tobiko, proceed.

Sen. Tobiko: Thank you, Mr. Temporary Speaker, Sir and Sen. Wambua, for being very gracious. I rise to oppose this Bill and support the position of the Standing Committee on Justice, Legal Affairs and Human Rights and the position that many Members have already taken.

Initially, I was a bit reluctant to take a position on this Bill, simply because I have had a chance to be a Member of both Houses. I have a lot of respect for the National Assembly and a touch of premium value to the Senate. So, when it comes to a tug of war between the two Houses of Parliament, it puts me in a very awkward position.

That said, this Bill, as has been said, was done in bad faith and so we should reject it in totality. It is sad when both Houses are clamouring for which House is supreme, should take precedence, and will do this or will not. This is because Kenyans expect better of us. They expect us to operate with a lot of maturity and decorum, show leadership, obey the rule of law and the Constitution to the letter. If we were to go according to the Constitution, then the roles of both Houses are well defined, and there will be no squabble. However, we have allowed ourselves, as the Senate, to be dragged into these squabbles, instead of us taking our prime time to discuss what matters most to the population of this country.

Kenyans want legislators to make a difference by passing laws that will help them ease their lives. They are expecting us to be discussing the issues that affect them at the counties. At the moment, you know the havoc the rains have done on our roads. Kenyans expect us to be giving a solution to the infrastructural challenges in this country; the water issues, the health sector issues, where our doctors have been demonstrating throughout.

It is sad that now we get into a sibling rivalry with the National Assembly, instead of us taking time to address what Kenyans expect of us. The laws should guide both

Houses on what should be done and what guides Joint Sittings. With utmost respect to both Houses, this is not the route we should take.

I do not think an eye for an eye and revenge is the route we should go. I believe this House can rise to the occasion to be the bigger brother, and being a well-endowed House with a lot of experience and brains, we can give a better direction in this country.

Thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Tobiko.

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): All Members, rise. Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 22nd May, 2024, at 9.30 a.m.

The Senate rose at 6.30 p.m.