

.PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 1st December, 2015

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

*[The Temporary Speaker (Sen. (Dr.)
Machage) in the Chair]*

PAPER LAID

REPORT OF THE SELECT COMMITTEE ON THE INQUIRY INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED AND ITS SUBSIDIARIES

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 1st December, 2015:-

Report of the Select Committee on the Inquiry into the Affairs of Kenya Airways Limited and its Subsidiaries.

(Sen. (Prof.) Lonyangapuo laid the document on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORT OF THE SELECT COMMITTEE ON THE INQUIRY INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED AND ITS SUBSIDIARIES

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Select Committee of Inquiry into the affairs of Kenya Airways Limited and its Subsidiaries.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Sen. Mukiite, do you have a notice of Motion?

Sen. Nabwala: Mr. Temporary Speaker, Sir, I beg to lay the following Motion on the Floor of this House---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Nabwala. You are out of order. Do you want to lay a Paper?

Sen. Nabwala: Mr. Temporary Speaker, Sir, I wish to give a notice of Motion.

The Temporary Speaker (Sen. (Dr.) Machage): Proceed and execute it properly.

Sen. Nabwala: Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that Agenda 2030 and attendant Sustainable Development Goals (SDGs) adopted by the United Nations on 25th to 27th September, 2015 in New York, USA will drive global efforts to end poverty and place the planet on a sustainable course over the next 15 years;

FURTHER aware that the SDGs constitute an interlinked framework---

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

The Temporary Speaker (Sen. (Dr.) Machage): Order. Sen. Mukiite, can you have a sit?

Sen. Billow: Mr. Temporary Speaker, Sir, I am trying to follow that notice of Motion on the Order Paper but I do not seem to find it.

The Temporary Speaker (Sen. (Dr.) Machage): Let me look at that. Approach the Chair, Sen. Mukiite.

*(Sen. Nabwala consulted the Temporary Speaker
(Sen. (Dr.) Machage)*

Sen. Billow, you are right. I do not see the Speaker's approval on Sen. Mukiite's notice of Motion. I have advised her on what to do.

Let us move on to the next notice of Motion.

*(Sen. (Prof.) Lonyangapuo, Sen. Moi and Sen. Billow
consulted loudly)*

Order, Sen. (Prof.) Lonyangapuo. Do you have any notice of Motion?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): So, why are you not taking the opportunity? Can you apologise?

Sen. (Prof.) Lonyangapuo: I apologise, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Okay, proceed.

APPOINTMENT OF SENATORS TO THE COUNTY MONITORING, EVALUATION
AND IMPACT ASSESSMENT FUND COMMITTEE

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that regulations for the County Monitoring Evaluation and Impact Assessment Fund have been gazetted;

FURTHER aware that the regulations provide for a Senate Select Committee to administer the Fund;

NOW THEREFORE, the Senate resolves to appoint the following Senators to the Senate Sessional Committee on County Monitoring, Evaluation and Impact Assessment Fund:-

1. Sen. Kiraitu Murungi
2. Sen. (Prof.) John Lonyangapuo
3. Sen. Stephen Sang
4. Sen. (Eng) Muriuki Karue

5. Sen. Fatuma Dullo
6. Sen. George Khaniri
7. Sen. Mutula Kilonzo Jnr.
8. Sen. Boy Juma Boy
9. Sen. (Dr.) Agnes Zani

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Any more notices of Motion? Is Sen. Madzayo in?

Let us move on to the next order.

STATEMENTS

STATUS OF RENOVATION OF LOKICHOGGIO INTERNATIONAL AIRPORT

The Temporary Speaker (Sen. (Dr.) Machage): This Statement is supposed to be responded to by the Standing Committee on Roads and Transportation. I see no representation.

Let us move on to the next statement.

RISING INTEREST RATES AND STABILITY OF SMALL BANKS IN THE COUNTRY

The Temporary Speaker (Sen. (Dr.) Machage): This statement concerns the Standing Committee on Finance, Commerce and Budget. Sen. Billow you are here, but I do not see Sen. Mutahi Kagwe. The tradition is such that he has to be around. We can hold this statement for a while.

DELAYED TRAVEL OF THE NATIONAL SOCCER TEAM FOR THE RETURN LEG OF THE 2018 FIFA WORLD CUP QUALIFIER MATCH AGAINST CAPE VERDE

This statement concerns the Standing Committee on Labour and Social Welfare. I do not see Sen. Hassan Omar Hassan here. Let us also hold this statement for a while.

CIRCUMSTANCES SURROUNDING THE DEATH OF MS. ELIZABETH AKALA

The Chairperson for the Committee on Health is meant to give a statement on the death of an expectant woman, Ms. Elizabeth Akala. Do you have the statement? I think you do.

Sen. Kittony: Mr. Temporary Speaker, Sir, I have the statement.

The Temporary Speaker (Sen. (Dr.) Machage): Can you take the opportunity and deliver it?

Sen. Kittony: Mr. Temporary Speaker, Sir, the statement has just been photocopied. I am not in a position to read it.

Further, the statement has not been authenticated by the Kakamega County Government. I think it will be your discretion on whether you want me to read the statement or defer it. The Committee could not approve the statement because it has got no signature.

The Temporary Speaker (Sen. (Dr.) Machage): If the Committee did not approve it, then you have no statement to deliver.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. As you notice, this statement was being given on my request. There is an important issue of procedure where the Chair should direct.

The Committee's problem is not the content, it is the fact that the information given as a statement from the County of Kakamega is not authenticated, the Governor has not owned it, and nobody has signed it. So, there has to be a clear direction. The people at the County Government of Kakamega should know that this information is needed urgently. I have a copy of the statement.

The Temporary Speaker (Sen. (Dr.) Machage): The copy could have come from any other source if it is not authenticated. If there is no signature, we cannot accept it as a document of the House. Can the Chair, through the office of the Secretariat, follow up the matter and see why we do not have that statement? You can have the page which is signed and the facts emailed to you. Let us have this statement on tomorrow's Order Paper. It is so ordered.

(Statement deferred)

Sen. (Prof.) Lonyangapuo, there is a statement you are supposed to request. Proceed and do so.

EVICION OF SQUATTERS FROM CHEPCHOINA FARM,
TRANS NZOIA COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I rise under Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the eviction of alleged squatters from Chepchoina Farm in Trans Nzoia County which was done yesterday. Many houses were burnt down and property was destroyed. In the statement, the Chairperson should:-

(1) Explain the circumstances surrounding the eviction of the alleged squatters from Chepchoicha Farm, where they have been living for over 20 years after the Government had already assured them of permanent settlement in the farm.

(2) State who authorized the eviction, demolition of houses and destruction of property of unknown value, including maize in the stores belonging to the alleged squatters and how they will be compensated for the losses.

(3) Indicate when the Government will finalize the survey, demarcation and the final settlement at the Chepchoina Farm.

(4) State measures that have been in place to guarantee the people who have been evicted to get the rightful share of land in the farm.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Allow me to ride on that request by pointing out that the issue of Chepchoina is not a new issue; not

in this Senate nor in the last and previous Parliaments. The Chairperson should clarify whether there is a deliberate attempt to evict the current genuine so-called squatters in Chepchoina and settle there some people from a certain community from Uganda with a view of increasing the number of voters for a certain interested party.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! If you have to seek for an addendum, then it must not deviate from the main Statement so requested. You can come up with your own request for a Statement. It is possible.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Allow me just to add a small supplementary to what Sen. (Prof.) Lonyangapuo has said. In answering that question related to Chepchoina, can the Chairperson also explain why a Government uses primitive ways of burning houses and beating people? I have said this before when it happened in my place in Embobut Forest. Is there no better policy and framework that can be put in place on how to execute orders that are related to the removal of people whether they are squatters or not other than the one where houses are burnt, people are beaten and violence used? If the Government does that, there is a way that it plants in the minds of citizens that violence is the only way that you can act. Assuming that it was legal to remove certain people from that farm or not, why are they using that kind of method? Are there no better methods of evicting people?

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Chairperson?

Sen. Nabwala: Mr. Temporary Speaker, Sir, I raised the Statement on Chepchoina last year. We had the same issue where 11 people were burned in their houses and others chased away and new people were brought on the farm. There is a dispute over the ownership of the land. The people who are now being chased away are those who were allocated the land in 1994 by retired President Moi. We are aware that new people are being brought from across the border to come and replace the people who are now being killed and their houses being burned. This issue was brought before the Cabinet Secretary (CS)---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Nabwala! What do you now want clarified?

Sen. Nabwala: Mr. Speaker, Sir, I would like those two Statements combined. This is not a light matter because people have lost their lives. This matter has already been brought on the Floor of this House. What have we done, as the Senate, to protect the people in the counties?

The Temporary Speaker (Sen. (Dr.) Machage): So, could you execute the question properly so that the Chairperson can know what you want?

Sen. Nabwala: Mr. Temporary Speaker, Sir, yes, I would like the Chairperson to combine the two Statements. In the first Statement, 11 people died and we had a delegation of people led by Sen. Zipporah and I. We talked to the people from Chepchoina and assured them that we were going to take action. The Cabinet Secretary (CS), Madam Ngilu, was interrogated on this matter but there was no solution and you can see the same thing has recurred. This time round, I would like the matter to be taken seriously.

The Temporary Speaker (Sen. (Dr.) Machage): Where is the Chairperson or any Member of the Committee on Land and Natural Resources? The Senate Majority Leader, you are everything. Could you take up the matter?

(Loud consultations)

Where is the Vice Chairperson? Sen. Khaniri, are you the Vice Chairperson of the Committee on Land and Natural Resources?

Sen. Khaniri: Mr. Temporary Speaker, Sir, yes, I am the Vice Chairperson of that Committee.

The Temporary Speaker (Sen. (Dr.) Machage): Then help transact the business of the House.

Sen. Khaniri: Mr. Temporary Speaker, Sir, I am just going through some documents that I have received now. Maybe if I could be appraised of what is happening? I am sorry.

(Laughter)

The Temporary Speaker (Sen. (Dr.) Machage): This is a serious matter. You will read the HANSARD and it will apprise you appropriately. Just give us the time and date that you will respond to the Statement.

Sen. Khaniri: Mr. Temporary Speaker, Sir, I will not make any commitment until I know exactly what the Member was requesting for.

(Sen. Murkomen consulted loudly)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen!

Sen. Khaniri: Mr. Temporary Speaker, Sir, if you could give me five minutes?

The Temporary Speaker (Sen. (Dr.) Machage): Okay. I give you five minutes.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. As the Vice Chairperson has requested for five minutes to think about it, we also want him to know that people are in the cold. As he thinks of a long-term solution, we want those people whose houses have been destroyed to return to their homes. We have the *El Nino* rains in that north rift territory and people are suffering. If this Government is sincere, I want to see everybody resettled by Thursday this week as they look for their own solutions.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. We will wait for five minutes for the Vice Chairperson to acquaint himself with the matter; unless you are ready, Sen. Khaniri.

Sen. Khaniri: Mr. Temporary Speaker, Sir, clearly, the issue that the Senator is asking for and the subsequent questions by other Members will require about three weeks to come up with a Statement. Realising that we will be breaking for the December recess, I would request that we handle this matter on the first to second week when we resume.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. This is not a usual Statement that requires a long period. People were evicted yesterday and houses and maize burnt. So, they are literally in the cold because of the rains. Could the Vice Chairperson take an initiative immediately after this to see the necessary relevant officers and Ministries to restore order? The people can go back to their farms as the Government continues to sort out this issue of a long-term solution.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Khaniri, are you able to give a preliminary report on Thursday?

Sen. Khaniri: Mr. Temporary Speaker, Sir, yes, we can do so. However, the only assurance I can give is the last request that he made; we can write officially to request that the people be allowed to return to their homes until the matter has been fully investigated. We will come up with a comprehensive Statement, as I said, the first week when we resume from the December break.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. You can give a preliminary report on Thursday, if possible. Otherwise your request for two weeks after the recess is accepted.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I rise to request for a Statement ---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Is it here on the Order Paper?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise under Standing Order No.45(2) to request for a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the murder of ---

The Temporary Speaker (Sen. (Dr.) Machage): If you could only hold on a little, because I had already started receiving Statements from Chairpersons. If we could finish that chapter, then I come to the chapter of requesting for Statements. Just hold.

Let us go back to Statement (a) on the Order Paper. Where is the Chairperson of the Committee on Roads and Transportation?

Sen. Khaniri, now that you are the Vice Chairperson for Land and Natural Resources, what have you to say?

Sen. Khaniri: Mr. Temporary Speaker, Sir, that is for the Committee on Roads and Transportation.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. You are right. Where is the Chairperson of the Committee on Roads and Transport? Okay, it is deferred.

Proceed, Sen. Munyes.

Sen. Munyes: Mr. Temporary Speaker, Sir, under Statement (a), I am supposed to seek a statement.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, I know. That is why I was looking for the Chairperson to answer it.

Sen. Munyes: Mr. Temporary Speaker, Sir, I had not even requested for the statement formally.

The Temporary Speaker (Sen. (Dr.) Machage): The request is already on the Order Paper.

Sen. Munyes: Mr. Temporary Speaker, Sir, I just wanted to supplement it.

The Temporary Speaker (Sen. (Dr.) Machage): No, Sen. Munyes. Order! Let me consult.

*(The Temporary Speaker (Sen. (Dr.) Machage) consulted
the Clerk-at-the-Table)*

I have been advised that you have not formally sought the statement. So, can you do it?

STATUS OF RENOVATION OF LOKICHOGGIO
INTERNATIONAL AIRPORT

Sen. Munyes: Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Roads and Transport concerning the status of renovation of the Lokichoggio International Airport (HKLK). In the Statement the Chairperson should:-

(1) Explain why the runway renovations have taken over two years to complete, necessitating the use of half of the runway.

(2) Indicate the cost of the project after completion.

(3) Whether the Chairperson is aware that the existing delays and disruptions have caused huge economic problems for the people of Turkana County and the entire aviation industry served by the airport.

(4) State what actions the Government will take to expedite the completion of the said project.

Mr. Temporary Speaker, Sir, I must also indicate that there are many airstrips in this country where funds have been allocated yet completion works have not been realized, for example, Nanyuki, Isiolo and so many others where the entire aviation industry has been affected.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Munyes! You have to restrict yourself to the copy of the statement that I have signed. You are now debating on the question.

Sen. Munyes: Mr. Temporary Speaker, Sir, it is just an observation. After flying around Mount Kenya two days ago, I realised that Nanyuki Airport was in disarray. We need to expedite the renovations. It is affecting the entire industry.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Where is the Chairperson of the Committee on Roads and Transportation or any Member?

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I was consulting on the next Order. There could be Members of the Committee on Roads and Transport here.

The Temporary Speaker (Sen. (Dr.) Machage): There are none. That is why I picked on you.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I will look at the HANSARD and get back.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. You have five minutes to do so.

Proceed, Sen. (Dr.) Khalwale.

CIRCUMSTANCES SURROUNDING THE DEATH
OF MR. COSMAS MUTUNGA AT KNH

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, on Sunday, 29th November, 2015, Mr. Cosmas Mutunga who was a cancer patient at Kenyatta National Hospital (KNH) was murdered. I, therefore, rise under Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on National Security and Foreign Relations to confirm the following:-

(1) Whether Mr. Cosmas Mutunga had been admitted at the KNH since 5th November, 2015 and explain the circumstances surrounding the murder at the hospital bed.

(Sen. Khaniri spoke off record)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Khaniri, the discretion on how to speak is my mandate. Can you give Sen. (Dr.) Khalwale the opportunity to raise that because if you looked at what happened to Sen. Munyes, already, there was a mix up of questions and answers as tabulated on the Order Paper? That gives a leeway to Sen. (Dr.) Khalwale.

(Sen. Khaniri consulted loudly)

Order, Sen. Khaniri!

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like the Chairperson to give the House information on the following:-

(1) Confirm whether Mr. Cosmas Mutunga had been admitted at the KNH since 5th November, 2015 and explain the circumstances surrounding the murder while in bed at the hospital.

(2) Explain the security arrangements in place and in particular the security of patients at the KNH.

(3) State the visiting hours allowed by the KNH.

(4) State the names and whereabouts of the security and medical staff that were on duty on the night of 29th November, 2015.

(5) State measures taken to ensure that the murderers are arrested and charged.

Mr. Temporary Speaker, Sir, also pursuant to Standing Order No.45(2)(b) I wish to seek a statement from the Chairperson---

The Temporary Speaker (Sen. (Dr.) Machage): Can we dispose of the first one first? Where is the Chairperson of the Committee on National Security and Foreign Relations?

(Sen. (Prof.) Lesan stood up in his place)

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Lesan?

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I wish to ride on the question that has been asked by my colleague. From available information, this person, who was murdered, shared a room with another patient. Could the Chairperson also give us further

information on the circumstances and condition of the patient who shared the room with the murdered patient? Is there any information that has been gathered from the patient who shared the room with the murdered patient?

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Proceed, Chairperson.

Sen. Adan: Mr. Temporary Speaker, Sir, this matter affects two Ministries; Health and Interior and Coordination of National Government. Therefore, I request to be given two weeks to respond to this statement.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, allow me to request the Chairperson that you disagree with the two weeks requirement because for a patient to be murdered in hospital, it means that all the other patients, not just in KNH but in many other public hospitals will now die possibly of heart attack out of fear that they could be murdered.

I, therefore, request that the answer comes forthwith this Thursday. The Committee will have a whole day to work tomorrow and Thursday morning so that we assure all our patients in hospitals that they are protected.

The Temporary Speaker (Sen. (Dr.) Machage): Chairperson, what reasons do you have to ask for two weeks?

Sen. Adan: Mr. Temporary Speaker, Sir, this matter requires investigation. I cannot just go to the Ministry and ask for an answer; that is why I am requesting for two weeks.

The Temporary Speaker (Sen. (Dr.) Machage): I order that you give a preliminary report on Thursday in view of what may happen according to our calendar. It is so ordered.

Sen. Adan: Mr. Temporary Speaker, Sir, it might be an uphill task but I will try my best. Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Try, I know you are able.

REASON FOR MOCK SECURITY DRILL AT STRATHMORE UNIVERSITY

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, yesterday in the morning, Monday 30th November, 2015, there was a mock security drill at the Strathmore University in Nairobi. Pursuant to this, I wish to seek for a Statement under Standing Order No. 45 (2) (b) from the Chairperson in charge of the Standing Committee on National Security and Foreign Affairs to give this House an answer with the following points clarified:-

1. To state what informed the choice of a mock security drill in a learning institution especially a University and in particular the Strathmore University in Nairobi.

2. Confirm the number of deaths and injuries arising from the mock security drill at Strathmore University, specifying how many were students, how many were university staff, both teaching and non-teaching, and how many of them were members of the public.

3. State who is going to take responsibility for the deaths and injuries that have occurred, and having taken that responsibility, explain how the victims are going to be compensated for the deaths and injuries.

4. State what property, if any, was damaged or lost as a result of the mock security drill and who will compensate for private property belonging to the students, university staff and members of the public.

I thank you.

Sen. Adan: Mr. Temporary Speaker, Sir, I am still requesting for two weeks.

Thank you.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I stand guided by the precedent that you have set in the case of the earlier Statement. Given that students at all our universities are still in session and we are likely to go on recess, it is important that an interim Statement comes so that we rest the worries of the parents, students themselves, the teaching and non-teaching staff. I request that an interim Statement comes on Thursday.

The Temporary Speaker (Sen. (Dr.) Machage): Indeed, I have set a precedent with the first question from Sen. (Dr.) Khalwale. Therefore, can you give us at least a preliminary Statement on Thursday? These are matters of national importance. The Senate has to be seen to be, not only privy to, but acting on them.

Sen. Adan: Mr. Temporary Speaker, Sir, I will give the answer on Thursday.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. We now look at Statement (e). Leader of the Majority party, you can use the Dispatch Box.

CIRCUMSTANCES LEADING TO THE DEATH
OF ALEX MADAGA

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, my card has gone missing mysteriously, but I hope it is safe wherever it is. This Statement is ready and the Vice Chair of the Committee on Health has brought it to the attention of the Committee so that they can go through it. I wanted to request the Vice Chair of the Committee on Health to provide the Statement because she is more familiar with it. It has just come today.

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir. The Statement is with us and I would like to read it as follows:-

Sen. Khaniri: On a point of order Mr. Temporary Speaker, Sir. It is on record that the Speaker of this House, Hon. Ekwee Ethuro, has always discouraged the issue of ambush. We have been waiting for this Statement for the last two months. I realize that the Statement was received by our Clerk on 11th November, 2015 which is about a month ago. All along, the Chair and the Leader of Majority have been telling us that the Statement is not ready. I have just been given the Statement now. When you found me the other time off guard, it was the Statement that I was trying to go through. It is an eight page Statement with appendices. I need to familiarize myself with the Statement and talk to the family so that I can be competent enough to interrogate the Statement. I need your guidance and ruling on this.

The Temporary Speaker (Sen. (Dr.) Machage): That is a fair request from the Chair. How long do you want for that?

Sen. Khaniri: A day is enough, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Okay, let us have this Statement on the Order Paper tomorrow afternoon.

Sen. Kittony: That is okay, Mr. Temporary Speaker, Sir.

(Statement Deferred)

The Temporary Speaker (Sen. (Dr.) Machage): Very well. So, we again revisit the Order Paper and see the Statements whose Members were not in. We go to Statement (b).

RIISING INTEREST RATES AND STABILITY
OF SMALL BANKS IN THE COUNTY

Where is the Chairperson of the Standing Committee on Finance, Commerce and Budget? I do not see Sen. Kagwe, so I defer the Statement to tomorrow. Let us move to Statement (c).

(Hon. Senators applauded as Sen. Keter entered the House)

An hon. Senator: Minister!

The Temporary Speaker (Sen. (Dr.) Machage): Order! Ministers are not allowed here. We have Sen. Keter in the House and not a stranger.

Sen. Orenge: On a point of order, Mr. Temporary Speaker, Sir. Did you notice they have said quietly that the Minister has not been sworn in yet, for which we appreciate but Sen. Murkomen is so much in a hurry. He is already occupying his seat. Are we being told something we have not been told?

The Temporary Speaker (Sen. (Dr.) Machage): Indeed, I noticed that move but I did not know what the intention was. That can only be told to us by Sen. Murkomen himself, but I assume he was just giving a good gesture to a colleague in this House.

Sen. Kagwe: On a point of order Mr. Temporary Speaker, Sir. Would I be in order to congratulate Sen. Keter for being the first Senator to be appointed Cabinet Secretary?

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senator.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I am just starting to explain.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Keter has not yet been vetted. Sen. Kagwe, I have not given you any opportunity to speak.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, when Hon. (Rtd.) Gen. Nkaissery was appointed, and before he was even vetted, the "Lower House" took a moment to allow Members to ventilate, either to congratulate or denounce the appointment. It will be quite in order to request you to give us a few minutes each to say something.

Sen. Kagwe: Mr. Temporary Speaker, Sir, whereas I appreciate that Sen. Keter is not yet a Cabinet Secretary, the day he will become a Cabinet Secretary, he will not step into this House. What other opportunity would we have, at least, to congratulate the nominee, if not the Cabinet Secretary, for being the first Senator to be nominated to be a Cabinet Secretary? We are not sure which position is more superior to the other, but nonetheless, I think it is an opportunity for us to tell Sen. Keter that we wish him well.

We hope that he will become a better Cabinet Secretary than the ones we have seen. He could also become a Senate defender in the Cabinet.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Kagwe! You have started before I give you the permission. I will allocate ten minutes only, but we need to finish with Statements first.

Sen. Orenge: On a point of order, Mr. Temporary Speaker, Sir. If this was a *baraza*, I would go by what Sen. Mutahi Kagwe has said. This is the Senate and there are legal processes that we are required to undergo, in which case, we should not assume that the National Assembly is going to do the necessary.

Secondly, the assumption of office is only when somebody subscribes to the oath of office. I am also excited and wanted to give a speech, but part of the duty of Parliament is to do confirmation hearings. The Senate being a “senior” House will be wrong to behave like a *baraza* before the process is complete.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to request the House to restrain itself. This is because at this particular juncture, the Senate is not officially aware that Sen. Keter has been appointed. I believe that there is no official communication from the Executive, informing the Senate that a Member of this House has been appointed. If we proceed on the basis of assumption, we will simply be sending a message that the House is excited, feels that it is a small place and, therefore, one of them has left this “small place” and gone to a “big place.”

I beg that you overrule the request.

Sen. Hassan: Mr. Temporary Speaker, Sir, I want to second the proposal by the Senate Minority Leader and Sen. Kagwe. We can say so many good things about Sen. Keter in the ten minutes that can actually help the “Lower” House in terms of the process of vetting.

Sen. Murkomen: Mr. Temporary Speaker, Sir, this House has had an opportunity to congratulate so many persons who have been appointed to different positions, including the former Senator, Harold Kipchumba. We spent two hours appreciating the work that he has done.

I totally agree with your ruling that, at least, ten to 20 minutes be allocated to ventilate on that issue, in terms of the significance of serving as a Member of the Committee on Energy and rising to serve as a Cabinet Secretary in the same Ministry. The Senators can, perhaps, give advice to their colleagues as he faces the vetting process and, ultimately – I believe – serving as Cabinet Secretary on behalf of the people of Kenya---

Sen. Ongoro: Mr. Temporary Speaker, Sir, I beg to differ because we probably only have three days before we go on recess. Looking at our full Order Paper and the matters that we need to discuss in this Chamber--- I do not know whether to appreciate or feel sad because, in my opinion, moving from a being Senator to a Cabinet Secretary is a demotion. I do recognize the fact that he has been considered for that position, but beg that we stick to the Order Paper. If time will allow – maybe on Thursday – we will fix that.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I have listened to you with a lot of interest and surprise, especially so from the Minority side, after hearing a request from Senate Minority Leader, which I thought was a consensus. It swayed my earlier thinking. I have already stated the allocation of ten minutes.

Let me also indicate that at no time will the President write to the Senate – given the history that we have had – on the appointment of a Cabinet Secretary. The letter goes to the National Assembly. It is public knowledge that one of us has been nominated to be a Cabinet Secretary. That is in the public domain. Hiding our heads in the sand is no wisdom at all. It just demonstrates naivety on the issue. I take special recognition of the talents of the Members of this House who, rightfully, have demonstrated their thinking that it is not right time to do this. You are very right, but I will use Standing Order No.1, which gives me those powers. I order that at the end of the Statements time, we will have only ten minutes. Every Member will be given not more than one minute to say something wise, so that we do not break the law as put to us by Sen. Orengo. It is so ordered.

Can we have the Statement by the Chairperson of the Standing Committee on Labour and Social Welfare?

DELAYED TRAVEL OF THE NATIONAL SOCCER TEAM FOR
THE RETURN LEG OF THE 2018 FIFA WORLD
CUP QUALIFIER MATCH AGAINST CAPE VERDE

Sen. Madzayo: Bw. Spika wa Muda, mpaka sasa sijapata taarifa mwafaka inayoweza kujibu swali ambalo ndugu yangu, Sen. Omar, aliuliza. Naomba nipewe muda kidogo ili niweze kukamilisha mawasiliano yangu. Nina uhakika kwamba siku ya Alhamisi nitakuwa tayari kutoa taarifa hiyo.

Sen. Hassan: Bw. Spika wa Muda, ulitoa amri kwamba taarifa hii itolewe leo. Siku ya Alhamisi wengine wetu tutasafiri kwenda Kigali kuwakilisha Bunge katika michezo ya Afrika Mashariki. Nitaathirika sana ikiwa ndugu yangu, Sen. Madzayo, ataleta taarifa hiyo kesho. Taarifa hiyo ikiletwa baada ya Alhamisi itakuwa ni tasa na haitakuwa na maana tena kwetu.

Sen. Madzayo: Bw. Spika wa Muda, nataka kuhakikishia Seneti kwamba nitakuwa na jibu mwafaka siku ya Alhamisi.

The Temporary Speaker (Sen. (Dr.) Machage): Je, iwapo Sen. Omar hatakuwa, utalijibu hilo swali vipi? Je, unajibu sasa hivi au la?

Sen. Madzayo: Bw. Spika wa Muda, sina jibu wakati huu, lakini---

The Temporary Speaker (Sen. (Dr.) Machage): Nakuamuru ulete taarifa hiyo kesho.

(Statement deferred)

Next Statement by the Chairperson of the Standing Committee on Finance, Commerce and Budget.

Has Sen. Kagwe left?

RISING INTEREST RATES AND STABILITY
OF SMALL BANKS IN THE COUNTRY

Sen. Billow: Mr. Temporary Speaker, Sir, let me explain the status of the Statement. I had actually responded, but the Senator had requested that we invite the

officials of the Central Bank of Kenya (CBK) to discuss that issue, because of the information that came to light. Therefore, the matter was referred to the Committee to deal with, until we get answers to bring back to the House.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That marks the end of the Statements Time.

I will allocate the ten minutes as ruled earlier, but remember that Sen. Keter has not been vetted. As the Swahili saying goes: “*usikate kanzu kabla mtoto hajazaliwa.*”

What is it, Senate Majority Leader?

STATUS OF RENOVATION OF LOKICHOGGIO
INTERNATIONAL AIRPORT

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, it is on the matter of the Statement by the Chairperson of the Committee on Roads and Transportation. You asked me to consult and get back to the House in five minutes, and I have consulted the HANSARD. Given the nature of that statement request – and I have shared this with Sen. Munyes - I can only undertake that it can be ready on the first day upon return from recess.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Munyes.

Sen. Munyes: That is okay, Mr. Temporary Speaker, Sir.

(Statement deferred)

The Temporary Speaker (Sen. (Dr.) Machage): As you think of my Swahili saying, let us listen to Sen. Madzayo.

SALE OF SHARES OF KENYA CASHEW NUTS LIMITED

Sen. Madzayo: Bw. Spika wa Muda, ningependa kuuliza taarifa kutumia Kanuni ya Seneti No.45, kutoka kwa Mwenyekiti wa Kamati ya Kilimo kuhusiana na maswala yafuatayo:-

1. Je, ni kwa nini mtambo wa Shirika la Kenya Cashew Nuts Limited, uliokuwa mikononi mwa chama cha ushirika, yaani Kilifi Cooperative Society, ulipewa Millennium Management Limited?

2. Je, ni nani aliyechukuwa alisimia 35 za hisa za wakulima wa Kaunti ya Kilifi? Je, hisa hizo za wakulima ziko wapi kufikia sasa?

3. Je, wakulima hao watarejeshewa lini hisa hizo, kwa sababu bado wako hai na wanaishi katika hali ya walalahoi?

4. Je, hayo mageuzi ya ununuzi wa shirika la Kenya Cashew Nuts Limited yalifanywa kulingana na sheria za Kenya?

5. Je, ni nani alitoa uwezo wa kuuza hisa hizo za Serikali au kutoa asilimia 65 za hisa kwa Kenya Assets Management Limited?

6. Ikiwa Millennium Management Limited ilinunua mtambo wa Kenya Cashew Nuts Company Limited pekee inaonekana wazi kwamba kampuni hiyo haikununua hektari 350 za shamba ambako kampuni hii ilijengwa. Je, Serikali itarejeshwa lini hizo hektari 350 za shamba kwa wananchi wa Kaunti ya Kilifi?

7. Je, Serikali ina mikakati gani kuhusu mtambo wa Kenya Cashew Nuts Company Limited pamoja na shamba lake la hektari 350 kurudishiwa wananchi wa Kaunti ya Kilifi?

Sen. Hassan: Bw. Spika wa Muda, ningependa kuuliza maswali zaidi kuhusu swala hili. Je, wakurugenzi wa kampuni hiyo ya Millennium Management Limited ni akina nani? Je, sheria ilifuatwa katika uuzaji wa hisa hizo? Je, Serikali ina mipango gani ya kufufua sekta ya korosho nchini?

The Temporary Speaker (Sen. (Dr.) Machage): Simwoni Mwenyekiti wa Kamati inayohusika. Je, naibu wake au mwanachama yeyote yuko?

Sen. Ntutu: Mr. Temporary Speaker, Sir, we will respond to that the first week after recess.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. It is so ordered.

NOMINATION OF SEN. KETER AS CABINET SECRETARY

Sen. Wako: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity. Both sides of the House have tremendous respect for Sen. Keter. It will not be good to proceed with the ten minutes now under the cloud of people saying it is not the right timing. It is good to proceed when both sides of the House- since we both respect him- are agreed on the timing. You have mentioned and warned Senators that when they are speaking, they should be aware that the National Assembly is yet to approve the nomination. I would like us to speak without any infringement so that we can say what is in our hearts. This is because Sen. Keter will be an important Cabinet Secretary and the advocate for devolution within the Cabinet; we shall have a friend there. Therefore, we want to speak freely.

Mr. Temporary Speaker, Sir, even though you have made a ruling, I plead with the Senate Majority Leader that if possible, he withdraws that and then soon after the National Assembly Committee has approved him, as they will do, we can have even half-an-hour---

The Temporary Speaker (Sen. (Dr.) Machage): Very well.

Sen. Keter.

Sen. Keter: On a point of order, Mr. Temporary Speaker, Sir. I want to echo the sentiments by Sen. Wako. I want to thank all Members and urge them to follow the law. We have a due process to be followed. After the vetting and before the swearing in, I will give a statement before I resign from being a Member of this House. This job involves service to all Kenyans and not the Jubilee Coalition alone. I have a history with all my brothers and sisters in the Senate because we have come a long way; it is now three years. Let us reserve all the comments until after the vetting and the approval, because I am still the Senator for Kericho County. After I resign from this House, everyone can give me guidance. For now, let us embark on the business that we have and reserve everything for that day.

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

The Temporary Speaker (Sen. (Dr.) Machage): If it is on the same issue, no!

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I beg the Chair to indulge me on this one. I do not intend to challenge the Chair. You have guided us under Standing Order No. 1, but I want to draw your attention to Standing Order No. 48(2) in regard to

Motions. We are about to discuss a Motion of this House, registering thanks on the appointment of Sen. Keter. The Standing Order says:-

“Before giving notice of Motion, the Senator shall deliver to the Clerk a copy of the proposed Motion signed by the Senator, and the Clerk shall submit the proposed Motion to the Speaker”.

We are not aware of any notice of Motion on thanksgiving for the appointment of Sen. Keter having been given in this House. I, therefore, request you to guide the House whether you have received any such Motion from any Senator, communicated to you by the Clerk. If you have not received, I beg you that you will be breaching the rules of this House. Standing Order No. 48(2) already provides for what you are purporting to give discretion of ten minutes.

Mr. Temporary Speaker, Sir, you need to rule on the matter.

The Temporary Speaker (Sen. (Dr.) Machage): It is interesting how Members use Standing Orders, laws and rules to suit their own situations. On several occasions, I have had a request from Sen. (Dr.) Khalwale to use Standing Order No. 1 to allow him to proceed for one reason or another. Now, the same Senator is speaking otherwise. That is unfortunate. Standing Order No. 1 still overrules you, despite the number of Standing Orders you quote.

The issue here is as first put by Sen. Orengo and then amplified by Sen. Wako, amongst other leaders. I respect the wishes and feelings of the Senate Minority Leader. When any leader of whichever side of this House makes a request to the Chair, it carries a lot of weight. It becomes difficult to negate that request. I would request that when a leader wants to make a request, he should think twice before passing the hurdle to the Chair. We have listened to Sen. Keter and he has humbly and with a lot of wisdom, humility, respect and friendliness, made a special request, which I am inclined to accept.

Next order!

POINT OF ORDER

DELAY IN DELIVERY OF REPORT TO THE PETITION BY THE COUNCIL OF ELDERS OF THE KIRINYAGA *MIHIRIGA KENDA* REGARDING THEIR CLAIM TO THE MWEA TRUST LAND

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. Last week, our able Speaker made a ruling with regard to Kirinyaga Mihiriga Kenda Petition, which has been lying in the Committee on Legal Affairs and Human Rights. The ruling was that the Committee should give the way forward today. We are about to go on recess and our people in Kirinyaga are waiting for the results of the petition, which was tabled here almost six months ago. I seek your advice.

The Temporary Speaker (Sen. (Dr.) Machage): I have to be advised. I cannot remember that ruling.

Chair of the Committee on Legal Affairs and Human Rights, are you privy to that matter?

Sen. Wako: Sorry, Mr. Temporary Speaker, Sir, I was on another matter.

The Temporary Speaker (Sen. (Dr.) Machage): There was a petition from Sen. Karaba's county on an issue that was raised and forwarded to your Committee. The

Speaker ruled that the issue should be deliberated and presented to this House by today. What do you have to say about that?

Sen. Wako: Mr. Temporary Speaker, Sir, we deliberated on that matter and the report is ready. So, I will find out why it has not been forwarded to this House.

The Temporary Speaker (Sen. (Dr.) Machage): Please, give a response tomorrow.

I will now defer Order Nos.8 and 9.

COMMITTEE OF THE WHOLE

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE
PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL
(NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

(Deferred)

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC
AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

(Deferred)

Next Order!

BILLS

Second Reading

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO.37 OF 2014)

(Sen. Wako on 27.10.2015)

(Resumption of Debate interrupted on 27.10.2015)

The Temporary Speaker (Sen. (Dr.) Machage): This is a matter of Division. Whips, do we have the requisite numbers to vote?

*(The Temporary Speaker (Sen. (Dr.) Machage) consulted
with the Clerks-at-the-Table)*

We do not have the requisite numbers in the House. Please, ring the Division Bell.

(The Division Bell was rung)

You can stop it now.

(Several hon. Senators stood up in their places)

Sen. (Dr.) Khalwale, Sen. Murkomen and Sen. (Prof.) Lesan, have your seats. I am on my feet.

We now have the numbers. We can execute Order No.10

We are taking the final count for Order No.10. I also have a vote. Serjeant-at-Arms, can I have my card? We can proceed.

I was trying to check on the documentation of representation. Member for Wajir you can vote. It is so ordered, your documents are proper.

(Loud consultations)

Order! Can we now engage our voting machines afresh on Order No. 10?

Let the bars be drawn and tell me when ready. We have 60 Seconds. Vote now. Remember we will not open the doors until the voting is done in other wards we will not withdraw the bars. To save time , can anybody who feels that he needs assistance move forward?

(Loud Consultations)

Order! You know I am still on the Chair. I will announce the results of the Division on Order Nos. 10, 11, 12 and 13. Thereafter, we will go to the Committee of the Whole, which is for voting only.

DIVISION

ELECTRONIC VOTING

*(Question, that the Office of the County Attorney Bill
(Senate Bill No.37 of 2014) be read a Second Time put
and the Senate proceeded to vote by County Delegations)*

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, the results of the Division are as follows:-

AYES: 26

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to nil)

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

Second Reading

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL
(SENATE BILL NO. 40 OF 2014)

(Sen. Keter on 28.10.2015)

(Resumption of Debate interrupted on 4.11.2015)

DIVISION

ELECTRONIC VOTING

(Question, that the County Governments Disaster Management Bill (Senate Bill No. 40 of 2014) be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, the results of the Division are as follows:-

AYES: 26

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to nil)

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

Second Reading

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)

(Sen. Musila on 27.10.2015)

(Resumption of Debate interrupted on 10.11.2015)

DIVISION

ELECTRONIC VOTING

(Question, that the Kenya National Examinations Council (Amendment) Bill (Senate Bill No. 7 of 2015) be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, the results of the Divisions are as follows:-

AYES: 26

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to nil)

(The Bill was read a Second Time and committed to a

Committee of the Whole tomorrow)

Second Reading

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO. 8 OF 2015)

(Sen. Hassan on 18.11.2015)

(Resumption of Debate interrupted on 19.11.2015)

DIVISION

ELECTRONIC VOTING

(Question, that the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015) be read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Mohamud, Wajir County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, the results of the Divisions are as follows:-

AYES: 26

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 26 votes to nil)

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

The Temporary Speaker (Sen. (Dr.) Machage): Could the Bar be withdrawn?

(The Bar was withdrawn)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Murkomen) took the Chair]

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

(Resumption of debate interrupted on 18.11.2015)

The Temporary Chairperson (Sen.) Murkomen: Order, Senators. Please, do not leave because we only have two Divisions in the Committee of the Whole. I request that you remain seated.

Can you ring the Division Bell for two minutes so that we can put the Question?

(Sen. Hassan walked out)

Sen. Hassan, you are not going anywhere. We are voting, please.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Murkomen): Do we have the numbers?

(Loud consultations)

The Temporary Chairperson (Sen. Murkomen): Order, Senators!

(Sen. Kittony and Sen. Hassan stood up in their places)

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Kittony and Sen. Hassan. Please, be seated.

I need a confirmation from the whips and it will be very sad if we cannot transact the two Committee Bills on an account of just two or so people missing. So, I want a confirmation of the numbers that we have on both sides so that we can make a determination as to whether we will proceed or report progress.

Can the Division Bell be rung for one minute?

(The Division Bell was rung)

Close the door and draw the Bar.

On the business on the order Paper, Order No. 14, we have four Divisions and the first is The Climate Change Bill (National Assembly Bill No.1 of 2014) I now put the Question for the clauses without amendments.

You are capable of voting within 30 seconds for your intelligence, starting now.

Let us move on to the next vote. We will announce all the results together. I want all Senators to be alert because we will vote for 30 seconds.

Let us proceed with Clauses with amendments. I will now put the question that Clauses 2, 3, 5, 7, 13, 14, 17, 32 and 35 be amended as proposed and be part of the Bill.

Voting starts now and you have 30 seconds to do so. Those who are supposed to vote manually can do so. I will announce the results later.

Let us move on to the next vote. There is a new Clause which we must vote for first, reading it a Second Time.

I put the question that New Clause 25A be now read a Second Time.

New Clause 25A

THAT, the Bill be amended by inserting the following new clause immediately after clause 25 – Incentives for the promotion of climate change initiatives.

25A. (1) The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, grant to persons who –

(a) encourage and put in place measures for the elimination of climate change including reduction of green house emissions and use of renewable energy;

(b) put in place measures to mitigate against the adverse effects of climate change;

(c) are involved in the conduct of accredited training in programmes that are aimed at eliminating climate change; such incentives as may be necessary for the advancement of the elimination of and mitigation against climate change and the effects of climate change.

(2) The Cabinet Secretary shall, for the purpose of subsection (1), in regulations set out the nature of the incentives, the conditions for the grant or withdrawal of such incentives and such other matter as may be necessary for the exercise of the power conferred under subsection (1).

(3) In granting incentives under subsection (1), the Cabinet Secretary shall take into account international standards and best practice.

(4) The Cabinet Secretary shall make the regulations specified under subsection (2) within a period of twelve months from the commencement of this Act.

(Question of the New Clause proposed)

(New Clause read the first time)

*(Question that the New Clause be read a
Second Time proposed)*

(The New Clause was read a Second Time)

Be ready to vote starting now. You have 30 seconds. Sen. Karaba, Sen. G.G. Kariuki, Sen. Mbuvi and Sen. Kisasa please come forward and vote. We have not announced the results, we are just voting. We will come to that.

*(Question that New Clause 25A, the Schedule, the
Title and Clause 1 be part of the Bill proposed)*

Hon. Senators, the results will be announced later.

Hon. Senators, you have 30 seconds to vote. We shall start with Clauses without amendments.

DIVISION

ELECTRONIC VOTING

*(Question that Clauses 4, 6, 8, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
28, 29, 30, 31, 33 and 34 be part of the Bill put and the
Senate proceeded to vote by County Delegations)*

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans-Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Uasin Gishu County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and; Sen. Wetangula, Bungoma County,

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, the results are as follows:-

AYES: 25

NOES: Nil.

ABSENTATIONS: Nil.

The "Ayes" have it.

(Question carried by 25 votes to nil)

(Clauses 4, 6, 8, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33 and 34 agreed to)

DIVISION

ELECTRONIC VOTING

(Question that Clause 2, 3, 5,7,13,14,17,32 and 35 be amended as proposed and be part of the Bill put and the Senate proceeded to vote by County delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County, Sen. Kisasa, Kilifi County, Sen. (Prof.) Lesan, Bomet County, Sen. (Prof.) Lonyangapuo, West Pokot County, Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County, Sen. (Eng.) Muriuki, Nyandarua County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans-Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Uasin Gishu County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and; Sen. Wetangula, Bungoma County,

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, the results are as follows:-

AYES: 25

NOES: Nil.

ABSENTATIONS: Nil.

The "Ayes" have it.

(Question carried by 25 votes to nil)

(Clauses 2, 3, 5,7,13,14,17,32 and 35 as amended agreed to)

DIVISION

ELECTRONIC VOTING

(Question that New Clause 25A be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen.

Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County, Sen. Kisasa, Kilifi County, Sen. (Prof.) Lesan, Bomet County, Sen. (Prof.) Lonyangapuo, West Pokot County, Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County, Sen. (Eng.) Muriuki, Nyandarua County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans-Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Uasin Gishu County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and; Sen. Wetangula, Bungoma County,

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, the results are as follows:-

AYES: 25

NOES: Nil

ABSENTATIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to nil)

(New Clause 25A was read a Second Time)

DIVISION

ELECTRONIC VOTING

(Question that the New Clause 25A, the Schedule, the Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka Nithi County, Sen. Kisasa, Kilifi County, Sen. (Prof.) Lesan, Bomet County, Sen. (Prof.) Lonyangapuo, West Pokot County, Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County, Sen. (Eng.) Muriuki, Nyandarua County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans-Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Uasin Gishu County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and; Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, the results are as follows:

AYES: 25

NOES: 0

ABSENTATIONS: 0

The “Ayes” have it.

(Question carried by 25 votes to nil)

(New Clause 25A, Schedule, Title and Clause I agreed to)

The Temporary Chairperson (Sen. Murkomen): Let us move to Order No. 15 which is The County Early Childhood Education Bill, (Senate Bill NO. 32 OF 2014). We are still in the Committee of the Whole and there are only four votes.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Chairperson, Sir. You have just read out the result of the Divisions on those four issues. I just wanted you to clarify an issue which the Senate Minority Leader has drawn to my attention that he has consulted there at the table and found that Sen. Kisasa voted for Kilifi delegation. Now, we want confirmation that the leader of the delegation asked her to vote because they happened to be on different sides of the House.

The Temporary Chairperson (Sen. Murkomen): Okay; we will come to that. The Senate Minority Leader has already raised that issue with me and there is no crisis. We will make a ruling thereafter.

Sen. (Dr.) Khalwale: Is it right, Sir?

The Temporary Chairperson (Sen. Murkomen): I know nobody is satisfied. Just wait and we will come back to that. The contested vote is one and we are 25 so it is okay, we will come to that.

Let us proceed with the Clauses without amendments.

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO.32 OF 2014)

(Resumption of debate interrupted on 11.11.2015)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 38, 41, 44, 46, 48, 50, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 72, 74 and 75 be part of the Bill put and the Senate proceeded to vote by County delegations)

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen.(Dr.) Khalwale, Kakamega County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mohamud,

Isiolo County; Sen.(Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. Murkomen): I wish to announce the results as follows:-

AYES: 25

NOES: Nil

ABSENTIONS: Nil

(Question carried by 25 votes to 0)

(Clauses 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 38, 41, 44, 46, 48, 50, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 72, 74 and 75 agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that Clause 37 be deleted put and the Senate proceeded to vote by county delegation)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen.(Dr.) Khalwale, Kakamega County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Isiolo County; Sen.(Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. Murkomen): I wish to announce the results as follows:-

AYES: 25

NOES: Nil

ABSENTIONS: Nil

(Question carried by 25 votes to 0)

(Clause 37 deleted)

DIVISION

ELECTRONIC VOTING

(Question that Clauses 5, 6, 7, 8, 20, 27, 29 35, 36, 39, 40, 42, 43, 45, 47, 49, 51, 52, 56, 68, 69, 71, 73, the First Schedule and Clause 2 be amended as proposed and be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen.(Dr.) Khalwale, Kakamega County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Isiolo County; Sen.(Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Sen. Mbuvi, Nairobi County.

The Temporary Chairperson (Sen. Murkomen): I wish to announce the results as follows:

AYES: 25

NOES: 1

ABSENTIONS: Nil

(Question carried by 25 votes to 1)

(Clauses 5, 6, 7, 8, 20, 27, 29 35, 36, 39, 40, 42, 43, 44, 45, 47, 49, 51, 52, 56, 68, 69, 71 and 73 as amended agreed to)

(Clause 2 as amended agreed to)

(First Schedule as amended agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that the Second Schedule, Title and Clause 1 be part

of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen.(Dr.) Khalwale, Kakamega County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Isiolo County; Sen.(Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. Murkomen): I wish to announce the results as follows:

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to nil)

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairman, Sir. I want to follow up on a point that I quietly canvassed at the Clerks' Table and was subsequently raised by Sen. (Dr.) Khalwale.

On today's Order Paper, we still have contentious issues on Order Nos. 8 and 9, which have been stepped down. It was on the basis of these contentious orders that we raised an issue and the Chair ruled on it. The issue we raised was on nominee votes or proxy votes as we commonly call them. I took the extra step to consult with Senators who are heads of delegations on my side; that is, Sen. Madzayo, Sen. (Prof.) Anyang'-Nyong'o and Sen. Hassan who lead delegations that comprise Members of the Senate on the minority and majority side.

Our point was and remains that the Constitution and the Standing Orders require that the heads of delegations nominate in writing. We can casually vote on matters that are not contested, like what we have voted, but that can be a precursor to a very dangerous situation when we reach matters that are serious and contested, like Order Nos. 8 and 9.

We have various contested Bills like Order Nos.8 and 9. It is on the basis of this that we raised the issue and the Chair ruled that the head of delegation has to nominate a voting Member of the Delegation in writing. It is also in furtherance of this that the

distinguished Senator for Nairobi wrote to the Speaker and disqualified one of the Members of his delegation, Sen. Sijeny, from ever voting on his behalf because she sits on our side. We have no problem with that because they do not politically share the same views on issues on the Floor.

We also know that Sen. (Prof.) Anyang'-Nyong'o has written to the Speaker and indicated that he has no Member of his delegation to vote on his behalf when he is not in the Chamber although we know that Sen. Gwendu comes from the same county.

Sen. Hassan has also communicated to the Speaker that he has no Member of Delegation to vote on his behalf although Sen. Mburu comes from the same county.

The Temporary Chairperson (Sen. Murkomen): The Senate Minority Leader, kindly get to the point.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, Sen. Kisasa is purporting to vote for Sen. Madzayo, I saw her come to show you a text message. The Standing Orders and the Constitution do not anticipate or allow for a nomination of a Member of a Delegation to vote via a text message. It has to be in writing. Therefore, if there has been a vote on that basis, then it is invalid. Our position is that it has to be deleted so that we proceed with other matters. This may look like a simple matter now because we are not contesting it. However, when we will be dealing with a contested matter, it will be a different matter all together.

The Temporary Chairperson (Sen. Murkomen): I have already heard, Sen. (Dr.) Khalwale.

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

The Temporary Chairman (Sen. Murkomen): I am sorry, Sen. Kagwe, I will not hear you because I have to make a ruling.

Sen. Kagwe: Mr. Temporary Chairman, Sir, I have a right to rise on a point of order.

The Temporary Chairperson (Sen. Murkomen): You have a right to rise on a point of order, but in the interest of time, I will not give you a chance. We have two more votes. Therefore, I do not want us to lose them on account of something that is very straightforward.

I have heard the arguments of the Senate Minority Leader and Sen. (Dr.) Khalwale. I have consulted Sen. Madzayo and Sen. Mshenga. I am satisfied that she has the necessary instruments to vote. However, on the substance as to whether in the future or as to how long she will vote, I will leave that to a substantive ruling of the Speaker later. For now, I am satisfied that she has the necessary authority to vote today. I talked to Sen. Madzayo and saw the electronic communication to that effect. I am satisfied for now.

Could the Chairperson report?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairman, Sir. This is not a simple matter.

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Wetangula! Please, sit down.

Could the Chairperson report on Order No.14?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of the Climate Change Bill (National Assembly Bill No.1 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Murkomen): The Mover of The County Early Childhood Education Bill (Senate Bill No. 32 of 2014), Order No.15, report. Please, proceed, Sen. Karaba.

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO. 32 OF 2014)

Sen. Karaba: Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of the County Early Childhood Education Bill (Senate Bill No.32 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Murkomen): For purposes of the Senate Minority Leader and those who contested the vote of Sen. Mshenga, I would like to clarify that I have just made an interim ruling to facilitate us to have a substantive time; when the Speaker comes up with his communication, we can argue.

I find it very difficult presiding as a Chairperson of the Committee of the Whole stage for us to converse over such weighty and important issues. There is no harm we are going to suffer now because the votes are over 25. If the Speaker comes to a substantive ruling and invalidates that vote, at that point in time, it will not harm the exercise that we have done here. For now, bear with me. A substantive time will come for us to argue. I also have issues, including whether if membership of delegation is segregated between two sides of a House. It is a substantive issue, but we cannot argue it in a Committee of the Whole stage.

Allow us to leave it at that stage because I have consulted both the Senate Majority Leader and the Senate Minority Leader. We will deal with that issue when the Speaker comes.

(The House resumed)

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

The Temporary Speaker (Sen. Ongoro): Who allowed the Bars to be opened? We had indicated that the Bars remain drawn because we still have Bills to vote for. We now do not have the requisite numbers. We will have to proceed with the reporting and then ring the Division Bell.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, send somebody to whip them

The Temporary Speaker (Sen. Ongoro): Let us proceed. Let the Whips bring back the Members to the Chamber.

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

Sen. Murkomen: Madam Temporary Speaker, I beg to report that the Committee of the whole has considered, The Climate Change Bill (National Assembly Bill No. 1 of 2014 and its approval thereof with amendments.

The Senate Majority Leader (Sen. Kindiki): Madam Temporary Speaker, I beg to move that the House do agree with the Committee in the said report.

The Senate Minority Leader (Sen. Wetangula) seconded

(Question Proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. Kindiki): Madam Temporary Speaker, I beg to move that The Climate Change Bill (National Assembly Bill NO. 1 of 2014, be now read a Third Time.

The Senate Minority Leader (Sen. Wetangula) seconded

(Question Proposed)

The Temporary Speaker (Sen. Ongoro): We now have to ring the bell because we need a division on that. We could go through on the other one, report on it and then we do Division for both of them.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. When we were in the Committee the exercise to which we are now reporting to you, a matter arose that requires clarification. As you know, traditions of this House are set by precedence. A precedent has been set whereby a Senator has voted and we have contested, could you also receive the same report so that the same is allowed to be decided on by yourself substantively.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, the office of the Speaker has no contradictions. Therefore, under those circumstances, I will sustain the earlier ruling by the Chair who himself is a Member of the Speakers panel and wait for substantive direction from the Speaker as earlier directed.

I beg that we move on with the business of the day. Let us proceed with the next, and then we will do one division for both of them.

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO. 32 OF 2014)

Sen. Murkomen: Madam Temporary Speaker, I beg to report that the Committee of the whole has considered The County Early Childhood Education Bill, (Senate Bill No. 32 of 2014) and its approval thereof with amendments.

Sen. Karaba: Hon. Madam Temporary Speaker, I beg to move that the House do agree with Committee in the said Report.

Sen. (Eng.) Karue seconded

(Question Proposed)

(Question put and agreed to)

Sen. Karaba: Madam Temporary Speaker, I beg to move The County Early Childhood Education Bill, (Senate Bill No. 32 of 2014) be now read a Third Time.

Sen. (Eng.) Karue seconded

(Question Proposed)

The Temporary Speaker (Sen. Ongoro): Ring the bell for two minutes. Hon. Members are just in the lobby and they can be whipped quickly.

DIVISION

ELECTRONIC VOTING

*(Question, that the Climate Change Bill
(National Assembly Bill No. 1 of 2014) be now read a Third Time
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Ongoro): Hon. Senators, the results of the Division are as follows:

AYES: 24

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 24 votes to nil)

(The Bill was accordingly read the Third Time and passed)

DIVISION

ELECTRONIC VOTING

(Question, that the County Early Childhood Education Bill (Senate Bill No. 32 of 2014) be now read a Third Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Nabwala, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Ongoro): Hon. Senators, the results of the Division are as follows:

AYES: 24

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 24 votes to nil)

(The Bill was accordingly read the Third Time and passed)

The Temporary Speaker (Sen. Ongoro): Could the Bar be now withdrawn?

(The Bar was withdrawn)

The Temporary Speaker (Sen. Ongoro): Hon. Senators, the next Order is supposed to be the Committee of the Whole on The County Industrial Development Bill (Senate Bill No.7 of 2014). However, because the amendments have just been introduced, we will defer it and move to Order No.17. We have already consulted with the Mover and it will be in the Order Paper tomorrow.

We will move to Order No.17

COMMITTEE OF THE WHOLE

THE COUNTY INDUSTRIAL DEVELOPMENT BILL (SENATE BILL NO. 7 OF 2014)

(Deferred)

BILL

Second Reading

THE WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move that The Water Bill (National Assembly Bill No.7 of 2014) be now read a Second Time.

As the adage goes, water is life. Water is a very important, but at the same time, a finite resource; it is not infinite. Water is critical for domestic, industrial and irrigation use. It is also useful for cultural purposes. It is because of this nature of water, being a finite, but critical resource, and being a resource that is needed in very many aspects of human life, that many countries of the world have witnessed community conflicts around adequacy and accessibility to water.

Our own country, Kenya has been classified as one of the most water-scarce countries of the world. It, therefore, came as a big relief when last year, it was announced that geologists had discovered large aquifers or underground water resources in Turkana County, in the northern part of our country. It is hoped, therefore, that soon when we can abstract water and put it to use, our country will move from being a water-scarce nation to a nation with adequate water supply.

Madam Temporary Speaker, those who drafted our Constitution had in mind the critical role of water in our national life. It is for that reason that our Constitution in Article 43 envisages water as a human right. I only know of South Africa as the only other country that has placed water, among other socio-economic rights, as justiciable rights.

There are three types of approaches by different countries to the question of water. Some constitutions are silent on water. The other category is countries which have adopted water in their constitutions under what is known as “directives of state policy” or “directive principles of state policy.” That means that water is mentioned in the constitution, but it is not provided for as an enforceable right.

In terms of modern constitutions, I can only cite the South African Constitution from which our Bill of Rights is largely modelled. Under Article 43 of our Constitution, we have water as a justiciable right. In other words, a Kenyan can go to court to enforce any limitation which is unauthorized or any abrogation of the right to water. The same case applies to other socio-economic rights like housing and sanitation. It is at this point, therefore, that the Constitution in the Fifth Schedule demands that there must be water legislation that gives effect to Article 43.

It is in that connection that I was very happy to see my colleague, Sen. Hassan Omar, introduce in this House a comprehensive Bill on the enforcement and realisation of socio-economic rights, generally under Article 43 of the Constitution. It is one of those moments that I commend him. We do not agree on many things, but this is one of the few areas that we agree on. I fully support that legislation. He has done this Senate proud as a harbinger of the enforceability and justiciability of socio-economic rights. I am sure he did that, not just for Mombasa County, but for all the counties of our country.

Madam Temporary Speaker, in this context, this Bill deals with a very important resource called water which is finite. Therefore, there are competing uses for water, which if not managed well, the society and our communities could generate conflicts, as we have seen in many parts of our country, especially in the northern and semi-arid parts. There has been a lot of push and pull by pastoralists as they want their livestock to access water. That is in competition with farmers who have more sedentary uses for water *et cetera*.

This Bill offers the country a comprehensive legal framework for the enforcement of Article 43 of our Constitution. I am very passionate about socio-economic rights. There are many ideological arguments against socio-economic rights even by leading constitutional experts. Up to now, there are those who believe that socio-economic rights should not be in the Constitution and they should not be given the kind of legislative prominence that we have seen, for example, in the Bill by Sen. Hassan Omar or the Bill that I am moving now.

It is said that you cannot put water as a human right because it is very difficult to ensure enforceability. No country in the world can assure 100 per cent access to water and housing. Therefore, when you put them in the Constitution, you will be exposing the Constitution to ridicule. A story is told in the old days in the Soviet Union of how they used to mock socio-economic rights of a woman who went to a restaurant and asked for the menu. She went through that menu, looked at the various items and the waiter responded in each case that the item that this woman wanted was not available. After five requests, which were not available, the woman cynically quipped: "Is what you have given me the menu or the Constitution?" It meant that the Constitution is that which says many things and does not deliver. However, this is not the case for our constitution.

Madam Temporary Speaker, we have seen developing countries push for the realization of the right to water and other socio-economic rights successfully. The South African example which I have given handled the issue of access to water in a very important case in the Constitutional Court in Johannesburg in 2002. Other similar socio-economic rights like the right to housing have been adjudicated positively to give homeless people homes. The Grootboom case in South Africa is a good example.

The right to emergency treatment which is also a socio-economic right and also captured in our Constitution has also been given effect. Again, I can cite the

Soobramoney case in South Africa which gave effect to the right to emergency medical treatment, where somebody can force both public and private sector to offer emergency medical treatment.

As we continue discussing this Bill, we are looking at a human right that must be enforced in accordance with our Constitution and make sure that every Kenyan has access to adequate supply of water and sanitation. The long title of the Bill describes it as an Act of Parliament to provide for the regulation, management and development of water resources, water and sewerage services and other connected purposes.

Madam Temporary Speaker, at this juncture, allow me to caution. I know this Bill has already gone through a lot of stakeholder interventions and presented before the National Assembly before coming here. However, the caution that I am giving all of us is that this is the House that will infuse the necessary balances that are required in this Bill to ensure that the framework that has been provided for in terms of functions around this commodity called water between the national and county governments is respected. Therefore, I am expecting that as we debate it, those balances will be looked for and enforced.

If I could just quickly highlight what the Constitution says in the Fourth Schedule about water, Part 1, says that the national Government has the responsibility on the use of international waters and water resources. So, the whole issue of water and resource use is in the national Government. County governments have two distinct roles concerning water. The first one, which is in Part 2, Paragraph 10 of the Fourth Schedule, is implementation of specific national Government policies on natural resources and environmental conservation, including soil and water conservation and forestry, implementation of national Government resources around water, especially the issue of water conservation.

The second one which is even more pronounced and broader is in Paragraph 11 of Part 2 of the Fourth Schedule:-

“County governments are responsible for county public works and services, including –

- a) Storm water management systems in built-up areas; and
- b) Water and sanitation services.”

In trying to find out the right balances in terms of making sure that each level of government and its functions are respected in this Bill, the Fourth Schedule will be very critical.

Madam Temporary Speaker, allow me to move very fast and highlight some of the clauses. I am sure that Senators have had time to look at this Bill and we will continue to look at it in the coming days as we debate this. Clause 5 says:-

“Every water resource is based in and held by the national Government in trust for the people of Kenya.”

In other words, the national Government is supposed to hold this resource as a trustee and not the owner or the proprietor of water.

The other provision, still in Clause 5, says that the agent of the national Government in the management and regulation of water resources country wide will be the Water Resources Authority herein after referred to as “the Authority”.

Clause 10 describes the functions of the Water Resources Authority mentioned above. I will only highlight two; the first is to formulate and enforce standards, procedures and regulations for the management and use of water resources and flood mitigation. The other one is to receive water permit applications for water abstraction, water use and recharge and determine issue, vary water permits; and enforce the conditions of those permits.

In other words, the whole idea of water permits is rested in the Authority.

Let me also mention Clause 23 on the establishment of Water Resources Committees in each basin area. Clause 28, the National Harvesting and Storage Authority is established.

Clause 34 says:-

“A permit is required for any of the following purposes—

- (a) any use of water from a water resource, except as provided by section 35; (b) the drainage of any swamp or other land; and
- (c) the discharge of a pollutant into any water resource.”

Clause 38 deals with application for permits which are to be made to the respective regulatory authorities of relevant water basins. Those regulatory authorities may impose conditions on those permits.

Clauses 45 and 46 deal with permits, variation of permits and even cancellation in certain circumstances if the conditions provided for when issuing those permits have not been met.

Madam Temporary Speaker, Clause 61 on Water Services reiterates water as a human right as provided for in article 43 of our Constitution. I have already mentioned how happy I am by that provision in our Constitution because it ups the status of this commodity into a human right. That creates the necessary legal difference to make sure that we enforce this right.

Clause 63 is on the establishment of Water Development Boards to do a number of things. Let me highlight two functions:-

- 1) To develop and maintain the management of the national Government public water works within the area of jurisdiction.
- 2) To provide technical support and capacity building to county governments when requested to do so by those county Governments.

Clause 68 is on Water Service Regulatory Board which is supposed to prescribe national standards for the provision of water services and asset development for water services providers. Clause 73 is on Water Regulation Boards which are required to maintain a register of accredited water service providers.

Clause 75 says county governments may establish water service providers within the county.

Clause 76 is on the responsibility of water service providers to provide water services within the area specified in the license and *inter alia* to provide county assets for water service provision.

Clause 106 is on the duty of licensees to ensure effluence from sewerage systems does not:-

- (a) Pollute the environment or;
- (b) Harm human health.

Madam Temporary Speaker, this is in the sewerage system to ensure that we protect public health. We have seen a lot of effluence and raw sewage in certain parts of urban areas across this country. We have been told of vegetables that are grown on “water” which is actually effluence from human and industrial waste. Those are vegetables that Kenyans are feeding on. No wonder there has been a sharp increase of carcinogenic ailments.

(An hon Senator spoke off record)

I am being reminded of the carcinogenic wheelbarrows.

We have seen a sharp rise in cancer related diseases in our country. These never existed in the past when Nairobi used to be called the City in the Sun. It is no longer that. There are some people who have called it a city in a mess or in garbage.

It is so sad that we are sacrificing public health as we pursue shortcuts to prosperity. So, even as we industrialize and our urban centres in various counties urbanize and modernize, we need to secure public health and make sure we do not pollute the environment.

In fact, the Constitution in the Chapter on Environment and Natural Resources requires the obligation of polluters to pay; it is called the Polluter Pays Principle. It is not enough just to create a duty not to pollute. The Constitution demands that any person whose activities lead to pollution of environment, damage to public health or life must be held accountable and pay for damages to compensate those who are affected by that pollution. For example, we have seen cases in Mombasa, people living in horrible conditions of environmental pollution or at the mercy of industrialists who are making money without regard to public health.

Madam Temporary Speaker, allow me to quickly highlight Part V, which is on Water Sector Trust Fund. This is very important for two reasons.

First, even in the transition period under the current water laws before we enact this legislation which will give effect to the new constitutional dispensation, we have seen a lot of progress made by the cooperation between the national and county governments. I say so, because I know my County Tharaka-Nithi is one of the six counties countrywide that received some funding from the national Government through the Water Services Trust Fund to support the activities around water. Each county got Kshs400 million. These were Tharaka-Nithi, Homa Bay, Nandi, Kwale and two other counties which I cannot recall.

Part V enhances that cooperation between the national and county governments to not only build the capacity of county governments to supply this human right called water, but also ensure that the resource is like an additional resource basket for both the national and county governments in their shared responsibilities on water.

Madam Temporary Speaker, Clause 111 says that the purpose of the Water Sector Trust Fund is to finance the water sector across the board.

Secondly, Clause 112 is interesting for the Senate and devolution; it says that the trust fund shall provide conditional or unconditional grants to county governments to supplement their budgets in the provision of water, sanitation and sewerage, *et cetera*.

Madam Temporary Speaker, allow me to say the following: One, this is one of the most important legislations that this Senate will ever pass with regard to the

implementation of the Constitution and our Bill of Rights. Secondly, the development of our country in terms of industrial, irrigation and agrarian development depends on the availability of clean, portable water for domestic use, but also adequate quantities of water for industrial use and irrigation. Therefore, this Bill, especially in trying to tackle the financial challenges that the national and county governments have faced in providing water, is doing a lot of justice in ensuring that we get adequate water for the development of our country.

Madam Temporary Speaker, finally, allow me to indicate that going forward, as a Senator, I would like to see more cooperation between the two levels of government. We have seen a bit of confrontation. I am not implying that when one level of government infringes on the functions of another, there should be no issue; there should be an issue. However, Article six of our Constitution says that the two levels of government are independent and distinct. But many of us read only that part; their independence and the distinctiveness. We forget the second part which says that they must conduct their relations in mutual respect and through cooperation and consultation.

If you ask me from where I sit, the future of a successful system of devolution will lie, not only in a system that respects the two levels of government in their distinctiveness, but more importantly, a system and an environment which actively promotes fruitful cooperation, mutual reinforcement and support of the two levels of government because both levels serve one target; the common citizen of Kenya.

Moving forward, I look forward to less confrontation, conflict and competition between the two levels of government and more cooperation, mutual respect and mutual reinforcement, so that the beneficiary of our governance system, namely the citizens of Kenya can get maximum harvest from our Constitution, legal system and institutions of governance.

Madam Temporary Speaker, I am tempted to say one last thing; to allow my seconder come back to the Chamber. If this system of cooperation and mutual support is encouraged, we will see less time wasted over people squabbling. I am not underrating the fact that the county governments need to get their space from the national Government. There is already a system that allows for consultation, cooperation, mutual reinforcement and that should be pursued. Therefore, I am looking forward to a situation where the Inter-Governmental Relations Act is made to work better and more efficiently so that the people of Kenya can enjoy flawless services.

Madam Temporary Speaker, with those many remarks, I beg to move and request the Senate Minority Leader, Sen. Wetangula, to second.

The Senate Minority Leader (Sen. Wetangula): Thank you, Madam Temporary Speaker. I beg to second this Bill from the National Assembly. We may recall that this is one of the Bills that this House fought very hard for, including going to the Supreme Court for an advisory opinion that made it possible for it to come here. Initially, you may recall the Water Bill, the Mining Bill, the Forest Bill and many other Bills were slated to start and end at the National Assembly yet they are fundamentals that touch heavily on county governments and counties.

Madam Temporary Speaker, I expect and I feel slightly disappointed that a Bill that touches on a resource that is at the heart of every county is being debated with four Members in the Chamber. Senators, particularly heads of delegations, I am sure do understand and appreciate the value and the enormity of water as a resource without

which, there can be no life. This country is one of the countries designated by the United Nations (UN) as a country that suffers from water stress and as a country that has inadequate supply of fresh water.

Despite the fact that we have the second largest fresh water lake in the world whose waters we have not been able to use because of the 1929 Nile Treaty that was designed by the British colonialists with very anachronistic clauses, you will be shocked to hear the content of that treaty; that 85 per cent of the waters of the Nile were preserved for Egypt, 10 per cent for Sudan and five per cent for evaporation with no Ethiopia and all the riparian countries where the source of the Nile waters come from, including Kenya because 75 per cent of the inflows of Lake Victoria come from Kenya and one cannot imagine a Treaty to regulate the waters of the Nile without consulting.

Madam Temporary Speaker, when I was the Minister for Foreign Affairs, we engineered the review of the Nile Treaty and Egypt boycotted to append its signature on the Treaty, but the Africa Union (AU) authorized the member countries to sign it and we did sign it. Ethiopia, Kenya, Uganda, Sudan, Congo, Rwanda, Burundi, Tanzania, Central Africa and all countries that make major contributions to the inflows of the Nile signed.

Madam Temporary Speaker, when I come back to the Bill, I will start from a point raised by the Mover of the Bill. This is not a Bill that has originated from this House. What I would have expected and I feel a little disappointed is that the Committee responsible for water resources – that is why we have committee systems – would have taken the Bill, gone through it, including seeking any expert opinion and views where necessary, come and inform and enrich debate on the Floor of the House.

Madam Temporary Speaker, Clause 5 of the Bill left as it is, is inconsistent with the spirit and provisions of the Fourth Schedule of the Constitution. The Fourth Schedule defines water as a shared responsibility between the county governments and the national Government, but this clause is definitive and categorical that every water resource is vested in and held by the national Government in trust for the people of Kenya. It completely locks out the county governments. I have gone through the Bill and that is why I have not been very active the whole afternoon. When my brother asked me to second the Bill, in the last two hours, I have gone through it from A to Z. There is little acknowledgement or assignment of responsibilities, duties and legal cover for county governments in terms of water resource management.

To some extent, you can understand that where we have trans-boundary water resources, perhaps exclusively leaving them to counties may pose some operational management difficulties. I have said on the Floor of this House that I cannot envisage a situation where we who live in Nairobi enjoy the water from Ndakaini Dam in Murang'a and say that Murang'a will have absolutely no say in either the management or protection of that resource.

Equally, we have trans-boundary rivers across counties, like Tana River, which starts all the way from Mt. Kenya running through Isiolo, Tharaka-Nithi, Meru, Kitui and Garissa counties. The management of that resource should not only be a preserve of the national Government, but a shared responsibility. It is the counties where the resources are based or emanate that are best qualified to be entrusted with the management and the protection of water sources. I hope that we will not include this before we go on recess on Thursday, but I hope that along the way, the Committee responsible, will bring very

comprehensive proposals for amendments to accommodate the interests of counties that we represent.

According to this Bill, for you to drill a borehole in your home in Laikipia, you will require a permit from a body based in Nairobi. To dam a little stream that emanates from your property, to create a fish pond as a reservoir before it flows on into a major water flow, you require a permit from Nairobi; that kind of requirement is totally inconsistent and an antithesis of devolution. This is because devolution meant that we get management and decision making closer to the people. That is why we have county governments.

Secondly, title regulations in this country have been the source of corruption. Somebody sits at a desk in Nairobi with a stamp and a permit and gives permits to everybody from everywhere in the country. It just becomes a money mint. People who come for permits know how much it costs to pay legitimate tax for the Government and how to pay the man holding the stamp to give them the permit. We must move away from this. Over-regulation of a country and a system is dangerous. It is something that we should not accept.

Equally, I want to see a situation where the management of national water resources is as envisaged in Clause 8(a), which is lifted from the Constitution; it states as follows.

“Every person has a right to clean water and good sanitation.”

Clean water and sanitation is unlikely to be provided for to a person in Mandera or Nyandarua counties from Nairobi. We tried it for the last 50 years and failed miserably. The central system gave way to devolution because what used to happen was that whoever was in office had discretion to decide where to take resources. Therefore, regions that did not have people in areas of responsibility ended up never having any resources. That is why it has been repeatedly said here that counties like Mandera and Wajir saw a pipe of water when devolution was implemented three years ago, or 50 years after Independence.

That is why we want counties to take care of the destiny of their development and people. We want resources from the centre to go to the counties. It is unlikely that a person sitting at Maji House in Nairobi will understand or appreciate the stress of water in Laikipia which is classified as an Arid and Semi Arid Land (ASAL) county. It is the people of Laikipia and their county government who will sit and decide that they want 50 or more boreholes in a year.

Madam Temporary Speaker, this Bill envisages that before a borehole is drilled, one has to come to Nairobi to get a permit. We are moving backwards and this is not something that we should accept. More importantly, the world over, water is provided by the State. It is a utility where charges must be as nominal as possible because water is life. Households may do without electricity and many other things, but they will not do without water. Without it, there can be no food, cleaning or drinking. That is why a city like New York has the cheapest water utility in the world. The family of Nelson Rockefeller left a foundation and decreed that the people of New York will enjoy near free water for eternity. If you go to New York, you will get the cheapest utility called water. The water in New York is cheaper than even water in Kikuyu Township, Ongata Rongai or even in the villages.

Clause 10 talks about the fees payable and eventual charges; as it runs through the Bill, it must be nominal because water must be a subsidy from the State. Even when you go to the rural areas of Kiambu, Naivasha or Bungoma, where there is piped water and meters to families, I would expect a regulation that sets the bare minimum for each family to pay so that we do not have a meter running and find a family with no income being told to pay Kshs5,000 a month. There are families in this country that do not earn even Kshs500 a month or a year. There are families that live in Kibera, Korogocho and Mathare slums.

Apart from reciting the provisions of the Constitution that everybody is entitled to clean water and good sanitation, poor neighborhoods should be entitled under the law to free provision of water. We can charge a few neighbourhoods like Muthaiga, Spring Valley, Karen and others, those who are on national water grid, money that can then help the poor to get water for free. However, as it is, we are defining and handling water as if it is a commodity for sale. If we start selling a commodity, then water is not different from oxygen. We will very soon start charging a levy for people who breath free oxygen in a free atmosphere, which may not be very helpful.

Madam Temporary Speaker, I would want the Mover of the Bill to disengage from the Senator for Kiambu so that he can follow the proceedings. This Bill creates too many boards which are a creation of bureaucracy. I have counted close to four boards at the national level in water management. We are making it very difficult to manage our water resources, because when you have a board here, and where you have a water basin, the Bill is providing for setting up a board. So, if you have four or five water basins in one county, you have four or five water boards. Those boards are going to be heavy on expenditure; on the usual vices of corruption and they are going to create bottlenecks instead of making it easy for the management of the water resources.

I would expect, and I want to encourage the Mover of the Bill, that both himself and the Committee responsible to make a provision that county governments shall also legislate to manage their own water resources provided those legislations will not be in conflict with the national interest, particularly where water is a trans-boundary resource. For example, if you go to the county of the distinguished Senator for Kirinyaga, all those swift rivers; River Tiba and others, running down, we cannot leave it to Kirinyaga to deal with River Tiba alone. It has to be in collaboration with the national Government because that, eventually empties into Tana River, where we have Masinga Dam, Gitaru, Kamburu and all those electricity generating facilities. We want to see major involvement by way of legislation at county level on how to manage water.

Madam Temporary Speaker, let me turn to Clause 17 where I want my brother, the Senate Majority Leader, to appreciate, and agree with me that boards and authorities we set up, must recruit their own staff to work for them. Why is the Government bringing good law on one hand here, and bad law in relation to the Office of the Auditor-General, on the other? On a matter of the Auditor-General, the same Government that is giving boards under water authority to recruit their own staff is taking away a constitutional body's authority; the Office of the Auditor-General, from recruiting staff. It says that staff of the Auditor-General will be recruited by the Public Service Commission (PSC). This, therefore, puts them at the disposal of manipulation and distortion of their work. If the employees of the Auditor-General are recruited by PSC, then they are also subject to transfers by the PSC. So, you will find that a good auditor under the Auditor-General on

the heels of a stealing governor, like my governor and his wheelbarrows, when he is about to catch up with them, the governor may influence the PSC to transfer that man from the Office of the Auditor-General to anywhere else so that you frustrate the audit and make it difficult for us to pursue accountability.

I want to encourage my brother; the Majority Leader, to re-think those clauses that are in the Auditor-General's Bill, that are taking away the responsibility of the Auditor-General to recruit and manage his own staff and instead, have his staff managed from elsewhere. This will make it easy for them to be manipulated, which in turn, will make it difficult for them to work.

Madam Temporary Speaker, questions of accountability and audit are not about the Government and the opposition; they are about the management of public resources. That is why we constantly stand to demand a level of accountability that makes it possible for everybody to know that when you take public resources and hand over to a governor to manage, he is going to manage them. As he manages them, there must be an independent third party to check if it is managed properly or not. If the third party comes and is walking in the shadow of another force, then it will not work.

I like Clause 17, that provides that when we set up an organisation under the Statute and the Constitution, we should allow them to recruit, discipline, dismiss, promote their own staff so that they can have a working environment consistent with what we aim at achieving as a country, free of the challenges that we are experiencing currently.

Madam Temporary Speaker, the Bill also provides under Clause 20 and others that I will write and send to the Committee, the acquisition of water sources by the various boards that are being constituted. However, it is completely silent on compensation. If you own land and on it lies a wetland that is then classified under this Bill as a national resource worth protection, the law does not provide how the owner of that resource who has protected it for years will be compensated yet under the Constitution, the owner cannot be dispossessed of the property by the State without prompt and adequate compensation.

I want to see an amendment at the Committee Stage that makes it easy where the government identifies one's property as part of a water resource to compensate you adequately. Clause 24 is the one I mentioned that creates committees and boards for every basin of water. Those basins will be created at the national level. If you go to Nyanza or Kisumu counties, you will have a Nyando Basin Authority, Sondu Miriu Authority, Nyamasaria Basin Authority and others that are operated from Nairobi. Then, what is the role of county governments where the resources are based?

Madam Temporary Speaker, there should be no board or committee for every basin operational with the Chairman, board members with the bureaucracy we see. These are things that should be done by a single person on the desk in the department responsible for water services in the county. We have to rethink this.

Equally important is when you read through the Bill. First, it is referring us to Schedule Two to see details of the board members. However, it simply provides for the board chairman who should be qualified and appointed by the President. At these levels, we know that whether it is the former governments of President Jomo Kenyatta, Moi, Kibaki, and the current Government of President Uhuru Kenyatta, unless we have serious

qualifications, you will see a court broker being appointed to manage a water board yet he knows nothing about water.

Madam Temporary Speaker, politicians are constantly blackmailed by their supporters. We must ring-fence such areas with the law, so that when a youth winger rushes to Sen. (Prof.) Kindiki and asks for a job, having identified one in the Water Bill, he should be told that he identified the job, but he does not qualify. Besides, the law does not allow us to appoint people. Otherwise, where the law is fluid, we will end up filling--- Like we saw currently, the Government appointed board members, all of whom are failed politicians. It is unlikely that failed politicians will succeed in anything, yet they are being loaded everywhere and appointed to every board.

For example, in Nzoia Sugar Company a failed politician was appointed as the Chairman of Nzoia Out growers Company Ltd and he has a criminal case pending for misappropriation funds. However, he was lifted and appointed to be the Chairman of Nzoia Sugar Company Limited - a major investment- even with those serious issues on his head. That is because he says: "*Mimi ni Jubilee damu; I will die with the Jubilee.*" Even if we were the ones doing such things, it would be wrong for the country and for future generations of this country.

Water is not just about extinguishing a bush fire where you can get anybody with a bunch of twigs and tell them to go and extinguish the fire. It is a resource that we must manage properly. I would want to see that people appointed to these boards have proper qualifications in water resource management. They must be hydrologists or environmentalists. You cannot pick somebody who in his whole life has been walking with a briefcase full of newspapers on the streets of Nairobi, calling himself a businessman and appoint him the chairman of the Water Services Management Board. All he turns up is to see what is up for him, but not how to manage water or help the people of Kenya benefit from the resource. Unless we qualify who should be on the boards, we will be opening it up for abuse. You remember during the good old days – not because I have any disrespect for Mzee Mulu Mutisya – when former President Moi appointed him to be in charge of Soil Conservation. Those kinds of actions do not add up at all.

We have no problem with people being appointed to positions. However, let them be appointed to positions where they add value. This country has no shortage of qualified people from any community. Assuming that we even want to be tribal, like many people are, even in your own tribe, you can still scout and get qualified people to give jobs, instead of giving people jobs just because they were shouting, "*wewe juu, wewe juu.*"

Madam Temporary Speaker, Clause 34 of the Bill is very important. It restrains any person or group of persons from unilaterally draining swamps and dams or polluting water sources. What I do not understand – and my brother, the Mover of this Bill should check – is that Clause 34 states that a permit is required for any of the following purposes: Any use of water from a water resource, except as provided by Section 35, the drainage of any swamp or other land and discharge of a pollutant into any water resource---. Is there any situation where you can give a permit to anybody to discharge a pollutant into a river or a water resource? I do not think so.

We should not create a law that will allow some corrupt character somewhere to sit and permit a pollutant to be emptied into a river. That is outrightly unlawful and it should not find its way into the law. What do we mean by saying that you need a permit

to discharge effluent into a river? Does it mean that ones you get a permit, the effluent ceases being harmful? That cannot be the case. I would like to have that removed. I say this because of drainage of dams. When you go to Nyandarua---

The Temporary Speaker (Sen. Ongoro): Order, the Senate Minority Leader! You will have 30 minutes tomorrow to conclude your contribution.

ADJOURNMENT

Hon. Senators, it is now time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday 2nd December, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.