

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 24<sup>th</sup> March, 2015

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

*[The Speaker (Hon. Ethuro) in the Chair]*

### PRAYERS

### PETITION

#### MIGRATION OF TELEVISION BROADCASTING FROM ANALOGUE TO DIGITAL PLATFORM

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Petition to the Senate by the Africa Digital Network Limited (ADN) concerning the migration of television broadcasting from analogue to digital platform.

Pursuant to Standing Order Nos. 220(1)(a) and 225(2)(b), I hereby report to the Senate that the Petition has been submitted by the Africa Digital Network Limited through the Clerk of the Senate, requesting the Senate to review certain aspects of the digital migration process in Kenya and to undertake certain interventions on the same as explained below:-

The Africa Digital Network Limited is a consortium of three media houses in Kenya namely:-

- 1) The Nation Media Group (NMG), the proprietors of the NTV and QTV.
- 2) The Standard Group (SG), the proprietors of KTN.
- 3) Royal Media Services (RMS), the proprietors of Citizen TV.

As you are aware, Article 119(1) of the Constitution reads:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, I have reviewed the Petition and wish to highlight the salient issues raised by the petitioners which are as follows:-

(a) that only two companies; the Government-owned Kenya Broadcasting Corporation (KBC) through its subsidiary Signet and the Chinese’, Pan African Network Group (PANG) are licensed Broadcast Signal Distributors (BSD) in Kenya. The petitioners are also aggrieved with the process through which the said BSD licenses were issued;

(b) that the petitioners object to being forced to have their content carried by only either the Government controlled KBC or the Chinese company, PANG. This is for reasons that:-

(i) it hands the Government of the day the opportunity to control what the petitioners broadcast;

(ii) the petitioners' investment in infrastructure of over Kshs40billion will go down the drain; and

(iii) the arrangement runs counter to Articles 33 and 34 of the Constitution on freedom of expression and freedom of the media, respectively.

(a) that following protracted litigation going all the way to the Supreme Court, the petitioners were issued with self provisioning licenses in November 2014, permitting them to carry their own content. However, the Communication Authority of Kenya (CAK) allocated the petitioner too few frequencies to enable them transmit the broadcast throughout the country;

(b) that the petitioners require up to 30th May 2015, to be able to commence broadcast under the self provisioning license allocated to them. This timetable is to allow for the petitioners to have their transmitters, antennae and set-top boxes manufactured, shipped, cleared, transported and installed to enable them migrate;

(c) that the petitioners are not opposed to digital migration but rather to having their contents – for which they pay a lot of money – pirated by pay TV channels who in turn charge their viewers.

The petitioners state that they welcome competition but on a level playing field.

The petitioners pray that the Senate resolves:-

(a) that the digital migration date be moved to 30<sup>th</sup> May, 2015 which is within the International Telecommunications Union Analogue Switch-off for Kenya of 17<sup>th</sup> June, 2015;

(b) that the Communication Authority of Kenya immediately returns the petitioners' equipment which it dismantled and carted away on 14<sup>th</sup> February, 2015;

(c) that the petitioners be awarded the third Broadcast Signal Distributor (BSD) licence as recommended under the National ICT Policy Statement dated 31<sup>st</sup> March, 2006 and the National Digital Migration Taskforce Report dated 4<sup>th</sup> October, 2007;

(d) that the contents of the petitioners shall not be carried by anyone without the petitioners' prior consent; and,

(e) that a Broadcasting Bill be enacted establishing a broadcasting authority independent of government and charged with the mandate of frequencies allocation and all other matters concerning television broadcasting.

The petition is signed by Mr. Linus Gitahi, Mr. Sam Shollei and Mr. Wachira Waruru, the chief executive officers of Nation Media Group, The Standard Group and the Royal Media Services, respectively.

Hon. Senators, I am aware that there is a pending case in court that has been filed by one, Mr. Okiya Omtata in which he is challenging the switch off of analogue broadcasting from the perspective of consumer rights. I have reviewed both processes against the law and our Standing Orders. I wish to advise that there is nothing preventing the Senate from considering this petition as received pursuant to Article 94 and 119 of the Constitution and the Senate Standing Orders.

Pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

**Sen. Hassan:** Mr. Speaker, Sir, thank you for this opportunity. I am aware that the petitioners, at some point came before the two Standing Committees of the Senate; the Standing Committee on Legal Affairs and Human Rights and the Standing Committee on Broadcasting. I have listened to some of the issues in the petition and there is a general sense in which that fair competition talked about in the petition tends to give a certain advantage to foreign investors over local ones. We know that this country where a local investor is able to invest over and above any foreign investor, then like any every other country that has decorum and respect for its citizens, first priority should go to the local investor.

One of the things that have been crowded in a lot of secrecy is the local ownership of Pan African Network Group (PANG) which is a foreign outfit that runs the Star Times. Therefore, I want a clarification whether we can establish with finality who are the investors behind PANG so that the freedom of information under Article 34 is adhered to. Kenyans have a right to have information that affects public interest.

Mr. Speaker, Sir, by way of clarity, it would be important to understand the status; I believe that the petitioners are back on air and I am not sure under what arrangement. It would be important by way of clarity to that report or to whatever outcome the Senate decides to recommend, to know under what arrangement the petitioners are back on air because at that point they came, they were off air. It would be important to know whether by virtue of them being back on air, this particular petition has been frustrated by passage of time or certain developments in the arena of the matters alluded to in the petition.

Therefore, it would be important to write to the petitioners to expound further on the circumstances upon which they are back on air and whether being back on air would have any adverse impact on any recommendations that this Senate might make. Otherwise, it would be a petition in futility because the status quo has been maintained or certain arrangements or agreements have been entered into.

Mr. Speaker, Sir, lastly, when the petitioners came to our Committee, they said that the President had instituted some kind of proceedings to ensure that the two parties are able to amicably resolve these matters. It would be important to know what progress was made in that particular area. I remember the Chairman of the Nation Media Group (NMG) raised the flag that they were going to meet the President and his team with a view of getting a solution to the matter. We want to know what kind of progress was made so that this Senate does not embark on processes that have either been finalized, actualized or interventions made so that we are able to move expeditiously in a manner that is not defeatist to the processes internally.

**Sen. Billow:** Mr. Speaker, Sir, I want to echo the sentiments by Sen. Hassan of Mombasa. We do not want to engage in an exercise in futility. I also want to say that the issue of the media is very important in this country. The media has been key in some of the achievements we have had in terms of our freedoms and fighting for the rights of the systems of governance, including the constitutional review process. The media has also been in the forefront in the fight against corruption. Therefore, it is important for us to get to the bottom of this matter.

I know there is a Senate Committee that has been looking at this matter but I am sure in their wisdom, the petitioners felt that the Senate should find a solution to this

matter. More importantly, this Senate needs to get to the bottom of these concerns regarding the digital migration so that we can advise Kenyans what the position is. There have been a lot of stories by these media groups and there are also counter views from the other group regarding frequencies. Therefore, it is important that as the Senate, we should handle this petition and find out the status of the frequencies.

Yesterday, we were with the Committee on Devolved Government in Mandera and one of the things the executive there raised is that they had applied for radio frequencies and have been queuing for many months. So, this is an area that is critical for everyone including the counties. Therefore, it is important that this Senate gets to the bottom of this matter and finds out what exactly is going on.

**Sen. Elachi:** Mr. Speaker, Sir, I also want to support what Sen. Hassan has said. The Senate needs to understand whether certain mechanisms that have been put in place to ensure that the media houses are back on air. We need to ask ourselves whether the set-top boxes available can serve all Kenyans. The Communication Authority of Kenya should guide us to understand if the rolling of the programme is going to be friendly to Kenyans or discriminatory.

More importantly also, we need to know, through the Report that the Committee was to table in this House whether, indeed, the issues that were raised at that time between the Government and the three media houses have been finalised. We need to be clear that it will never happen again because the main concern of the Senate, as an institution, is to ensure that the Constitution is adhered to. We must ensure that Kenyans have information. That is our role.

With regard to the issue of set-top boxes going to the rural areas, I do not know whether these have any way of being connected to batteries because access to electricity is a problem. Some people in the rural areas use batteries to watch television. So, there are many things the Government should clarify to us and simplify for Kenyans also to understand. If that is in the Petition, we need to see how the petitioner sieves out to focus on a way forward. For now, we are on air and I have not seen media houses complaining. I think we are moving on well.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Members, regarding whether the issues can be canvassed or not, we have technical people to sort out that.

**Sen. Obure:** Mr. Speaker, Sir, there is no doubt that the media in this country has played its part in matters relating to the social and economic development of this country. The media has continually given information ensuring that the nation is properly enlightened and educated. There is also no doubt that the media, generally, has also been associated with efforts being made by the Kenyan people to enhance economic space and improve governance through the various institutions.

However, there is need for this Senate to go deep into the various issues raised by media houses in order to understand the challenges facing that sector. In my understanding, the media is requesting for an extension of the time up to 31<sup>st</sup> May, 2015. The additional period will allow them to set up the necessary infrastructure by way of importing the equipment which they require and so on. This, in my opinion, should not be found unreasonable.

Lastly, Mr. Speaker, Sir, I also note that even the extended period which they are asking for will still be falling within the timeframe set for the migration process

throughout the international community. It should not be difficult to accommodate the petition by the media houses.

Thank you, Mr. Speaker, Sir.

**Sen. Ndiema:** Mr. Speaker, Sir, this petition will give the Senate ample opportunity to look into what is happening because the stoppage of the transmissions by local companies, coming close to the recent Security Bills, has painted a negative image of the country; that, perhaps, we are not so friendly to the investors or the media. We want to know exactly why it has become urgent for media stations to migrate. We also need to understand the implications of the digital migration to the consumers. Will it involve additional costs or will the consumers enjoy the services free as they used to? We also need to see how local artists can benefit from this digital migration. What will be the local content of their transmissions? Perhaps, this is an opportunity to interrogate and ensure that our artists, performers and broadcasters do not lose jobs.

**The Speaker** (Hon. Ethuro): Hon. Senators, pursuant to Standing Order No. 227(1), the Petition stands committed to the relevant Standing Committee, in this case, the Standing Committee on Information and Technology. In terms of the Standing Order No. 227(2), the Committee will be required, in not more than 60 days from the time of reading the prayer, to respond to the petitioner or petitioners by way of a report laid on the Table of the Senate and no debate in relation to the report shall be allowed.

I may also wish to add that since the matter has been before the House, that period should be dramatically reduced.

Next Order!

## PAPERS LAID

### REPORT OF THE LANDS COMMITTEE ON THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL, 2014

**Sen. Kivuti:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate.

The Report of the Standing Committee on Land and Natural Resources on the Environmental Management and Co-ordination (Amendment) Bill, 2014.

*(Sen. Kivuti laid the document on the Table)*

*(Sen. Sang spoke off record)*

**The Speaker** (Hon. Ethuro): Sen. Sang, your demeanor does not matter.

*(Laughter)*

I have not seen your request. You made some few attempts and then you withdrew.

THE PUBLIC FINANCE MANAGEMENT  
(EQUALISATION FUND) GUIDELINES, 2015

**Sen. Sang:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate.

The Public Finance Management (Equalisation Fund) Guidelines, 2015.  
Thank you, Mr. Speaker, Sir.

*(Sen. Sang laid the document on the Table)*

REPORT OF THE INFORMATION COMMITTEE  
ON ITS VISIT TO KONZA TECHNO CITY

**Sen. Kagwe:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate.

Report of the Standing Committee on Information and Technology on its first visit to Konza Techno City on 19<sup>th</sup> November, 2014.

*(Sen. Kagwe laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Next Order!

### NOTICE OF MOTION

#### RESOLUTION TO HOLD EXTRA SITTINGS

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

THAT, pursuant to Standing Order 30 (3) (b), the Senate resolves to meet at 9.00 a.m. with effect from Wednesday, 25<sup>th</sup> March, 2015, to Thursday, 2<sup>nd</sup> April, 2015, every sitting day, excluding Thursday, 26<sup>th</sup> March, 2015.

**The Speaker** (Hon. Ethuro): Order, Senators! You will notice that we have a Supplementary Order Paper. Before we take Statements, let us go to Order No.8.

### MOTION

#### RESOLUTION TO HOLD EXTRA SITTINGS

**Sen. Keter:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order 30 (3) (b), the Senate resolves to meet at 9.00 a.m. with effect from Wednesday, 25<sup>th</sup> March, 2015 to Thursday, 2<sup>nd</sup> April, 2015, every sitting day, excluding Thursday, 26<sup>th</sup> March, 2015.

Mr. Speaker, Sir, as you are aware, there are constitutional Bills whose deadlines have to be met before we go for recess on 2<sup>nd</sup> April, 2015. There are two Bills – Order Nos.11 and 13 - which are on Second Reading, which we need to finalize before 27<sup>th</sup>

March, 2015. Once we finalize, we need to send them back to the National Assembly. Also, if there is disagreement, we need to give room for the mediation team to meet before 27<sup>th</sup> March. Therefore, we do not have too much time, bearing in mind also that on Thursday afternoon, we will have a Joint Sitting of Parliament, where His Excellency the President will deliver his speech and, subsequently, from Tuesday next week, there will be three mandatory days of sitting. We really need to work extra hard today and tomorrow.

Mr. Speaker, Sir, since this is a straightforward Motion, I beg to move and request Sen. Elachi to second.

**Sen. Elachi:** Mr. Speaker, Sir, I beg to second.

Indeed, in addition to the Bills that the Senate Deputy Majority Leader has talked about, there are Bills regarding allocation to counties and revenue to counties. We, therefore, need to go through them and meet the constitutional deadline. We will need guidance from the Speaker especially on the Division of Revenue Bill and the County Allocation of Revenue Bill.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Sen. Abdirahman:** Mr. Speaker, Sir, I rise to make a few comments before I say whether or not I support the Motion.

It is a pity that the business of this House seems to be misunderstood by my counterpart on the other side. It is more or less a Jubilee affair, yet this is business of the House. It is important that consultations are done. No doubt this is a very important Motion that helps rebuild the image of the Senate. Many a time, we have complained that we have not been doing good work. This will only enhance our image and active participation in the House, particularly with regard to passage of Bills, which is crucial business for this House. But when my counterpart tries to look for the nearest relative on the side to second, then some of us are bound to say no.

However, with a heavy heart, I support. We do not execute only the business of the Government in this House. We also execute---

**Sen. Elachi:** On a point of order, Mr. Speaker, Sir. While I agree with the Senate Deputy Minority Leader, indeed, in the Rules and Business Committee (RBC) we have the Senate Minority Leader. I believe that he was informed about the Motion. Therefore, it would be unfair to say that this is the business of the Jubilee side.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. In terms of decorum and as has always been the tradition whenever there is a Motion that is agreed upon in the RBC, which captures the objectives of this House, Sen. Keter would have just asked our Senate Deputy Minority Leader to second this Motion. I would ask Sen. Keter to rise up and apologize and then we go ahead and live with the traditions.

**Sen. Khaniri:** Mr. Speaker, Sir, I rise to vehemently oppose this Motion.

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Khaniri! We are busy fighting for consultations across the political divide and you do not even appreciate that your leader in the House is yet to conclude his contribution.

**Sen. Khaniri:** Mr. Speaker, Sir, I thought you were giving me an opportunity to contribute. I did not press the intervention button.

**The Speaker** (Hon. Ethuro): Proceed, Sen. Abdirahman.

**Sen. Abdirahman:** Mr. Speaker, Sir, you can discuss business in the RBC, but that has to be transmitted equally, irrespective of the sides, to the membership. You cannot take us for granted.

*(Loud consultations)*

Mr. Speaker, Sir, please protect me. I want to conclude.

**The Speaker** (Hon. Ethuro): Order! You need more protection from your own side.

**Sen. Abdirahman:** If my friends on the other side are courageous enough to defend the Government all the time, business will still be there any other day.

I want to conclude by saying that this is a very important Motion. In the interest of the business of this House and the bipartisan manner in which we have operated as the Senate in the past, I beg to support.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to oppose this Motion. When I look at the real reason why this Motion is being brought before the House, it is because we want to leave enough time for us to debate the Presidential Speech. I want to remind Members of this House that in the Ninth Parliament, Hon Peter Oloo Aringo fought the provisions of Articles 58 and 59 of the old Constitution, so as to give Parliament its own calendar. When he lost his seat, Sen. Keter, then Member of Parliament (MP) for Belgut, took up the matter and fought for provisions of Articles 58 and 59, to give this Parliament its own calendar, they did not succeed but thanks to Kenyans under the new Constitution, we have our own calendar. We would like, in opposing this Motion, to send a clear message to the President, that the calendar of Parliament is sacred. In fact, to attempt to adjust it must be through a lot of persuasion.

Mr. Speaker, Sir, listening to the Mover of the Motion and from the remarks from the background including some heckling from Mandera---

*(Laughter)*

**The Speaker** (Hon. Ethuro): What is it, Sen. Billow?

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. Is the Senator for Kakamega in order to suggest that there is something about the President on this Motion? I do not see any reference whatsoever to the President. What the Motion says is to start the meeting at 9.00 a.m., so that they can deliberate on these Bills and that is what the Mover said. There is no speech of any kind that was mentioned here. Is he in order to every time impute improper motives on the Jubilee Coalition?

**The Speaker** (Hon. Ethuro): Order, Sen. Billow! You are completely out of order. Sen. (Dr.) Khalwale is very right in his submission because in the Motion, we have excluded Thursday and that is the day for the Joint Special Sitting of Parliament. Sen. (Dr.) Khalwale, that is not the only reason why the days are being added. There is a better reason of Constitution deadlines of the Bills in the House

**Sen. (Dr.) Khalwale:** So guided, Mr. Speaker, Sir. I was speaking to our colleagues on the other side, that given that your days in the Government are numbered, it is important that you move in and appreciate that an Opposition which is working like



ours, is supposed to make sure that the country runs in an orderly manner. It is the same way that the Jubilee Government has subjected our women to rape in offices, that now they want to rape the calendar of this House. It is the same way---

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. With all due respect to Sen. (Dr.) Khalwale, can the Senator for Kakamega seriously mean what he said about the Jubilee Government raping anybody? First of all, it is a very serious allegation and at the very least, it is totally unexpected language and accusations in a House as respected as this Senate. Raping is done by individuals and they can be from Coalition for Reforms and Democracy (CORD) or Jubilee. We know that to accuse a party or an institution of rape, in all honesty, is going beyond the boundaries of decency. Could the Senator withdraw and apologize?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, indeed, my brother and Senator for Nyeri is right to ask me to withdraw and apologize but he has not asked me to substantiate. When I fail to substantiate, there would be a reason for me to withdraw and apologize. For that reason, I want to proceed.

**The Speaker** (Hon. Ethuro): Order, Senator. Now if he was right, he just gave you the easier option and - mind his language - he actually said that you are his good friend, so, maybe, it is in that spirit, you would not want to pursue that one because, Senator, between the Jubilee Government and the allegations you are making, it can still be located to where you belong, not as a party but as an institution of Parliament. So who should be blamed?

**An hon. Senator:** Jubilee!

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, there are also two sides of this institution. We have the Jubilee Coalition and also the CORD Coalition but let us not belabour this. I am bleeding as a son, as a father, as a brother, as a grandson and as a husband. Think about it.

I therefore oppose this, so that we can send a clear message, that the calendar---

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. The Senator cannot get away with this. We are Members of Jubilee because we were elected through that party. You cannot associate crime with a political party or members of a political party, we cannot accept that. There are Members of CORD who are involved in all kinds of crimes and we are not saying here that CORD is guilty of that crime.

Your own Chairman of Public Accounts Committee (PAC) has been all over the media for the last one month; are we accusing you of corruption? If anything, the source of corruption, rape and everything is from your side. It is always in the west. The corruption that this country is dealing with is what you and your colleagues have been stealing. So, you cannot attempt to point fingers at Members of this House.

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

**Sen. Billow:** You better be on a point of order because you started it. So you have to withdraw and apologize.

*(Loud Consultations)*

**The Speaker** (Hon. Ethuro): Order, Members. This is a very small matter. I do not know why we are exciting passions here. Sen. (Dr.) Khalwale, I think your last appeal is very well put, but the earlier statement about raping--- you know raping is a serious crime. Just withdraw and apologize so that we can proceed.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, one cannot attempt through debate to teach me English. When you say the Jubilee Government is “raping”, you can be saying physical raping of the opposite sex or you can say “raping” because when you loot from public resources, you are raping.

*(Loud Consultations)*

**The Speaker** (Hon. Ethuro): Order! What is it, Sen. Hassan?

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. As you are also telling Sen. (Dr.) Khalwale to do the honorable thing, Sen. Billow, has even done worse. He said all these looting, raping and stealing emanate from your side because he heard his leader somewhere bumbling in a public rally and those types of things which are totally unsubstantiated. If we are dealing with emotions, let us also make sure that you regulate that side, if they are asking for decorum, then, they should also exercise it because if he started it, somebody has to stop it.

*(Loud Consultations)*

**The Speaker** (Hon. Ethuro): Order, Senators. I am actually surprised that a simple matter of a procedural Motion can elicit such intense altercations between Senators that I know for a fact have no serious issues against each other. If it is a matter of language, Sen. (Dr.) Khalwale and I know that we are not linguists and we do not have to be to appreciate English but Sen. (Dr.) Khalwale, there is also something called a context in which an expression is made. By the way, if you are trying to explain or teach English, you are actually misleading us because the context in which you express the word “raping” was very clear; it was in a particular context, and location.

I can hear you just talking about the Government; you know very well that there are three arms of the Government; you should then locate it to where it belongs. But it is better for you and even easier for all of us if you just withdraw and apologize; that way, we will make progress.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, because of the respect I have for the Chair and for this House, I want to withdraw that the “Jubilee Government rapes---“

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Let us listen to the Senator.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to withdraw the words “Jubilee Government rapes.” I want to allow my conscience to be free by saying that “elements within Jubilee are raping”.

*(Laughter)*

Having said that, Mr. Speaker, Sir, I want to apologize to the Government, but not to the rapists within the Government.

*(Laughter)*

Therefore, Mr. Speaker, Sir, I want to conclude by saying that for the sake of us maintaining the dignity, authority and supremacy of the Parliament of Kenya, we should not allow the whims of the Executive to interfere with our calendar for which we fought so hard.

With those many remarks, Mr. Speaker, Sir, I beg to oppose.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. The Motion before us is a straight forward Procedural Motion brought by the Senate Deputy Leader of the Majority. He may have forgotten that, really, it is noble to pick on a Member of the Opposition – especially as one of the leadership of this House – to support such a noble request of the House maybe because, for reasons we do not know, he is not always in the House---

*(Laughter)*

**The Speaker** (Hon. Ethuro): What is it, Sen. Keter?

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. With due respect to my colleague, Sen. (Dr.) Machage, he has made some allegations that I may not have been aware that I should have given my colleague on the other side an opportunity to Second the Motion. This was a straight forward Motion that does not warrant raising a lot of issues, saying that I should have done this or I should have not done that. But for him to make that allegation and say I did so because I have not been around, he should substantiate on when I have missed sittings of the House. Can you check on the records of this House? Whenever I have been out, I have always written a letter to the Speaker stating where I will be. Maybe, it is because he does not have the capacity to know. Can he, therefore, substantiate that claim?

*(Some Senators spoke loudly off the record)*

**Sen. Keter:** *Wee, nyamaza, Bwana!*

**The Speaker** (Hon. Ethuro): Order! Order, Members! Indeed, Sen. Keter is right; I am the only one who can confirm or otherwise whether he was in the House or not.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I have not disputed at all that he may have been out with the permission of the Chair. I have no power to know that and all I have done is to make an observation of what we see in the House. If he does it with the permission of the Speaker, it is all right!

*(Laughter)*

Having said all that, Mr. Speaker, Sir, I seek that the Members on this side of the House do not revenge on other issues on passing this Motion. I think it is important partly because we are also to blame, as a House, for prolonging Bills unnecessarily that should

have been passed in good time. We are now paying the price such that we have to find more time to pass Bills that should have been passed in a very short period.

We really have no alternative but to obey the Constitution and try to pass or refuse to pass the Bills in that recorded time. I plead with Members of the Opposition that this has nothing to do with party politics; but just the country; our country. We have to be patriots and do what is necessary.

The Speech of the President on Thursday is also a constitutional issue; we do not have to go into that. If the day that has been set for that is Thursday, then so be it; we will go and listen to the Head of State. This is unless we have any other reason that may make us not go between now and Thursday; we could change our minds. But as it is, I beg to support this Motion.

**Sen. Khaniri:** Mr. Speaker, Sir, I want to be on record that I have opposed this Motion.

*(Applause)*

I listened keenly to my very close friend, Sen. Keter, as he moved the Motion, giving reasons why we should have those extra sittings in the mornings. I will tell you that, unfortunately, I was not convinced and, therefore, I will oppose the Motion.

Mr. Speaker, Sir, in our own wisdom, we came up with our calendar and I think, as a House, we must always endeavour to stick to the calendar that we passed at the beginning of the Session. The Mover of the Motion said that the reason we need these extra morning sittings is because there are some three constitutional Bills which have some timelines. If we take our work seriously the way we have always done, we still have five normal sitting days; we have tomorrow, we have 26<sup>th</sup> March, 31<sup>st</sup> March; we have the 1<sup>st</sup> and even the 2<sup>nd</sup> of April, which is the last day. We can still pass these Bills in our normal sitting times if we sit on those days.

Mr. Speaker, Sir, the second reason he gave was that the President is going to deliver an Address to Parliament on 26<sup>th</sup> March, 2015. The President can be asked to wait; let us have our priorities right. The Bills are more important than discussing a Presidential policy statement; this can wait because it has no constitutional timelines. Therefore, I want to urge the House to oppose this particular Motion so that we can stick to our programme that we passed as a House. This Motion is uncalled for and unnecessary.

Mr. Speaker, Sir, I beg to oppose this Motion vehemently.

**Sen. Okong'o:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to also support this Motion with a rider. If the constitutional Bills coming to this House are because of the grandstanding between you and your sister--- If the constitutional Bills coming to this House are because of the grandstanding between you and your brother, the Speaker of the other House, that matter needs to be looked at effectively.

*(Laughter)*

There are some constitutional Bills which are supposed to emanate either from this House or the other House and that needs to be looked at.

Secondly, Mr. Speaker, Sir, the President of Kenya is---

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

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, did you hear the distinguished Senator for Nyamira say “the differences between you and your sister?”

*(Laughter)*

Mr. Speaker, Sir, we are at a loss, as a House; how does the difference between you and your sister affect the calendar of the House?

*(Laughter)*

**Sen. Okong’o:** Mr. Speaker, Sir, I corrected that by saying our sister House and your brother, the Speaker of the other House.

**The Speaker** (Hon. Ethuro): Absolutely!

**Sen. Okong’o:** Sen. (Dr.) Khalwale was not very keen on that.

**The Speaker** (Hon. Ethuro): In fact, the Chair heard you to the extent that you even elicited a smile from the Chair!

*(Laughter)*

Obviously, Sen. (Dr.) Khalwale was not listening attentively.

**Sen. Okong’o:** Thank you, Mr. Speaker, Sir.

Secondly, Mr. Speaker, Sir, a president of a nation must be respected at all costs. President Uhuru is on his second year in office and we need to hear what he says about this Nation, because this nation has several issues.

So, Mr. Speaker, Sir, I beg to support this Motion on those two premises.

Thank you, Mr. Speaker, Sir.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I strongly support the Motion. So far, the image and reputation of this House is a very positive one. Today, Kenyans have a lot of concerns about the National Assembly. The only challenge this House has, in fact, is the ability to do its business and primarily to pass the Bills because every time we come to vote, our system of voting is so complicated that we are unable to move fast. So many Bills are pending; a single division takes almost a month to conclude because of failure by Members to attend House sittings. We cannot blame anybody. So, if the constitutional timeline, which is 27<sup>th</sup> May, 2015, reaches and these Bills are not passed, we cannot blame the President, Jubilee or anybody else.

Sen. Khaniri, you better pay attention because it is not about the President; it is about this House. So, I want to urge our colleagues on the other side to look at the interest and reputation of this House and not just the politics or the political party. That is what is important; let us pass these Bills and send them to the National Assembly for concurrence. In any case, on Thursday morning, we would still have been off; so, excluding that sitting will not change anything. In fact, most of the time, the National Assembly has worked up to 9 p.m. or 10 p.m. to have these Bills passed. We rarely extend our time beyond 6.30 p.m. I think it is time we rolled up our sleeves and clearly demonstrated that we are what we say we are and do our business effectively.

With those few remarks, I beg to support.

**The Speaker** (Hon. Ethuro): Order Members! In order to proceed, let me just also say this; a procedural Motion is a Motion that is decided by your leadership through the Rules and Business Committee (RBC) and I can confirm for a fact that the Minority leadership was fully represented.

As for the consultations on the Floor, that is a different matter and I think that it is legitimate. The Deputy Senate Majority Leader should have consulted the Deputy Senate Minority Leader on the Floor. But I want to believe that there was an assumption that the leadership, along the political divides, also have communication horizontally and not necessarily across. Secondly, if you may have noticed, it is only tomorrow for this week and then it is next week that we will have the Tuesday, Wednesday and Thursday morning sittings.

On the matter of the recess, for the benefit of Sen. (Dr.) Khalwale and Sen. Khaniri, it is in consideration of that calendar, because it gave us 2<sup>nd</sup> April, 2015, as a date for us to go on recess. So, it is out of respect for the calendar that these extensions are done, within the sitting days that are provided for in the same calendar. Finally, on the matter of the Presidential Address, you cannot say that a Presidential Address to Parliament is not important. It is very important, particularly this one, which is provided for in the Constitution. In fact, if you check Article 132, up there in terms of ranking of the--- and rightly so because the sovereign power has been delegated to these institutions by the people - Parliament is number one and the Executive follows. So, the only opportunity that Parliament has to interact with the Executive is when the President comes to you, in observance of that constitutional obligation and for you as that oversight body over the Executive, to interrogate - including why you should have those many days to debate the Presidential Address.

Article 132(1)(c) of the Constitution says:-

1The President shall-

(c) Once every year-

- (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national values referred to in Article 10;
- (ii) publish in the Gazette the details of the measures and progress under subparagraph (i); and
- (iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

So, it is an opportunity for the national Executive to come to Parliament and submit those written documents, which we are under obligation to interrogate. So, it was in consideration of all these that your leadership, through the RBC, decided that we should proceed along the manner we are proceeding.

Even if we proceeded along these lines and we do not take heed of what Sen. Billow has said, in terms of getting numbers for voting, and in terms of what Sen. (Dr.) Machage has also said that we spend a lot of time on Statements and Motions whereas our business as a Parliament is through Bills, we must give those Bills a priority if we still want to maintain the integrity of our calendar and accomplish the constitutional obligations that we have. I thought I would just say that so that I can explain a few other things and so that we reach some common understanding. So, we should proceed to put the question.

Order, Members! I therefore wish to put the question. This of course, is a matter not affecting counties; it is a matter affecting your time here.

*(Question put and agreed to)*

Order, Members! In the interest of processing our business, we will prosecute Order No. 9 and then Order No. 11, in that order.

## BILLS

### *First Reading*

THE EMPLOYMENT (AMENDMENT) BILL  
(SENATE BILL NO. 1 OF 2015)

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

### *Second Reading*

THE NATURAL RESOURCES (BENEFIT SHARING) BILL  
(SENATE BILL NO. 34 OF 2014)

*(Sen. (Dr.) Zani on 4.12.2014)*

*(Resumption of Debate interrupted on 19.3.2015)*

**The Speaker** (Hon. Ethuro): Order, Members. It is a Division and so I order that the Division Bell be rung for one minute.

*(The Division Bell was rang)*

**The Speaker** (Hon. Ethuro): Order, Senators. Close the doors and draw the bars. Ensure that you have your voting cards. I now wish to put the question. This is a vote by delegations.

*(The doors were closed and the bar drawn)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Natural Resources (Benefits Sharing) Bill (Senate Bill No.34 of 2014) be read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County, Sen. G.G. Kariuki, Laikipia County, Sen. Keter, Kericho County, Sen. Khalwale, Kakamega County, Sen. Khaniri, Vihiga County, Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County, Sen. (Dr.) Machage, Migori County, Sen. Madzayo, Kilifi County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutahi, Nyeri County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Munyes, Turkana County; Sen. Obure, Kisii County and Sen. Sang, Nandi County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Order, Senators!

The results of the Division are as follows:-

**AYES:** 27

**NOES:** NIL

**ABSTENTIONS:** NIL

*(Question carried by 27 votes to nil)*

**The Speaker** (Hon. Ethuro): We may now proceed to Order No. 10 on the Supplementary Order Paper.

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

*[The Speaker (Hon. Ethuro) left the Chair]*

### IN THE COMMITTEE

*[The Temporary Chairperson  
(Sen. (Dr.) Machage) took the Chair]*

### THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL (SENATE BILL NO.5 OF 2014)

*(Several Senators walked out of the chamber)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Members! If you walk out, we will not execute this. Really, I am concerned. Let me have the Division Bell rang for another two minutes. We need numbers.

*(The Division Bell was rung)*



**The Temporary Chairperson** (Sen. (Dr.) Machage): Ring the Bell for one more minute.

*(The Division Bell was rung)*

Order! Where are the whips? We are in the Committee of the Whole and we do not seem to have the requisite numbers to prosecute this matter. I will therefore call on the Mover to report progress.

**Sen. Keter:** Thank you Mr. Chairman, Sir. Pursuant to Standing Order 139, I beg to move:-

THAT, the Committee of the Whole reports progress of its consideration of The Alcoholic Drinks Control (Amendment) Bill (Senate Bill No. 5 of 2014) and seek leave to sit again tomorrow.

**Sen. Murungi** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. According to the traditions of this House, whenever the Speaker is announced when the House is in the Committee of the Whole, the Speaker does not emerge from the Plenary; he or she emerges from the Speaker's office. I would like you to guide the House whether you are satisfied that there is a Speaker in the House and whether you are satisfied that if there is a Speaker in the House, the way he came in the House, he did so in accordance with the Standing Orders of this Senate.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Further to the point of order raised by Sen. (Dr.) Khalwale, in the event that you find that the said Speaker was out of order, he should be able to apologize.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale has made a very serious allegation against the Chair and has doubted whether we actually have a Speaker on the Chair now. Would I be in order to demand that Sen. (Dr.) Khalwale pin-points the Standing Order on which he rose?

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, you are completely out of order because you could not have sought to stand on a point of order from a Chair who is not in existence. If I, the Speaker, is not properly here, then you cannot address the Chair. So, you are completely out of order. Considering that you have not demonstrated evidentially the Standing Order you are rising on, I consider you totally out of order.

I hope you are not referring to Standing Order No.1 (ii).

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, indeed you are right that you find it difficult to listen to me because I have already assumed that there was no Speaker

in the House. Falling short of becoming disorderly, I was respecting the Mace. The authority of this House is within this Mace and not within the Speaker. The Speaker can change or be replaced, but not the Mace. I, therefore, want to refer you to Standing Order No.1 (ii) which you know.

**The Temporary Speaker** (Sen. Murkomen): Order Sen. (Dr.) Khalwale! I told you not to refer to Standing Order No.1(ii) because the Chair is aware about that. I have already ruled you out of order and the authority of the Chair is final; you cannot challenge the Chair. Despite the fact that the Mace is a very important sign of authority in this House, the Speaker also has his place just like the Members have their place in this House. You are completely out of order and I am short of asking you to apologize and withdraw, but it is enough to rule you out of order.

Could the Chairperson report progress?

### PROGRESS REPORTED

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT)  
BILL (SENATE BILL NO.5 OF 2014)

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole is considering the Alcoholic Drinks Control (Amendment) Bill (Senate Bill No.5 of 2014) and has instructed me to report progress and seek leave to sit again tomorrow.

**Sen. Murungi** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. (Murkomen): Next Order!

### BILL

*Second Reading*

THE PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL  
(NATIONAL ASSEMBLY BILL NO.29 OF 2014)

*(Sen. (Prof.) Kindiki on 18.3.2015)*

*(Resumption of Debate interrupted on 19.3.2015)*

**The Temporary Speaker** (Sen. Murkomen); Sen. (Dr.) Zani had 13 more minutes to contribute to the Bill, which she is still entitled to but since she is not here, we can continue to debate the Bill as long as there are people who are still expressing interest to contribute. This is one of the Bills that has a constitutional deadline of 27<sup>th</sup> May 2015. Not everybody needs to debate on this Bill but considering its importance, I suppose that

many of you would have liked to say something because it is only the Mover and the Seconder who spoke to it.

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. If I heard you correctly, are you saying that we can continue with the contribution on the Bill?

**The Temporary Speaker (Sen. Murkomen):** Yes, we shall resume contributions to business on Order No.12 which is The Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014). Where we are at the moment is that the Mover moved and it was seconded. Sen. (Dr.) Zani was contributing and she was left with 13 minutes and so any Senator can proceed to contribute.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to support this Bill. Looking at the Memorandum of Objectives and Reasons for this Bill, I am persuaded to believe that this is a very important Bill. This is because the Bill provides for the Objects of the Bill as being:

- a) a general report on the values and principles of public service;
- b) public participation in the promotion of the values, principles and policy making of the public service; and,
- c) reporting on the status of the promotion of the values and principles of the public service.

Mr. Temporary Speaker, Sir, this is a very important Bill, especially in view of the tight corner that the country finds itself in now. If this Bill had already become law in this country, the kind of annoying, irritating and nauseating pronouncements that come from the public service by way of promoting public servants in this country and appointing public servants would not be the case.

Mr. Temporary Speaker, Sir, the Speaker *Emeritus*, Francis Xavier ole Kaparo, the Chairman of the National Cohesion and Integration Commission (NCIC), has also conceded that the appointments and promotions in public service leave a lot to be desired. When you look at the entire public service – and we have spoken on this very many times – appointments and promotions are skewed deliberately to leave out 40 communities from participating in matters of governance and administration of our beloved Republic of Kenya. They are skewed to favour only two communities. Whenever we have said this in public fora, we have been accused of hate speech.

Mr. Temporary Speaker, Sir, I am glad that today, enjoying the immunity of this House, I cannot be accused of hate speech. It is wrong to heap public appointments in the hands of only one or two communities, unless we do not want to build a Republic called Kenya. We want to build fiefdoms where whoever is the highest ranking from a particular tribe, then happens to become the President, then that would be the way to go. We must all join hands and continuously insist that the issue of ethnic and regional balancing, as provided for in the Constitution, is observed in public appointments and promotions.

I understand that this week, the National Assembly is vetting the appointees to the Judicial Service Commission (JSC). The two people that are being vetted are none other than Ms. Winfred Guchu, the former Executive Director of TNA political Party and Mr. Kipng'etich arap Korir. Even if these two Kenyans – whose credentials I have no reasons to doubt – fit the bill, given that Ms. Guchu was the Executive Director of the President's party and that Mr. Kipng'etich arap Korir, shares the same DNA with the Deputy President, then we, as Kenyans, have reasons to be afraid that the independence of the

JSC will be compromised. I hope that the National Assembly will rise to its name and ensure that these two names do not go through, so that the President is given an opportunity to appoint other people.

Mr. Temporary Speaker, Sir, I know that my younger brother, Sen. Njoroge, the nominated Senator, is wondering what I am saying, given that in the same week, former Ministers Mr. Chris Okemo, and Dr. Noah Wekesa, received appointments. I agree that those are appointments, but they cannot be used to be presumed to be achieving the regional and ethnic balance. You cannot hire people as drivers, tea boys/girls, office attendants, cooks and watchmen, and then compare it with other regions where people are given positions of Chief Executive Officers (CEOs). We want to stop this. When Nelson Mandela of South Africa was being sentenced, he said he was against segregation of black people, just as much as he was against the segregation of white people and that he was prepared to die for it. Let us all as Kenyans say that we want to be against marginalization against our own communities and the community that we do not belong to.

Mr. Temporary Speaker, Sir, there cannot be greater shame than a former Minister, being asked to go and count the number of farmers who have received seeds. In the process, you are persuading a political leader from that region to accept it and say; "Let us move on". Why can the Lord Almighty not give us all good life and let the years move very quickly, so that we go to the election in 2017 and remove this childishness in the discharge of public service? I have had an occasion to work with Sen---

**Sen. Mungai:** On a point of order, Mr. Temporary Speaker, Sir. I rise to object to the sentiments that have just been uttered by the Senator for Kakamega. It is on record that the Senator for Nakuru County has someone else, who is not from his tribe as his county manager. It is, therefore, not right for him to impute that there is tribalism in almost the entire Jubilee Government. It is really not right. It is important that he makes clarification on that.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Is the Senator for Kakamega in order to contradict himself on the Floor of this House? When he is out in Kakamega supervising the fighting of bulls, he always complains that the Jubilee Government has never remembered to give any appointments, of whatever size and kind, to the people of that region. Is he now in order to demean the appointment that Mr. Okemo has now been given, yet he is not Mr. Okemo to complain?

**Sen. Njoroge:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Dr.) Khalwale in order to make allegations that the two nominees; Ms. Guchu and Mr. Kipng'etich arap Korir, who has close blood relations to the Deputy President, are not supposed to be considered to the positions that they are seeking? Is that not a kind of discrimination that Sen. (Dr.) Khalwale is trying to introduce into this House and the whole nation?

**Sen. Wamatangi:** On a point of order, Mr. Temporary Speaker, Sir. Is the Senator for Kakamega in order to mislead this House and the nation? He is insinuating that when an appointment of an individual is made, it is a tribe or a clan that has been nominated. Secondly, he has also made insinuation that the two nominees; Dr. Noah Wekesa and Mr. Okemo have been appointed to go and count seeds and farmers. That is an absolute misrepresentation of facts. It is not in order for a Senator to use the Floor of this House to make such allegation which he knows to be false and which have far

reaching ramifications. The onus is on the appointees to either decline or accept the nominations. The Senator for Kakamega cannot mislead this nation by saying that the appointment of those individuals equals or amounts to marginalization of either the community or the individuals.

**Sen. Ong'era:** On a point of order, Mr. Temporary Speaker, Sir. Are the distinguished Senators from the honourable side in order to ask such questions when we know that the distinguished Senator for Kakamega, who is in the public domain as a distinguished bull-fighter, was merely expressing his opinion on how he feels about this matter?

**The Temporary Speaker** (Sen. Murkomen): Order! Sen. (Dr.) Khalwale is in order any time he wants to make allegations, but he must be ready to substantiate.

In a debate of such kind; on values and principles, I want to remind the Senator of Articles 73, 74 and 75 of the Constitution that says that any position of service under our Constitution is not for one to enrich or glorify himself or, in any way, for purpose of grandiose. Therefore, if you are called upon to be a seed counter, you must do it so diligently like Martin Luther King Jnr. said: if you are called upon to be a sweeper, you should sweep so well until the host of heavens and earth says that there was once a great sweeper.

The Senator is out of order if he demeans any office in this country. However, he is in order if he can decry what he calls a state of marginalization or skewed appointments as long as he proceeds to substantiate. He has attempted to substantiate a little bit even if it was not satisfactorily. I only want to warn the Senator that while debating such an important Bill, he should be careful not to demean any office, whether it is for a watchman or a sweeper. Just walk the tight rope.

Proceed.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, for that very wonderful ruling. Indeed, in the short term, we have accepted to sweep the streets and wash your dishes. But things change. When they do, the shoe will be on the other foot and that is when some of those who think we are joking will be reminded of what Sen. Keter felt after the election of 2002. He is here. Also what the Deputy President, Hon. William Ruto, felt and the pressure he was put under after the election of 2002. What happened at that time is that there was systematic removal of people from the Kalenjin Community from top positions in the Government. It was a very big shame.

**Sen. Wamatangi:** On a point of order, Mr. Temporary Speaker, Sir. I truthfully value, honour and respect your ruling, but there is a serious matter here that requires to be addressed in the content of what the hon. Senator has said to this House. If it is not dealt with, it portends serious misleading of future debates. Did you hear what the Senator said? He said that if the likes of Donald Kipkorir, who has the same DNA with the Deputy President, is allowed to pass, then the judiciary is not going to be free.

**The Temporary Speaker** (Sen. Murkomen): I did not hear that. Did you say that?

**Sen. Wamatangi:** Yes, he said that. Please, read the HANSARD. If you let that pass, what are we saying? That is a serious allegation.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Wamatangi! You have made your point.

He did not talk about Donald Kipkorir. He talked about Kipkorir, who was nominated, but did you say that it has something to do with the independence of the judiciary?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I still remember very clearly what I said. I said that then it concerns us that the independence of the judiciary is at stake. That is completely different from what the distinguished Senator from Kiambu is saying. With all due respect, you would expect me to be a zombie if I am not afraid that the judiciary's independence is threatened when a former executive officer of the TNA party of the President is now the one sitting on the commission and the other one Kipng'etich arap Korir of the Deputy President have now come together to create numbers that will affect decision-making. Do you not remember just a few months ago, six commissioners of the Judicial Service Commission had to exit? It was a very big storm. If we had not stood as a strong Opposition---

**Sen. Mugo:** On a point of order, Mr. Temporary Speaker, Sir. Is the hon. Senator in order to mislead this House? We know that people can exercise independence. I want to remind him that I have the same DNA as the President and when he stood for presidency in 2002, I did not support him. I came out openly and declared my principles. I said that I was in the Opposition all along and I was not going to change because my brother was the presidential candidate.

It would be a bad thing to put people in certain categories just because of their DNA. One could be gifted in a certain area and there is absolutely no harm in being given an opportunity to work. What Prof. Yash Pal Ghai has said in the affidavit is cheap because hon. Christine Mango was a very staunch member of ODM and nobody raised a voice when she was appointed. Why must we be so petty when it comes to TNA or Jubilee? Anybody has a right to serve in any capacity.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir---

**The Temporary Speaker** (Sen. Murkomen): Order, Senator. I will give you a chance and your time will be extended a little bit.

**Sen. Keter:** On a point of order, Mr. Temporary Speaker, Sir. With due respect to my brother, the Senator for Kakamega, whom I have known for a long time and we rarely disagree, but it is good to have the records right. It is not correct to say that the JSC is compromised by having one person from the Kalenjin or from one other tribe. You need to see the composition of the commission. We have the Chief Justice, hon. Muchelule, Mr. Ojienda and so on. So, if we have one Kalenjin why do you say that it is geared towards tilting the equation? Let us be honest to one another. We never complained when Prof. Mango was there. Those are Kenyans who deserve to be in those positions. It is good to have records right so that we do not condemn an individual who has been given a position to serve in this country.

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, we need to bring this debate to an end. It is not serving any usefulness in promoting the values we are debating here.

Sen. (Dr.) Khalwale, if you had actually talked about the two nominees being unfit by virtue of having relations with the President's party or one coming from the same tribe with the Deputy President, I think you are completely out of order.

Sen. (Dr.) Khalwale, as Sen. Keter has said, the Chief Justice comes from a community which is different from the others. Justice Ojienda comes from another

community and Justice Muchelule is from another community. Therefore, the tilting of balance does not occur by virtue of appointment of individuals. It is not good to lump together public officers by virtue of their personal credentials or accuse and crucify them by virtue of their relationship to anybody who is in public office. Otherwise, people would say that a person from Kakamega should not be appointed because Sen. (Dr.) Khalwale is already in high office. He is the Chairperson of the County Public Accounts and Investments Committee. That is totally out of order, Sen. (Dr.) Khalwale.

If you had talked about the composition being skewed - having more than one from a particular tribe - perhaps, you could have said that the numbers are more and, therefore, regional and ethnic balance is an issue. However, when you cast aspersions without substantiated facts and say one will be biased, you are completely out of order.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I do not know whether the Chairperson is trying to help me. How I wish that I had been challenged. I can substantiate this very particular allegation using the Constitution and the list of all the top executives in all parastatals and departments. Since nobody has challenged me ---

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

The only debate that we are discussing here is in the JSC. You can proceed to talk about other entities. However, on this one, you are out of order to cast aspersions, first of all, on nominees who are yet to be vetted by another House. The Motion is in our sister House.

Secondly, you are out of order to cast aspersions generally on an account of one coming from this or the other tribe. That is why I did not rule you out of order when you made a wider comparison between appointments across public offices because that is your opinion. However, when you cast aspersions on another institution like the JSC, specifically we need to also ensure that the facts are kept. However, you are at liberty to compare the position of the Chairperson of the Kenya Seed Company, a member or whichever institution in its weight with another office. You had already done that and I did not rule you out of order.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, because this is a House of record, it is important that I respond to the---

**The Temporary Speaker** (Sen. Murkomen): You have three minutes remaining.

**Sen. (Dr.) Khalwale:** Yes, Mr. Temporary Speaker, Sir. It is important that I respond to the point of order by my brother, Sen. Keter and my sister, Sen. Mugo. It is true, to you, that the Senator for Kakamega County is being petty in raising this imbalance. However, I want to tell her about Coretta King. When they were marching, because they were looking for their freedom as black people, her white friends were asking her what was wrong with her. She told them, "You need to be black to know that there is nothing wrong with me." Sen. Mugo, you need to be marginalised for you to know that there is nothing wrong with me.

Mr. Temporary Speaker, Sir, my brother, Sen. Keter has challenged me on the issue of the former Executive Director of The National Alliance (TNA).

**Sen. Mugo:** On a point of order, Mr. Temporary Speaker, Sir. May I inform Sen. (Dr.) Khalwale that I have gone through much worse than he will ever think of? I was once arrested because of the Mau Mau revolution which was led by my uncle. I was thrown out of school. I have been marginalised. I and my whole family used to sleep in pineapple plantations. So, he should not look at people and think that they came from

here like he has. We have come from far. We have fought for this country now, that time and during the Second Liberation. You have heard Sen. Orengo say this many times. I was sprayed with---

Mr. Temporary Speaker, Sir, Sen. (Dr.) Khalwale has to learn to respect other tribes and other people and not always to think that this tribe marginalised the other. Some of us have gone through hell. Please, do not use me as an example saying that I have never been marginalised. I have been marginalised.

**The Temporary Speaker** (Sen. Murkomen): Order, hon. Sen. (Dr.) Khalwale and Sen. Mugo! You have already made your points. Sen. (Dr.) Khalwale, Sen. Mugo has made it clear that she is not a good example for you. Look for someone else who has not gone through what she went through. Those are facts.

Sen. (Dr.) Khalwale, could you proceed. You have only one and half minutes to complete. Please, talk about something else.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, before I conclude, I want to clarify this; what makes us pissed off with Winfred Guchu is that she swore an affidavit during the petition of the contested presidential election in favour of the current President.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! Sen. Wamatangi, were you also used as an example?

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I am not just about to offer myself as the second example because Sen. (Dr.) Khalwale would certainly fail the test if he was to even try me.

Mr. Temporary Speaker, Sir, before I sit I want to you to make a determination or a ruling. It is known in this country that when an appointment is made, one of the requirements is not to go for a DNA test. It is wrong to draw a parallel line that because so and so carries the DNA of so and so, they are not fit for appointment.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Wamatangi! I already ruled Sen. (Dr.) Khalwale out of order. That is on the record. I said his statements on the JSC, I am convinced were misleading. His casting of aspersions on public officers only on an account of whether their second name is the same as that of the President or the Deputy President is completely out of order. That determination is already made. The only thing is that nobody asked him to apologise and withdraw.

One minute, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, as we debate this Motion, may all the people who are appointing authorities know that as this Act comes to life, there is the Constitution which has a chapter on Leadership and Integrity and more specifically Article 73. You cannot, just like some of my colleagues, wish away the Constitution. You wish it away because you have suffered in the past. *Pole sana* if you have suffered in the past. For us, we continue to suffer.

Mr. Temporary Speaker, Sir, we are using the Constitution and we will continue using it to ensure that the country is equalized so that historical injustices do not become and continue being the injustices of today and tomorrow. What kind of people would we be if we took pleasure in seeing an Arab or a Somali child crying because of---

**The Temporary Speaker** (Sen. Murkomen): Order! You time is up!

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

I beg to support.



**The Temporary Speaker** (Sen. Murkomen): It would serve all of us well if we were to debate the Bill. Sen. (Dr.) Khalwale, even the Chair here is happy to be educated on the Bill clause by clause and be informed. However, you spent a lot of time on generalities. This should be a notice to other Members.

Hon. Senators, I have a Communication to make.

## COMMUNICATION FROM THE CHAIR

### NOTICE OF SPECIAL SITTING OF PARLIAMENT

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, as you may be aware, Article 132(1)(b) of the Constitution and the Standing Order 22(1) of the Senate Standing Orders require the President to address a special sitting of Parliament once every year and at any other time. Via a letter Reference No.OP/CAB.1/40 dated 16<sup>th</sup> March, 2015, addressed to the Clerks of Parliament, the Office of the President requested Parliament to set a date for the Presidential address to Parliament. Upon the Speaker consulting the Speaker of the National Assembly, it was resolved that His Excellency the President addresses Parliament on Thursday, 26<sup>th</sup> March, 2015.

Hon. Senators, this is, therefore, to inform you that a Special Sitting of Parliament will be held on Thursday 26<sup>th</sup> March, 2015, at 2.30 p.m. in the National Assembly Chamber. His Excellency the President will also use the occasion, pursuant to Article 132 (1)(c)(i) to report on all the measures taken and the progress achieved in the realization of national values set out in Article 10 of the Constitution. Further, pursuant to Article 247 of the Constitution, His Excellency the President will also report on the state of the security of Kenya.

I, therefore, urge all the hon. Senators to attend the Special Sitting, which is an important occasion in the Calendar of Parliament; that provides the opportunity for His Excellency the President to deliver the State of The Nation Address and address the legislature and people of Kenya on critical matters concerning the country.

Hon. Senators, due to limited sitting space, the Senators and Members of the National Assembly will be at liberty to invite one guest each for the occasion. You are hereby requested to provide the names of such guests at the Senate reception to facilitate the preparation of formal invitation cards.

Hon. Senators, the Special Sitting has necessitated a re-arrangement of parking. Consequently, the current Senators' parking area here at the Main Parliament Building will be unavailable for parking on Thursday 26<sup>th</sup> March, 2015. Please, do also note that access to Parliament through the parking area, formerly known as the Ministers' Gate, will remain restricted from tomorrow 25<sup>th</sup> March, 2015, to facilitate the pitching of tents for refreshments on the particular day. Alternative arrangements have been made for parking at the COMESA Grounds of the KICC. I urge the hon. Senators to bear with the situation.

I thank you.

I have given that Communication on behalf of the Speaker of the Senate.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. First of all, I want to thank you for that Communication. By good luck you have read it in good time. Given that we have a day to the Presidential Address, could you, please, take extra

measures to ensure that when the Senators go to that Chamber we will not find ourselves in a situation where those Members of the National Assembly will tear our trousers and attempt to pull us from “higher” sitting” to “lower sitting?” Seriously speaking, we would like that assurance because for the many years that we have been in this Parliament, we do not know what is going on---

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Khalwale! A point of order is not supposed to be a debate.

Parliament will make every effort to ensure that the Standing Orders are observed. I do not think that the Speakers of the two Houses would accept a situation where press-ups, pulling of trousers or fighting will be done in Parliament because that is completely against our Standing Orders.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Thank you for that assurance. Would I also be in order to ask that the Senator for Kakamega also gives a commitment that he will not engage in press-ups and provoke the Members of the “lower” House to tear his trouser or shirt?

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Sang! I have already made a ruling that press-ups will not be condoned. There will be no provocation. In any case, the Standing Orders are very clear; that the President shall be heard in silence for all the period of his address. The hon. Senators, except for a few occasions reported by the Press which have not been substantiated, have behaved well over time.

Sen. Lonyangapuo.

*(Debate on the Public Service (Values and Principles) Bill  
(National Assembly Bill No.29 of 2014) resumed)*

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I also rise to support the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014).

This is a Bill for an Act of Parliament to give effect to the provisions of Article 232 of the Constitution regarding the values and principles of public service and for connected purposes. I am happy that a law is coming to prescribe values and principles that are required for officers who have been engaged in the public service.

Clause 5(1) says that every public officer shall maintain high standards of professional ethics. These include honesty, high standards of integrity, transparency, respect towards others, objectivity, patriotism and observation of the rule of the law.

We have had devolution for years now and all the officers who have been employed in the county governments are also public officers. You will be surprised that the practices on the ground are very pathetic. You will find that most of the public officers in the counties are from the dominant ethnic community in those counties, yet we want to be a unified state. County executives even transact business in their mother tongue in some counties. This was not the objective of devolution. Some counties have not observed what was agreed on, for example, consideration of all ethnic groups, gender and minority groups in the county appointments. We also have parastatals and heard what Sen. (Dr.) Khalwale talked about, although he went overboard. He did not appreciate the appointment of some people by the President this week.

Public officers must be bound by the code of ethics. When an officer is employed, he or she must sign against certain values, but amazingly, some of them do not do so.

You will find that some officers are rebellious against workers from other ethnic communities. It is indicated also under Clause 6(1) that a public officer shall use public resources in an efficient, effective and economic manner.

You find the type of luxury and loose expenditure that is expedited in some of the units being run by public officers, who have not read values and principles of the public service. Today, it is very sad that when you go to some counties, nearly everybody working and sitting in an office has a Prado which has a high ground clearance. It is not a motorbike or small vehicles that we know. It is a vehicle with the highest ground clearance that you can get in the land, yet the roads do not exist. Have you visited Elgeyo Marakwet of late, where roads are terribly challenging and you get a huge car negotiating the rough terrains?

In my neighborhood, Turkana, I saw a brand new Mercedes. I do not know how it arrived in Lodwar from Nairobi because of the bad roads. These are the things that are now being seen in the name of resources for the county government, yet these are public resources being administered by a public officer working, under the public service whose values and principles are not what I am explaining.

Mr. Temporary Speaker, Sir, Clause 6(2) says that if a public officer that fails to do so, there are ways in which they can be dealt with and they are stipulated clearly. Clause 7(1) says that:-

“The public service shall ensure that public services are provided promptly effectively, impartially and equitably.”

If you visit some of the hospitals, schools and other places where services are required, you will be amazed at the laxity with which some of our officers are serving people; that in a hospital, you find that a nurse or an officer seated and instead of serving you, they talk to you rudely. Sometimes they tell you that the drugs are not available and you have to buy them from the nearest chemist. In most cases, that chemist belongs to a relative, a friend or themselves. These are some of the values that are not required in the public service, but you find some officers still practice them.

Clause 7 (4) states:-

“That the provision of public service is ineffective if-

(a) There is unreasonable loss

(a) Public complaints against public officers are made regarding the provision of public service

(c) Public grievances against a public institution are made regarding the quality of its services.

Mr. Temporary Speaker, Sir, some people complain, but instead of the officers taking them positively they start harassing the complainants and the people that have brought the issues. Of late, there is a new medium called *Twitter*, *WhatsApp* and *Facebook*. Some county governments are being criticized through *Facebook*. I know of a county government which shocked us recently; instead of taking the criticism positively, they blackmailed Criminal investigation Department (CID) officers - I do not know where they left their own ethics, values and principles. They became *askaris* for the county government and started harassing those people. They took them to court for criticizing the county governments.

As long as you are sitting in a public office, it is clearly indicated that anybody with a complaint can come. If you do not hear the complaint, the person can go to the

highest authority or even put it in the newspaper. These public officers who suddenly found themselves as governors and forgot that they are also public officers, they better get this Act very fast. We are going to pass it very fast and somebody should go and read it to them - possibly, the Committee on Devolved Governments - so that they get to know that they do not use their excesses to harass people who are coming up with positive criticisms for them to change and offer services.

Clause 7(5) states that the provision of public service is not impartial or equitable if:-

(b) "A public officer discriminates against a person or community during a provision of public services.

(b) A public officer refuses or fails to give accurate information during the provision of public services."

Mr. Temporary Speaker, Sir, as I had mentioned, governors and some related county assembly members have a tendency to reward people who voted for them. This Bill demands that they should not bring that type of behaviour in their work place. It also says in 7(5) (b) that:-

The provision of public services is not impartial or equitable if-

"A public officer refuses or fails to give accurate information during the provision of public service"

Clause 6 states that:-

"Every public institution should develop standards for responsive, prompt, effective, impartial and equitable provision of services"

Mr. Temporary Speaker, Sir, you find that some of them always operate on lies instead of giving what is required. Clause 8(2) states that:-

"The public service, a public institution or, where permitted, an authorized officer, shall develop guidelines for the provision to the public of timely and accurate information and the promotion of transparency"

At the moment, this is very important because I do not know how often offices of Senators get accurate information from public officers. Knowing that we represent and serve to protect the interests of county governments, the Speakers and their own Clerks should give accurate information. It is now law that they must serve the offices that are relevant, so that we do not go to fire fight, like now we are dealing with Petitions. Suppose this flow of information was there earlier, the leader of delegation in the Senate would already know some of the challenges their counties are going through and would have sorted them out.

Similarly, officers working in the parastatals must know that as public officers, they must keep these values and make sure that they understand what is written.

Clause 10(1) states that:-

"The public service, a public institutions and authorized officers shall ensure that public officers are appointed and promoted on the basis of fair competition and merit".

Mr. Temporary Speaker, Sir, Surprisingly, some appointees in some parastatals and more so in the counties - because we serve to protect the interest - appoint themselves in mysterious ways. You find a very senior person and some junior officers sitting in a very big position. They are in Job Group "Q," "R," and "S". In the national Government, originally central Government, you would have to work for 20 or 30 years to get to those

positions. Right now, some young officers are jumping from graduation square directly to land in those positions.

Other officers stagnate in their job groups for many years. When it comes to execution of duties, the person with a huge salary and a big job group now goes to bow before the junior one who knows everything. This is what I find absurd. I told my governor in my county that we must make sure that these things are properly re-aligned. We should make sure that a junior person who has not even graduated is properly appointed and vetted before they are employed. We have some people from other tribes who are living in other counties, I want to expect that in the counties of Nyeri, Kiambu , Kisumu or Siaya, we should have someone from West Pokot and vice versa. If we continue doing what we are doing, ethnic groups are going to be contained in their corners where God put them and they happen to become members of that community.

Mr. Temporary Speaker, Sir, part 3 regarding public participation, complaints, register and reporting: It is a must that any officer that gives services must use all available resources and opportunities to reach as many people as possible. Residents' associations, self help groups and welfare associations must be used. There is no other better document that this now, especially when we are anchoring devolution. It will be very painful when this is implemented. We hope some things that have been done incorrectly are now going to be rectified after the passage of this Bill. It is important that some of these Bills should have been brought earlier so that as we go into devolution, we should not be playing around the way things are today.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. M. Kajwang:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill which seeks to give effect to Article 232 of the Constitution. Even though I support this Bill, I wish that this Bill would have given that particular Article wings to fly rather than just giving it feet to crawl. When you look at what is stated in Article 232, we have talked about our value system as a nation. This Bill really expands it and makes it a much longer document. But there are certain areas where we needed to have defined things, like consequences to those people who do not properly abide by these values.

Mr. Temporary Speaker, Sir, even in corporate organizations, vision, mission and value statements are things that are held very dearly. It is a good thing that for those of us who are in public service, we are now coming up with a value statement that will guide the conduct of those people who are mandated to serve the public.

There are very many people in the public service who are doing a good job. We have seen policemen who do not demand for bribes until someone approaches them with a bribe. We have even seen those who reject those bribes. It is not fair to generalize the public service, say that it is rotten and, therefore, we need a document like this to remind them of what they are supposed to be doing.

I must hail those people in the public service, be they policemen, teachers or public servants in public offices who are doing a good job. However, there is a small minority which is spoiling the name of the public service. If you look at the National Police Service (NPS), for example, we say that it is the most corrupt institution in Kenya. However, it must be on record that there are some policemen who are dedicated and they are doing a good job.

Mr. Temporary Speaker, Sir, there is a clause in this Bill which requires public servants to comply with professional associations. Over the weekend, we saw our learned

friends who decided to sit together to discuss issues of relevance. The concern here is that even some of these professional associations might not be observing the values we are insisting that the public service should be observing. That is a matter of concern.

Mr. Temporary Speaker, Sir, we are saying that this is a digital Government and the Jubilee administration rode on the wings of being digital versus the competition, which was deemed to be analogue. But when you look at it carefully, there is no professional association that binds those people who offer Information Communication and Technology (ICT) Services in this country.

Look at it this way; we are currently setting up a citizens' database where we are saying that we want to put all records of all citizens in this nation in one particular database. Right now, for a good fee, you can get the entire database of the Independent Electoral and Boundaries Commission (IEBC). For a good fee, you can get data of all the registered voters in this country, including their cell phone numbers. For a good fee, you can also get the entire database of the Integrated Population Registration Services (IPRS) database. This data is being sold or is being given out by ICT professionals. I am one of them. When you talk of public servants complying with professional associations, the time has come for us, as a nation, to define minimum standards that those people who are custodians of data in public service must meet because data is now becoming the next big frontier for crime.

Mr. Temporary Speaker, Sir, this particular Bill also talks about fair competition and merit in public appointments. Fair competition and merit is a fallacy, particularly in cases where discretion is exercised. Even though my brother, Sen. (Dr.) Khalwale, raised some issues which ruffled feathers, I would like to associate myself with his comments, where he protested that in certain cases where certain offices have been given the discretion to make appointments, they make those appointments and, on the face of it, it seems to be proper and within the law. However, when you look at it carefully, you realize that fair competition and merit has not been put into consideration.

There are certain cases where we, as a leadership, must see beyond our noses. We must see beyond our communities and we must see beyond our parties and our friends. We have seen in the case of the JSC, in as much as those appointments are fairly very much within the law, however, you wonder why one would just go for the people who campaigned for them or for the people who manage their political parties for a position as sensitive as the JSC.

Mr. Temporary Speaker, Sir, fair competition and merit should also be ingrained in the appointment decisions at the county governments because we have seen too many cases where Governors and the County Executive Committees (CECs) use these appointments to reward cronies and also to silence opponents. Furthermore, this Bill talks about public participation in the promotion of values and principles, as stated in Article 232. When I read this particular clause of the Bill, I find it to be very convoluted because it just opens doors for people to mint money by saying they will be going round in public forums to encourage public participation on values and principles.

Perhaps, what is much more relevant is public participation in policy making. This has also been made a mockery; we have seen cases where county governments – which we are supposed to defend and represent – come up with interesting programmes to seek public participation. They will go to a market centre with a huge document called the Integrated Development Plan, call the fishermen and market traders there and ask

them for their views. They never get any quality feedback from these people because, number one, they do not prepare these people in advance. Secondly, they do not avail these documents well in advance and they are so complicated that when you take it out there, it is only consultants who have the capacity to comment on them.

What then happens is that all these people who are called here are sometimes promised some goodies; they call them money for the motorbike back home. What brings them into these forums, therefore, is more of the money they are going to get at the end of the session rather than the participation that they are expected to make. So, when you talk of participation in policy making, I hope that it will go beyond the mockery that we have seen going on.

Mr. Temporary Speaker, Sir, one area that I like about this particular Bill is that it talks about handling complaints. At the moment, raising complaints is tantamount to shooting yourself in the foot. This is because if you go to a police station and you are treated badly, when you raise a complaint, the fear amongst the public is that the bad treatment will only increase. If you are in a hospital and you are treated badly, many people prefer to shut up because they have no visibility on the cause of action that can be taken to resolve the issues that they are complaining against.

However, this being a digital Government and we, being in a digital age, I would encourage that the handling of complaints against violation of these values and principles should be automated. My colleague, Sen. (Prof.) Lonyangapuo, has also talked about *Twitter*, *Facebook* and all these other social media activities. When you read this Bill, it is still very “analogue” because it prescribes the people and the manner in which complaints can be raised. This Bill should be expanded so that we recognize social media as one legitimate source of raising complaints.

Mr. Temporary Speaker, Sir, coming from the private sector, I can report with authority that when you open social media accounts and channels to allow people to ventilate and to complain, more customers will prefer social media. In fact, if you wanted to complain to one of the telecommunication companies about poor service and you opt to send a letter by post, make a telephone call or put it on *Twitter*, they will respond to the one on *Twitter* much faster because it is in the public domain. I believe that the Government should also be put to the level of visibility and transparency where we are using social media and a complaint that is raised via social media, be it on *Twitter*, *Facebook* or any other channel that might come up in future - is considered to be a legitimate complaint.

Mr. Temporary Speaker, Sir, these should go into a complaints handling system so that, at the end of the year, there will be a report of all the complaints that have been raised against public servants who violated these values and principles. The report shall be presented to the President and other relevant authorities for action. I want to encourage that we become digital in our thinking. This Bill should also anticipate a digital society where social media is taken as a legitimate channel of raising complaints.

In conclusion, Mr. Temporary Speaker, Sir, I support this Bill even though I wish it was much more aggressive in defining consequences for violation of values. Values can be written on paper and can be hung on a wall. But if people do not believe and live by them, then they might not be worth the paper they are written on. Currently, we have heard of cases coming out of the IEBC of acts that, on the surface already breach these values and principles that we are talking about.

We have heard of cases coming out of Parliament where certain Committees have been accused of corruption which flies in the face of these values and principles that we are talking about. We have heard of cases where hon. Members of Parliament are accused of indecent actions that fly in the face of these values and principles. The question is: what are the consequences? I wish that this Bill would dwell on consequences of violation of some of those values and principles. I believe there could be other legislations that address that, but to the common man out there who wants to see that a public servant is supposed to deliver service in a certain manner, failure to which something has to happen, I wish that this Bill could dwell much more on the consequences. If we focused on consequences then the people who ate “chicken” at IEBC should be somewhere eating beans just the way other chicken thieves are treated in this country.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. From the outset, I support this Bill that seeks to reinforce values and principles in the public service. As I support it, I must say it is a bit late; it should have come right at the beginning of the implementation of the Constitution when counties were being established. This is because where we are now, there are so many issues that have arisen that bring to question the values and principles of officials in the county governments. Nonetheless, it is important that we have these values because they, not only impact on behaviour, character and so on, and so forth, but they impact on civil service productivity. It is not just a question of being fair, but these values that are being reinforced will ensure that our public service is productive.

Mr. Temporary Speaker, Sir, some of the issues being raised here are not new. Some of them were there in the Civil Service Code of Regulations, but overtime, they have been watered down. I recall that during the early 1960s and 1970s, the civil servants of those days were more disciplined and observed ethics than the current ones. For instance, when it came to issues of correspondence, public complaints or issues of public services, if a member of the public wrote a letter requesting for a certain service; even as the matter was being considered, there was an acknowledgement. There was a format whereby the member of the public was informed that his or her request has been received and is receiving consideration.

*[The Temporary Speaker (Sen. Murkomen) left the Chair]*

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

After some time if it had not been considered, there was an update, another letter to say that the matter was still being considered. This happened until conclusion of the matter. This happened despite the fact that we did not have the benefit of the digital era that we have now. It should be easier to do that now. But as matters stand now, if a member of the public seeks any service - whether is a title deed, pension or whatever it is - he or she has to travel all the way from the rural area, perhaps, a hundred times. If he or she does not do so, the matter rests there. There was a time that processes used to continue and somebody got his pension right at home without ever having to come to Nairobi; but those days are gone. I hope this Bill seeks to address those issues.



Mr. Temporary Speaker, Sir, there is a lot of waste in the public service. As I look at the new requirements here, this Bill seeks to address this waste. When you talk about for instance, refunds or claims where somebody has a claim on the Government - whether it is Value Added Tax (VAT) refund, tax refund or medical claim - it ends up being very expensive, not only to the claimant, but even to the Government because there is a lot of delay.

There are also wasteful procurement procedures such that when it comes to procurement by the Government, there is a notion that this is the property of the Government and, so, nobody cares as there are no consequences, as my colleague, the Senator for Homa Bay, has said. Penalties are not clear even in this document. I support him that there should be penalties such that if there are delays in reimbursing whatever - because some reimbursements or claims are straightforward, but some officers engage in rent seeking behaving as if they are doing favours to the claimant. At the end of the day, the claimant gets nothing. In fact, they end up being in debit.

When we look at the waste that arises from unnecessary litigation, some officers deliberately delay implementation of certain obligations on the side of the Government. Finally, those who are aggrieved go to court to seek claims from the Government. As a result, we are paying a lot. You remember the issue of pending Bills which has never really gone away. There was a time a task force was formed and we thought it was going to clear it, but it has never done so. Right now, as I am speaking, we are hardly two years down the line in the counties, but if you were to go and audit the contractors who have not been paid, some of them, perhaps entered into agreements that cover the whole of the five years that the county government will be in office.

In the first one year in a department, all the money has been committed and contractors, in some cases, have performed their tasks and completed the projects, but there is no money and no planning. It is not because the officers are not educated, or that they are not aware. However, in their race to seek rent, they are busy dishing out contracts left and right, regardless of whether the Government can afford to pay. This is hurting the Government because it leads to the public and investors losing confidence in the Government. I hope that in coming up with the regulations, the Public Service Commission (PSC) and the boards will come up with penalties that will ensure that county and national Governments do not over-commit their resources.

With regard to issues of debt, there was a time when the Government had to borrow. It was forced to borrow. However, we are no longer sure whether future generations are safe, looking at how we are running around both at the national and county governments, seeking loans that go to waste.

There is the issue of public participation that is a constitutional requirement. However, how seriously it is being taken by governments at both levels is something to question. In the old days, *barazas* were held and members of the public had a chance to talk and give their views. A District Commissioner (DC) would attend the *baraza* with his team and go back without claiming anything because he was still operating within his jurisdiction. Today, the amount of wastage being experienced as a result of the public participation forums is mind-boggling expenditure. We must hire tents, entertain people and do a lot of launching, including launching things which are obvious.

Why is it after a county government has already approved loans or bursaries to be issued to students, the whole county comes to a standstill to launch something that has

been there and which will continue being there? The public forums are a continuation of campaigns. Members of the public are invited. At the end of the day, they are induced by being given something small. Of course, public servants get their allowances. There is also a feeling of the “big man” syndrome. What type of culture are we encouraging in our society; that in every public participation forum, there has to be payment? The public is invited to give their views and not to be paid. No wonder, the primary purpose of the forum has become for purpose of satisfying members of the public by giving them something small in appreciation of their attendance.

There is no service we can effectively perform without discipline. Discipline goes with training. It is unfortunate that in the current era, officers are recruited and directly placed in jobs without any form of training or induction. It must be a requirement under the regulations in this Bill that every officer recruited, regardless of the level, even if it is a Cabinet Secretary, undergoes some form of training to induct them on the requirements of the law we will enact.

With regard to the the Public Finance Management Act (PFMA), unfortunately, some people have been recruited; even at the highest level, but they do not know any Government regulations. By the time they get to learn, they have already messed up and are taken to court or investigated and yet this is not their fault. These people were not trained. It is important for officers who are recruited to be trained, first, on financial management and, secondly, on how to manage human resources. Some officers, once recruited, want to sack everybody they found in their offices. For the rest of the time, they are there, they are busy fighting fires, trying to gather information against other officers and transferring them.

Since officers and members of the public are allowed to complain, senior officers should not be busy witch hunting officers whom they suspect to have accused them. There is a lot of covering up. Whenever there is a fault; either in a health sector or in the roads and a complaint arises, somebody should come up to protest. The public officer who reports such a matter is branded a criminal and is harassed and transferred left, right and centre. I believe that this Bill will take that into account.

With regard to information, when I joined the civil service, there were certain issues which were a must. If you were a district officer in charge of a division, you had to prepare an annual report. You also had to do monthly reports for all the departments within your jurisdiction. These days, we do not even get a report for the entire Ministry. Reporting must be done. There is no way we can avail information without a report. That would be wrong.

There used to be a list of all officers employed under each Ministry and department and their qualifications. The list showed where they went to school and whether they joined the university. That was called a list of public service officers. Over time, that disappeared. For no apparent reasons, we do not know who is where. We cannot even determine whether the Constitution is being complied with in terms of regional balance and ensuring that all communities are represented.

The Public Service Commission and the Public Service Board should be independent. It seems as if over time, the County Public Service Boards are being blackmailed to surrender some of their functions, including recruitment.

**Sen. Murkomen:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion. This is a very important Bill on values and principles of public service and public officers.

The Constitution, in Article 232, lists what is referred to as Values and Principles of Public Service. These values and principles need to be given a breath of life and as Sen. M. Kajwang called it, “wings to fly” so that they can be operational. However, if you read the Bill, as it is, you will find that this is just a replication of statements that have no procedures of implementation that clearly define the punitive measures that should be achieved.

I hope that in the Committee Stage, we will provide for punishment. Instead of giving generalities that one should go through disciplinary measures, we must make it clear that we will not condone the way things were done before this Constitution was passed.

I want to be clear here that I have read the definition of Article 261 of the Constitution. The law we are passing here does not apply to us, as a House, and many state officers. However, this applies to public officers. These are persons serving in all the other organs of the state, except what is clearly excluded there; the President, Members of Parliament, the Governors and Commissioners, among others.

Looking at this Bill, it seems that although we are setting very tough standards for what would be called a junior public officer compared to the President, Deputy President and ourselves, there is still a prevailing conduct and behaviour of impunity among those who are elected to come and represent people.

Article 73 of the Constitution makes it clear that we have been given the power to serve and not rule over anybody. It even further makes it clearer because we must set an example. For us to preside over a House where we pass laws that will demand others to behave in a particular manner, we must always go back to Article 73(1)(a)(i) – (iv) and live by the spirit of that Article that says:-

“Authority assigned to a State officer –

(a) is a public trust to be exercised in a manner that-

- (i) is consistent with the purpose and objects of this Constitution;
- (ii) demonstrates respect for the people;
- (iii) brings honour to the nation and dignity to the office; and
- (iv) promotes public confidence and integrity of the office.”

Mr. Temporary Speaker, Sir, more often than not, as elected leaders, we have violated every single sentence in this particular Article. We have become more of rulers than servants; persons who disregard the public. We do not respect the people and we actually demand respect from them yet they are the ones who have hired us to be public officers. We have behaved in a manner that does not bring honour to the nation and dignity to the office. One scholar said that a leader of integrity is not the one that just operates around the line between wrong and right, but he must be far away from that line. He must be someone who operates in the bigger operational space where values, good manners, respect for the people and fear and reverence of those who elected him prevail. Article 75 of the Constitution says:-

“A State officer shall behave, whether in public and official life, or in association with other persons, in a manner ...”

Compared to what we used to have before, this Constitution concerns itself with behaviours and manners. The question we should be asking ourselves is not just about whether we are being debated in relation to corruption. It is about even when an elected State officer should be found quarreling with his spouse, shouting, calling people names using foul language or being drunk and disorderly. If a public or State officer is found sleeping in a trench, that should actually be the worst of the crimes imagined by this Constitution.

Mr. Temporary Speaker, Sir, more often than not we run to other sections of the Constitution to run away from Articles 73 and 75. So, for us to prescribe certain requirements of what could be considered the “other offices” supporting this other State officers; the presidency, Parliament, the Judiciary and constitutional commissions, we must be a good example. We must have the confidence that Paul in the Bible had to tell Christians and those who wanted to follow him that; “You follow me as I follow Jesus.” We must be able to say to the rest of the nation; “Follow me as I follow the Constitution.” It must be so evident from a State officer or legislator that when people see you, they see a person who is following the Constitution. It becomes easy for them. Even if they have never read the Constitution, they will tell you: “Okay, instead of doing civic education, go and live by the principles of that Constitution and we will study you. We do not require you to come and explain to us what we need to do; we will just study your behaviour, manners, sacrifice, commitment and values.”

When it comes to the Bill itself, we must make it abundantly clear to all public officers that their positions are not for personal enrichment. In our counties now, one of the most prevailing discussions will be that: “You know, we should accumulate wealth as much as possible and as fast as possible, take advantage of this position for personal gain as much as possible. You never know whether the same governor will be re-elected or whether there will be change of guard.”

Mr. Temporary Speaker, Sir, I have even said that the public is also culpable. You realise that a public officer is always ridiculed when he retires, having not accumulated a lot of public or personal wealth because they were honest, spent more time serving the nation, wanted to walk on the narrow road and under the principles of this Constitution. Where were you when men were acquiring wealth or when women of means and intelligence were grabbing land? The public must demand higher standards from public officers. They must also reward those who will live under the narrow road. You find citizens, somebody who is completely impoverished as a result of Government not being able to deliver services in a village, telling another person in office; “I hope you have gotten yourself a lot of wealth because the next elections are about to come. You must amass as much wealth as possible.” We, as a people, must start inculcating the culture of respecting values and principles of governance.

This Bill is useful to the great extent that it provides that there must be a record of all complaints that are provided by the public and also gives the public the right to participate in debating and passing of policies of Government or institutions. Going forward, we need to see that there is a deliberate effort in terms of human and financial resources that will enable the people to understand principles, values and policies that are being put in place for their sake.

Mr. Temporary Speaker, Sir, I am more concerned about the budgeting process in the county. The process of budgeting and allocating resources to a particular office must

be more participatory. The people must have a say. Articles 174, 175 and 176 of the Constitution tell you that the reason we went for devolution was because the people wanted to have their own self-government. That is, the ones they are going to dictate to where to put and how to start a project and which one to prioritize. That way, the collective thinking of the people will be imported to governance at the local level. However, you find a situation where everybody believes that it is the prerogative of the governor; he is the sole giver of life in the county and the bringer of development.

I was in Mandera yesterday where I had informal sessions with the Members of the County Assembly (MCAs). One of the things I reminded them is that they are the ones who determine development in the county and not the governor. Since they have the budgeting powers and they are the ones in charge of how the County Integrated Development Plan will look like, they are, therefore, the designers and the oversight implementation projects of the county. However, what do you find? If you go to a public function in Homa Bay, you will realise that all the MCAs are busy praising the governor telling him, "Thank you, Mr. Governor the giver of life, the one who has done for us this road and this water project." Yet, it is the MCAs who are budgeting.

What makes it even more ridiculous is that once they have praised the governor, they say we do not know what Sen. M. Kajwang has done for this county. How many projects has he brought? As if the public resources that we are fighting over to be allocated to our counties is nothing. As if the resources they are using were personal resources created by the county on their own.

We must start appreciating and dissuade members of the public, state and public officers from this mentality that an individual is a giver of development; even those who have been told that they are going to be watchmen, managers, custodians and trustees of public resources on behalf of the people. You convert it to become like you brought development to the people. That behaviour must be routed out so that the people themselves will say we are the ones who decided under county integrated development plans that we will put this project here.

Mr. Temporary Speaker, Sir, last weekend, I went around my county and addressed a few persons in meetings and along the roads. I realised that our people need to know better. A county government is not a private entity or a preserve of a few people who have been made managers of those counties. It is collective governance that has a place for the Senators, governors, MCAs, but an even bigger place for the people because they are the ones who determine where development is going.

Mr. Temporary Speaker, Sir, at the Committee Stage, we need to propose greater sanctions on those who are not going to abide by the principles enunciated in Article 232. We also need to provide a clear mechanism of compensation. There should be a mechanism for rewarding even that sweeper who sweeps the office of the Clerk of the county assembly so well, so that there must be a place in the hall of fame that says that there was a great sweeper in this county. That there was a great security person in this county and a great clerk in this county. It must not be that always greatness is attributed to the person who has been given more. It should be that the person who has become faithful in whatever; whether it is big or little that has been given to a particular office, that office and that person should be rewarded.

I like what this provision of the Act says; that if a member of public who is being served by an office finds in his or her wisdom that a particular public officer has done

well, they must commend and give feedback. This is a culture that we must inculcate in our people; that saying thank you is not wrong. In this country when you remind somebody for not having thanked a certain public officer for serving you well, what they say is: "Why should I thank him, he was employed to do so". Courtesy and appreciation will assist that public officer to double his effort; to appreciate feedback. Let us not only give feedback because it is negative, but we must also be able to give feedback because it is positive. That is what we must achieve.

Mr. Temporary Speaker, Sir, even within this Senate, we must move forward and provide a criteria of how public officers are going to be rewarded and recognized for the service they are giving to the people at the county level and even at the national level. I believe that it is very sad that Parliament has received a lot of negative publicity in the recent past because we are not abiding by Articles 73 and 75 of the Constitution. Even amongst ourselves we should not always protect each other even when we know that there are rotten elements that are giving us bad publicity. We must be able to tell them that enough is enough and that this Parliament must be protected as an integral institution of this country.

I support.

**The Temporary Speaker** (Sen. (Dr.) Machage): I see no other interest in contributing to this Bill. Is the Mover available to reply?

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. Pursuant to Standing Order No.54 (iii), I request that you defer putting the Question on this Bill to tomorrow Wednesday 25<sup>th</sup> March, 2015.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, request is granted.

*(Putting of the Question on the Bill deferred)*

Next Order!

*Second Reading*

THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

The Mover is not around. Next Order!

*Second Reading*

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL  
(NATIONAL ASSEMBLY BILL NO.42 OF 2013)

The Mover is not around. Next Order!

*Second Reading*

THE MINING BILL (NATIONAL ASSEMBLY

BILL NO. 8 OF 2014)

The Mover is not around. Next Order!

*Second Reading*

PUBLIC APPOINTMENTS (COUNTY ASSEMBLY  
APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)

The Mover is not around. Next Order!

*Second Reading*

PARLIAMENTARY SERVICE (AMENDMENT) BILL  
(SENATE BILL NO. 21 OF 2014)

The Mover is not around. Next Order!

*Second Reading*

THE NATIONAL GOVERNMENT COORDINATION  
(AMENDMENT) BILL (SENATE BILL  
NO. 30 OF 2014)

The Mover is not around. Next Order!

*Second Reading*

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

The Mover is also not around.

I am actually very disturbed because we have had this list of all these Bills whose Movers were not around and just this afternoon we have had to extend time of the sittings of this House to include morning sittings. This is one of the reasons we did that and with this kind of behavior, we may not move far. I order that the Movers be informed and reminded that they have a duty to this House.

*(Bills deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, there being no other business to be transacted, I hereby interrupt the sitting of the Senate. The Senate stands adjourned until tomorrow, Wednesday, 25<sup>th</sup> March at 9.00 a.m.

The Senate rose at 5.45 p.m.