

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 9<sup>th</sup> February, 2016

*Eleventh Parliament - Fourth Session - First Sitting*

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

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

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATIONS OF STAFF FROM VARIOUS COUNTY ASSEMBLIES

**The Speaker** (Hon. Ethuro): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visitors from Nakuru, Kilifi and Kericho county assemblies.

The County Assembly staffers are here on a four-day attachment to visit similar departments at the Senate. I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

From Nakuru County Assembly, Human Resource, Administration and Finance and Accounting Department:-

1. John Kwambai
2. Jane Wakanyi
3. Emmanuel Njuguna

From Kericho County Assembly, Sergeant-at-Arms Department:-

1. Reuben Kirui
2. Augustine Ngeno
3. Sharon Cherop
4. Scolastica Chepkemai
5. Julius Langat
6. Joseah Langat

From Kilifi County Assembly, ICT and Research Departments:-

1. Mercy Kuria
2. Josephat Saro
3. Iha Thoya
4. Keith Kitsao.

On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay as they train at the Senate.

I thank you.

*(Applause)*

WELCOME TO HON. SENATORS TO  
THE FOURTH SESSION OF THE 11<sup>TH</sup> PARLIAMENT

Hon. Senators, I have another communication to make on the Fourth Session. It is my pleasure to welcome you back from the long recess on this first day of the Fourth Session of the 11<sup>th</sup> Parliament. It is my sincere hope that you all had a happy holiday and are ready to begin this year on a good footing.

During the last session, the Senate conducted a substantial amount of business in line with our mandate as provided in the Constitution. Just to refresh your memories, some of the business transacted by the Senate during the Third Session was the following:-

(a) A total of 33 Bills originating from the Senate and 12 originating from the National Assembly were introduced to the Senate.

*(Applause)*

I think we need a bigger applause than that one because your first consideration is legislation.

*(Prolonged Applause)*

(b) The Senate also considered two Memoranda on Bills which had been passed by both Houses and submitted to His Excellency the President for assent. This was in respect of the Public Audit Bill (National Assembly Bill No.38 of 2014) and the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014).

(c) Ninety six Motions were tabled, 57 of which were deliberated upon and concluded;

(d) Thirty three Petitions were presented out which nine were reported on;

(e) One hundred and fifty nine Statements were requested from the Chairpersons of Committees out of which 95 were responded to.

This is just but part of what the Senate achieved in the last Session which indicates a marked improvement in volume and the quality of the business transacted over the previous Sessions. Much more, as you are undoubtedly aware, was achieved through respective committees as the House firmly and unequivocally took up its rightful place as the guardian angel of devolution.

Hon. Senators, in continuing to exercise our mandate as the House of equity, it is my expectation that we will see more business transacted by the House during this Fourth Session. This Session should see more consolidation and reflection as it is a turning point. It is actually a mark of transition to full realization of devolution. We have, therefore, planned a series of activities to further deliberate with you on these issues and we will be

calling upon you to fully participate. We will, therefore, be asking for your maximum support and cooperation at this particular fourth year of the five-year term.

Lastly, and as you are all aware, Statements and Motions lapse at the end of each Session. I, therefore, urge Senators who wish to resuscitate such Motions and Statements to proceed and re-file them with my office.

It is, therefore, my singular honour and appreciation to wish you all the best as you continue to fulfill your mandate during this Fourth Session that commences today.

I thank you.

*(Applause)*

*(Sen. (Dr.) Khalwale stood up in his place)*

Order, Sen. (Dr.) Khalwale! What happened to your digital capacity?

Let me first recognise Sen. Wangari since I can see her request. I will come to you later.

**Sen. Wangari:** Mr. Speaker, Sir, I also wish to join you in wishing every Senator in this House a happy new year. I also wish to thank you and your office for being a good facilitator in the just ended Session. I hope that we will do better this year under your leadership.

I also want to further thank your office especially on the issue of liaison in terms of benchmarking from the counties. I want to specifically recognise my county, whose staff are here and represented. I hope that as we end our term, this being the fourth year of the five-year term, we will do an audit of devolution to see if it has achieved what it was meant to achieve. Benchmarking will guide counties in terms of checking on hiccups in the duties of the county assemblies and county executives.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, allow me to thank you for the *communiqué* and also wish colleagues a happy new year.

Next year, when we will commence the final Session, I look forward to you making a similar announcement. However, how I wish that you task the office of the Clerk to do a follow-up with the Executive, so that during such a Communication we are also told the status of implementation of some of the important resolutions that we make as House, both in terms of how we have challenges with the National Assembly, but more importantly, how the Executive implements our resolutions to communicate with the country, that we do not speak in vain, and that the Executive treats us with the seriousness we deserve.

**Sen. Billow:** Mr. Speaker, Sir, I also want to add my voice to welcome all the Members and congratulate them for the good work they have done. What you have said in terms of the number of Bills, Motions and other business that we have done is quite a lot. However, there is still a lot more to do.

We have been reading in the media that many Members of this House are likely to go for positions other than those of the Senate. I am glad my friend, the Senator for Nyeri County, confirmed today in the media that he was not going anywhere. I was beginning to feel lonely here.

*(Laughter)*

I think this House, unlike what was in the media – the story was in *The Standard* newspaper – the report was saying that maybe these people are not busy. We are doing a lot of work. The most important work is to ensure that devolution succeeds. Everywhere you go in this country, you will actually see the footprints of the success of devolution. We owe it to ourselves to ensure that county governments get resources.

We have, as much as possible, also made sure accountability in counties is addressed. There is a lot of work to be done. I urge my friends that some might think that the grass is greener on the other side, on that seat that many want to go to; but I can assure you that, the grass will always be greener and better in this House. I urge my colleagues to ensure accountability. In fact, I am impressed that devolution has succeeded and we owe it to ourselves.

Thank you.

**Sen. (Prof.) Anyang' Nyong'o:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I have only two points to make. Missing in the Communication was the victories we have had in the courts over some very crucial laws that were passed. That is an important addition to our achievement which should feature prominently in your Communication.

Secondly, we have a magazine of the Senate. What you have said this afternoon should be expanded as a solid article in that publication so that what we have achieved in this Senate should not just end as being known to ourselves, but nationally and internationally.

Thank you.

**Sen. Madzayo:** Asante Bw. Spika, kwanza, kwa makaribisho yako ya mwaka wa 2016, na pongezi kwa kazi ambayo sisi Maseneta tulifanya. Vile vile, nakushukuru kwa kuwakaribisha wananchi kutoka Kilifi ili wajifunze hali na taratibu za utendakazi. Nina imani kwamba wakirudi kwao watatumia elimu watakayoipata katika Seneti kuendeleza Kaunti ya Kilifi.

Nakuunga mkono katika kuwapongeza sana Maseneta wenzangu kwa kazi tuliofanya. Tumepitisha Miswada mbalimbali na itakuwa jambo la muhimu ikiwa sheria tulizopitisha zitalisaidia taifa letu la Kenya.

Asante, Bw. Spika.

**The Speaker** (Hon. Ethuro): Let us keep it that short and sweet since the interest is high.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, first, I join you in welcoming the Members back. Although we have done quite well in passing various Bills and Motions, the effect of that is not being felt. Quite a number of Bills that we have passed go to the National Assembly and get stuck there. I am not aware of any Bill that went there and was passed, and I stand corrected on this. I do not know whether there is need for a certain amount of diplomacy and dialogue so that the Bills can pass through that hurdle.

Secondly, I urge Members to put more effort. I sit at the County Public Accounts and Investments Committee and we are behind in terms of looking at the accounts in various counties, never mind the fact that the Auditor-General is behind. We are looking at the accounts of two years ago, which makes the Senate less visible. Devolution itself seems to be working very well, but the auditing of accounts is relatively slow. A lot more effort and support is needed for us to move faster.

Last but not least, I do not think that there is anybody who is going to vie for a position in secret. Therefore, it is wrong for a daily newspaper to speculate and write that so-and-so will vie for a certain seat. They have a right to do what they are doing, but I am still doing my job as a Senator. I have not discussed whether I will vie for governorship or senatorship position, but that does not mean that I will not vie for any position. However, the media houses should hold their horses until we tell them where we are headed.

Thank you.

**Sen. Karaba:** Mr. Speaker, Sir, I appreciate your Communication. I am happy that we are back. I join you to welcome my colleague Senators to the august House.

It is important for the Petitions that are particularly crucial to the counties to be expedited so that when we go to the next elections we will be seen like we have done something for the counties. Particularly, there are those Petitions concerning boundaries and change of beacons, as it were.

Thank you.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I start by congratulating you for steering this Senate which is the second one since 1963. We have really been instrumental in setting the structures. The next set of Senators who will come will really have an easier job because the structures have been well laid out. We have set precedence in many key areas.

One of the areas that I wish we would continue to set precedent in is social audit. We should make it very essential in our various committees to be able to exercise more oversight, but a very specific sort of oversight. We should look at the sort of impact that devolution has had within the counties and document it. We should look at the areas that counties have not done as well as they ought to have done and make proposals on the same.

We could even go to a higher level. We could have some time, as Senators, say, a 'Senator Hour,' where we can address specific issues about specific counties. For example, we could consider the number of Bills that have been handled in various counties. I was aware that in Kwale County, quite a number of Bills have not been passed because of various issues. It is good for us to keep in touch with the county assemblies. As we move forward, it is critical for us to continue with close integration with county assemblies.

The issue of the Bills and what happens when they get to the National Assembly should be addressed so that communities can gain and stop the quagmire that we have had.

We welcome the visitors. Long live the Senate of Kenya.

**Sen. Khaniri:** Mr. Speaker, Sir, I join you in welcoming my colleagues to this new Session. I wish them a fruitful Fourth Session. I also congratulate them for the work done in the last Session. You have clearly enumerated what we achieved. There are quite a number of Bills and Motions. But I want to echo the words of Sen. (Dr.) Khalwale that it is one thing to pass these Bills and Motions, and another thing for them to really benefit the people in the counties and the Republic.

That brings us to the issue of implementation of legislation and the Motions that we pass. In future, as you enumerate to us what we have achieved, it is also important for us to know the status of the implementation of the same.

You also stated to us the Statements that had been sought had lapsed and yet, before the close of last Session, there are a number of Statements that were put off to the first and the second sitting under your direction. I just want to get your guidance on that particular aspect.

I want to assure Sen. Billow that it is my democratic right to run for any seat that I want in the Republic. Although a section of the Press had indicated that I am one of those who are gunning for gubernatorial seat in Vihiga County, I want to make it very categorical that I am here in the Senate to stay. Come the next elections, I will defend my seat as the Senator for Vihiga to ensure that my people benefit from devolution.

Thank you.

**Sen. Kagwe:** Thank you Mr. Speaker, Sir. I appreciate your sentiments about our hard work. I also thank you for the Senate leadership without which we would not be successful. In addition to the quantifiable successes that you have elucidated, there are also the non-quantifiable aspects that I congratulate our Members for. It is the maturity that has made this House respectable across the country. The brotherhood, sisterhood and the bipartisan nature that has been shown by Members in their work and how they have approached the legislation on Bills is commendable.

Mr. Speaker, Sir, we have a lot to be thankful for and much to look forward to. As for my brothers who are vying for gubernatorial positions among others, I urge them that as they prepare to do so, they should work on Bills that will make governorship effective. This includes the minimum qualifications of those who will work with them. Even if Lord of Lords is elected as the governor in some of the counties, as long as the infrastructure exists as it is today, they will be summoned here in 2019 and they will not explain how they spent their monies.

**Sen. Njoroge:** Thank you Mr. Speaker, Sir. I wish the Chair and the Senators a happy new year. I commend the Senators and especially Sen. Omondi, Sen. Leshore for having supported the Persons with Disabilities (PWDs) since we came into this House. In the past, PWDs have been discriminated all round. I also thank both sides of the House and hope that this will continue for the remainder of time. This has encouraged us to an extent that we pray that in the near future, we shall vie for presidency because it has been proved that Kenyans give support to this House. Therefore, I wish all of you the best as we continue with our business.

Thank you.

**Sen. M. Kajwang:** Thank you Mr. Speaker, Sir. I join my colleagues to wish everyone a happy new year. I have also noticed that there is a delegation from Kericho County. Chair, you know Kericho County does not have a Senator in the House. Since the county borders Homa Bay County, I undertake to represent their interests until they elect a young or old man to this House. I welcome the delegation from Kericho County.

Mr. Speaker, Sir, you have highlighted the achievements of this House in the last one year. It was a year when I was new and the youngest Member of this House. I, therefore, concur with you that this House has proven itself. However, there are challenges which if we do not talk about, we will not face this session with the certainty that is required. It is a fact that this House has operated with a limited capacity to carry out the oversight role in the counties.

We are good when it comes to legislation and debate but for us to be felt out there, that has been limited. I hope that with their wisdom and leadership and that of the

entire House, they will unlock the operational and logistical challenges that render us ineffective to oversight devolution.

Mr. Speaker, Sir, may I point out, and probably this could be one of the achievements of this House, that when the World Trade Organisation Conference was held in Kenya, Senators accepted to give out their offices so that the delegates could be hosted in a proper manner. To date, these offices have not been handed back. The sub-chiefs and chiefs in this country have offices, but half the number of Senators are operating in the air. I believe that with your leadership and wisdom, these are issues to be sorted out quickly.

Finally, I find it interesting that the Members associated with gubernatorial campaigns are active today in opposing those insinuations. This may show that the Senate is the superior House. When a Member leaves the Senate and vies for a gubernatorial position, then it is a demotion. Therefore, I congratulate my brothers who have resisted moves to demote themselves from the Senate to gubernatorial positions.

**Sen. Mositet:** Asante Bw. Spika. Nakushukuru kwa uongozi ulionyesha mwaka jana. Pia, ninawashukuru wenzangu kwa kuzingatia zile sheria ambazo tulipitisha hapa. Kwa hivyo, hiyo ni uadilifu kazini. Pia, waliweza kufanya kazi vile inatakikana. Wale ambao wanafanya kazi zaidi ni wale wenye wamesemekana wanawania viti vya ugavana. Sifikirii maneno hayo yana ukweli kwa sababu wenyewe wamejitokeza na kusema kwamba hawana nia na wataendelea kutumikia taifa katika Seneti. Labda ni mbinu ya kuchokoza ili wengine wajue vile wakenya watasema.

Ninashukuru uongozi wa walio wengi na walio wachache na pia Seneti kwa jumla kwa uadilifu wao. Miswada ambazo hazikufikiwa mwaka jana, naomba Bw. Spika kwamba ofisi yako iangalie vile tutazifufua.

Asante.

**Sen. Orenge:** I thank you Mr. Speaker, Sir, for giving me the opportunity to appreciate your leadership of the Senate. I also join other Members of the Senate in wishing them a happy new year. I hope that after the recess, we have come with more energy to make this country better for all of us.

Mr. Speaker, Sir, in the visits that we pay to the counties or delegations, in the Committees that we belong to, there is a spirit of unity and harmony within Senators. I appreciate that.

I have gone to my own county with committees of this Senate. In a certain place in Siaya, people could not determine who was who in terms of the coalitions that exist in this House. We went there and talked about the role of the Senate and importance of devolution. I must quickly add that you had the occasion to come to Siaya and preside over a very important function at the county assembly.

That is a day that we will not forget in Siaya. I hope that you will have another opportunity to come. You must have noticed that the decorum and the way business was being conducted at Siaya County Assembly was mature. That is a reflection of what even this Senate should be. To that extent, the process of going back to the counties and county assemblies is mutually beneficial, both to the Senate and the county assemblies.

Mr. Speaker, Sir, finally, I appreciate the first decision you made during the First Session of going to the Supreme Court which I do not want to say much about as of now. Probably, we will get another time to talk about the Supreme Court. You took the courageous decision to go to the Supreme Court for an advisory opinion in relation to the

process or procedure for enacting legislation in Parliament, and more particularly, Article 110(3) of the Constitution.

In the advisory opinion, it seemed to be the opinion of the Supreme Court that it is very difficult to conceive of any issue that does not concern counties, be it security or any matter that concerns the national Government. If you examine any functions or matters that come to Parliament, you will always come to the conclusion that there is an element of county interests or matters that affect counties in many of the Bills that go to the National Assembly.

In this regard, I beg you again – in this Fourth Session – to have a proper meeting with the Speaker of the National Assembly together with the Leadership, so that when there is agreement and concurrence under Article 110(3) of the Constitution, there would be some level of accountability, where we will know our Speaker was properly consulted in accordance with the Constitution.

There should also be a paper trail because accountability is very important in this new constitutional dispensation. Otherwise, people may begin to develop the notion that the Senate is not all that important. What I understood from the advisory opinion of the Supreme Court was that this Senate has a very important function.

In some of the trips you have taken us to – including Japan and Russia, the former Soviet Union, in north and south, new and old democracies – whether it is written in the constitution or not, the Senate eventually is an insurance policy for any republic. To that effect, there is quality control, even in funds, where the Senate understandably has a peripheral role on any Bill or matter that appears before the national legislature. However, they emphasised to us that when there is an important issue that requires some detail--- In fact, when it is not quite political, it will end up in the Senate.

This issue may not seem to be very important as we deal with it now, because the politics of it may burry the importance of this important institution. But in order to build for the future, I urge you, the Senate Minority Leader and the Senate Majority Leader, to have some conversation with the leadership of the National Assembly. I do not expect difficulties in this new Fourth Session regarding Article 110(3) of the Constitution, regarding what concerns counties and what does not. We are very clear that your word is final.

According to my interpretation of Article 110(3), so long as the matter has come to you and you have concurred, it ends there. However, for the interest of posterity, we need some paper trail and accountability so that we can rest satisfied that the Senate is not being taken for granted.

I thank you.

**The Speaker** (Hon. Ethuro): I had concluded, but I can see two eminent Senators – the Attorney-General *Emeritus* and the Senate Minority Leader - who wish to make contributions. I will allow them a maximum of two minutes each in that order because it is extra time.

**Sen. Wako:** Thank you very much, Mr. Speaker, Sir, for giving me this opportunity just to make a few remarks on this Motion. During the recess which was long, I personally learnt a lot. I stayed with my people in the county and it was obvious that a lot of civic education is required for people to understand the role of a Senator. A number of them understood, but many of them also felt that we are not being felt on the ground because of prevalent corruption which they perceive exists in most counties. As



we go forward, the role of oversight should be given emphasis and we should be felt on the ground; that we are actually carrying out our role of oversight.

They understood that the money goes to county governments because of the Senate. It also increased because of the Senate and they applauded us for that. However, we fall short because people do not know what we do on the question of oversight. I explained to them that initially the governors were not cooperative and it is only recently that we had a court ruling in our favour. As we go forward, the resources for oversight and so on should be emphasised. We must get them so that we can get to the ground over the issue of oversight.

Secondly, on the issue of our relationship with the National Assembly, we are now in the Fourth Session, going to election next year. We would want to bequeath a Senate which has good ground and plays its proper role under the Constitution and which is in good relationship with the National Assembly, and not necessarily an acrimonious relationship.

Before coming here I was sharing with your counterpart, Hon. Justin Muturi. I was quite happy when he mentioned that the National Assembly has many Bills before it, many of which will also be considered by the Senate. He mentioned it when he was addressing the National Assembly.

I would like the Leadership of the Senate to take that on and let us be engaged more on that very issue. In the beginning, Members of the National Assembly said that the only Bill that we could discuss was the County Allocation of Revenue Bill. The matter was taken to the Supreme Court and it ruled the way the Senator for Siaya has said. In spite of that, we still get tricklings of legislations coming to us, in spite of the Supreme Court ruling that nearly all legislation is a matter that concerns counties, and, therefore, a legitimate matter to be discussed by the Senate. We want to see an improvement on that. I suggest that we take the Speaker on his word and see how we can improve on that aspect of legislation.

Talking about legislation as you know---

**The Speaker** (Hon. Ethuro): Conclude, Senator.

**Sen. Wako:** Mr. Speaker, Sir, I need to carry out an audit of Bills that we have to do during this session. I also hope that the funding will be made available for us – particularly my Committee – to audit all the Bills that are in statute books, to ensure that they are in conformity with the Constitution, and that the role of county governments in those legislations is clearly spelt out.

I thank you.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. Allow me to wish you and all my colleagues a happy new year. As we start this Fourth Session, I hope we will have a more consultative approach to handling our business, be more interactive and less adversarial so that we can pursue our legislative agenda for the benefit of the counties that we represent and the country at large.

Definitely, the Senate has weathered many storms starting from the challenge as to our relevance, moving on to the need for this House to be appreciated as a legislative arm of Government and more importantly, the continuing lack of harmony – so to speak – between our House and the “Lower House”.

I had hoped, right from the word “go”, that the Speakers of the National Assembly and the Senate, having been elected from the same side of the coalition, would

bring incredible harmony in the running of the business so that we have a seamless flow of business and that we would appreciate each other a lot more. Unfortunately, it has not been the case. I hope that this time round, there will be some visible change.

Mr. Speaker, Sir, equally important is to caution ourselves against the temptation for this House to conduct itself – from time to time – as if it is an extension of the Executive. Our duty as the Legislature is to oversight the Executive. Sometimes it is disheartening for this House to start conducting itself as if we represent the interests of the Executive in the Senate.

In the history of this country – I do not know if you or any of my colleagues have been following – there has never been such a large number of cases in the courts challenging the constitutionality and validity of legislation as we have now. This is very telling to both Houses. It is an indictment to some extent that we have probably been veering off the beaten track in our legislative programmes.

The distinguished Senator for Siaya, Sen. Wako, other lawyers and I are in court challenging a legislation passed by our own House. I am referring to the events of 16<sup>th</sup> December, 2015 where we felt that we did not do the right thing. Painfully, Sen. Orengo, Sen. Wako and I have gone to court to challenge a Bill passed by this House with the belief that it is unconstitutional and that the court will hear us fairly. These are things that should not happen if there is adequate consultation and attention to what we are doing as Parliament.

Luckily when we went to court, our lead team lawyer, Sen. Orengo, was asked: “Where were you?” He produced the HANSARD that acquitted us to show that when it was time to speak, we did not keep quiet and the court has seen that as part of the challenge.

Mr. Speaker, Sir, as we move to the Session that we must define our relevance even more, I encourage you to engage the Speaker of the National Assembly a lot more to remind him that legislative business is not his personal agenda but that of the nation and where the law requires you to consult and determine issues that come to the House, it is not left to his or anybody’s discretion. It is for you to obey and adhere to what the law and the Constitution say so that we can move in a more systematic manner.

Finally, this House has also gone through challenges in our relationship with governors. Towards the end of the last Session, I was quite happy to see quite a number of governors willingly coming to submit themselves to scrutiny by the Senate County Public Accounts and Investments Committee (CPAIC). This is as it should be because when you administer public resources, you cannot shield yourself with all manner of excuses as to the level of accountability that is expected of you.

The days of running around with all manner of injunctions against the Senate and other organs of oversight are behind us. This is because those who are giving us responsibility to administer public funds must submit to scrutiny, audit and oversight. That is why our passage of the Bill against the Office of the Auditor-General remains a black blot on the integrity of this House and our commitment to oversight and proper use of public funds.

Mr. Speaker, Sir, I wish every colleague a very good Session. For those of you who sent me many messages about the issues that I recently went through with the Independent Electoral and Boundaries Commission (IEBC), I thank you because the law was clear and it was upheld. I stand here to salute – in no uncertain terms – my lawyer,

Sen. Orengo, for standing with me and for pursuing a legal and just cause with such vigour that everybody was left agreeing with him. It is not just about me. This is now settled; that none of you will be tormented on spurious, malicious and wicked issues being engineered by people who are of ill will rather than people seeking justice.

With all those remarks, I thank the distinguished Senator for Meru who says he prayed for me. I believe he prayed quite silently and I wish him well in his engagement in his county.

**The Speaker** (Hon. Ethuro): Members, I think that concludes it. I have heard your various interventions and I think all of them will be taken on board. Definitely, what you have requested the Speaker to do shall be done. For the offices, I have just consulted and there is some work going on. The first floor has already been handed back. We will ensure that the rest of the offices are brought back. My understanding was that by 1<sup>st</sup> February, 2016 the Senators should get back their offices.

Let us move to the next Order.

*(The Clerk-at-the Table read the Orders in quick succession without giving Senators an opportunity to raise any issues)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. For all the time that I have been in Parliament, when the clerk reads an Order, he sits down to see if there is any Member with an issue. He then stands to read again and sits down to see if a Member has an issue. However, when he stands and reads continuously, it prevents any efforts by any Member to stand up and make a proposal or intervention on any matter that is coming on the Floor. So, we end up passing Orders that we have issues on, like I know the Senator for Vihiga has a Petition that he wanted to present. He could not stand up and compete with the clerk who is also standing for the attention of the House.

**The Speaker** (Hon. Ethuro): Order! That is correct. Let the Orders be read out again.

What is it, Sen. Khaniri? Except for the benefit of the Senate Minority Leader, if he can be privy to the business the Members want to bring to the House, would it not be expected that the Speaker should be privy to the same business?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I was not privy. I just heard him say that.

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

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. On 24<sup>th</sup> January, 2016, I presented to your office a Petition that was signed by some Members of the Vihiga County Assembly and a long list of residents of Vihiga. It was my expectation that the Petition would be presented today.

Mr. Speaker, Sir, looking at the Order Paper, the Petition is not listed for today. So, when we got to that item, I wanted to get your guidance as to whether I can proceed and present the Petition or whether it could be slated for tomorrow or another day. I seek your guidance.

**The Speaker** (Hon. Ethuro): Sen. Khaniri, you were in my office this morning and we tried to trace where the Petition had reached. We also have internal procedures in the House which must be observed. I gave you that undertaking. I have followed the

matter and it is in the pipeline. If you had only approached the Chair, I would have given you a more appropriate response. The way it is now, we cannot ask you to present the Petition but we will communicate to you. As soon as it is ready, we will let you know.

**Sen. Khaniri:** Mr. Speaker, Sir, that is precisely the guidance I wanted to get from the Chair. I oblige and will wait for your wise communication and guidance.

**Sen. Karaba:** Mr. Speaker, Sir, I believe this is the right time for me to remind you and the House that last time before we went for recess, you made a ruling that those petitions which were yet to be tabled were to be tabled this time. I am still waiting for the *Kirinyaga Mhiriga Kenda* Petition on boundaries. I am yet to be advised.

**The Speaker** (Hon. Ethuro): Hon. Members, it is our tradition that the first business of the first sitting is to approve the Rules and Business Committee (RBC). This Committee will process the business that will come before the House. So, bear with us. Immediately we dispose that business of approving the RBC, it will get to work and then, we will advise you on the status of all those petitions.

### NOTICE OF MOTION

#### APPROVAL OF MEMBERS OF THE RULES AND BUSINESS COMMITTEE

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.176 (1), the Senate approves the following Senators to be Members of the Rules and Business Committee:-

1. Sen. David Ekwee Ethuro – Speaker of the Senate – Chairperson
2. Sen. (Prof.) Kithure Kindiki – Senate Majority Leader
3. Sen. Moses Masika Wetangula – Senate Minority Leader
4. Sen. Beatrice Elachi – Senate Majority Whip
5. Sen. Johnson Nduya Muthama – Senate Minority Whip
6. Sen. Onesmus Kipchumba Murkomen
7. Sen. Beth Mugo
8. Sen. Kiraitu Murungi
9. Sen. (Prof.) Lonyangapuo
10. Sen. James Orengo
11. Sen. Janet Ong’era
12. Sen. (Dr.) Agnes Zani

Thank you, Mr. Speaker Sir.

### MOTION

#### APPROVAL OF MEMBERS OF THE RULES AND BUSINESS COMMITTEE

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order No.176 (1), the Senate approves the following Senators to be Members of the Rules and Business Committee:-

1. Sen. David Ekwee Ethuro – Speaker of the Senate – Chairperson
2. Sen. (Prof.) Kithure Kindiki – Senate Majority Leader
3. Sen. Moses Masika Wetangula – Senate Minority Leader
4. Sen. Beatrice Elachi – Senate Majority Whip
5. Sen. Johnson Nduya Muthama – Senate Minority Whip
6. Sen. Onesmus Kipchumba Murkomen
7. Sen. Beth Mugo
8. Sen. Kiraitu Murungi
9. Sen. (Prof.) Lonyangapuo
10. Sen. James Orengo
11. Sen. Janet Ong'era
12. Sen. (Dr.) Agnes Zani

Mr. Speaker, Sir, as you have guided this House, the first critical business every new session is to constitute the RBC so that it can move with speed to schedule business for this House with immediate effect.

Hon. Senators will realise that for the past three years we have largely maintained the same Membership of this Committee.

First and foremost, by way of requirement, as Senators are aware, the Chairmanship of the Committee as well as the membership of the Senate Majority Leader and the Senate Minority Leader, the Senate Majority Whip and the Senate Minority Whip is required to remain.

Mr. Speaker, Sir, other than that, it has also been our practice that this Committee remains constant so that this critical role is institutionalized especially during this first Senate.

We have not made any changes from the majority side. I have also seen that there are no changes from the minority side except as Members know that towards the end of last year, the former Deputy Majority Leader resigned from office as the Deputy Majority Leader and also as Senator for Kericho County. He went to serve the nation in a different capacity in the Executive. The only replacement in that Committee is Sen. Murkomen, replacing Sen. Keter, as was the tradition. I do not want to speak a lot except to welcome back colleagues and thank them for supporting the business of this House during the last Session.

I also want to take this opportunity to congratulate my brother, Sen. Wetangula, who went through a very difficult period. I am sure that for every elected leader, the most painful experience is where the mandate given to you by your people is being challenged. There might have been difficult moments for him but I know that is history now. I believe that among all the Senators, there is no one who wished Sen. Wetangula to go away. We all encouraged him. I personally shared with him my own feelings about his predicament. I want to believe that what Sen. Murungi has said; that there are those who were praying for you but silently. Some of the best prayers are said in silence.

We are very happy he is back with us and we should all stand together as an institution. Therefore, welcome back, Sen. Wetangula, not that you were away but with that very heavy load on your back, we must have been affected. We want you to know that we are very happy you are back and we look forward to working together with you

this Fourth Session. In our usual tradition, we shall agree on many issues and even if we do not agree, it will be on policy positions which we take as political parties and that is welcome and respected.

With those few remarks, I beg to move and request the Senate Minority Leader to second.

**The Senate Leader of Minority** (Sen. Wetangula): Mr. Speaker, Sir, I beg to second this Motion. This is routine because the House must have the Rules and Business Committee (RBC) to determine the business of the House. In our consultations, we felt that the RBC membership that was there has been doing a good job. They have been available when needed, they have been industrious in their output and we have consequently brought back the same members except the replacement of the former Senator for Kericho, who is no longer a Member of this House. I hope that we will quickly approve this list of membership of the RBC so that the first meeting can be held this afternoon to schedule and determine business for the House from tomorrow.

I want to thank the Majority Leader for the kind words that he has extended to me. I want to urge him that we should fast track the Bill about the structure of the Senate. Whichever way we want to take, we have put a lot of work in trying to create this Senate to be a real Senate. We should see the product of the Committee led by Murkomen become fruitful. As a Senate, this House must be clothed sufficiently to discharge its responsibilities. Out there, wherever you go, you hear the address of *wananchi* in their most innocent terms – they say Members of County Assembly (MCA), Member of Parliament (MP), Senator and so on. They even do not know that a Senator is a Member of Parliament.

It is only fair and just that this House being the second Senate in the history of this country - the first one having been wished away by those who wanted the country to go to single party politics - this Senate must play a critical role in recreating a truly vibrant Senate that is a House of revision. The Senate should be a House where every Bill from the National Assembly, like it is done in all jurisdictions, must come here for the final word. That is the only way we can strengthen devolution, the new content of the Constitution and make this country have several levels of scrutiny and accountability that can make the country much better and much more admirable than we have today.

With those few remarks, I beg to support.

*(Question proposed)*

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I rise to oppose this Motion. The spirit of our Constitution has equal opportunity embedded in it. When we heard the names which were nominated for the first time, we were all happy. The second time, we said that they are the ones who know the ropes. These committees are there for a purpose. There are others which go for five years and others are renewed every year. I think it is only fair that opportunities in these committees, especially this particular one, are given to different Members, but we are recycling the same names.

When President Obama was in this country, not too long ago, he said many things and there is one particular statement I admire. He said this statement when he was in Addis Ababa where heads of state were gathered. Many of them in the African set up are clamouring for the third term against the provisions of their constitutions. President

Obama's words were simple. He said that he does not see why the whole country should change the Constitution just for an individual. For heaven's sake let it not be that without you, the country cannot run. That is the reason being fronted by some heads of state.

Mr. Speaker, Sir, the fact is that each one of the 68 Senators would wish to serve in the Rules and Business Committee (RBC). Therefore, we should give opportunity to everyone. I appreciate that some Members are there by virtue of their offices and I respect that. However, for the other slots, let us give equal opportunity to all the Members. I know that the right way to deal with what I am proposing is to propose an amendment to the original list and seek approval of the House. However, I do not want to do that because that would get personal.

I therefore urge you to use your powers in the Constitution and the Standing Orders to adjourn this House for about an hour and specifically request the Senate Majority and Minority Leaders to consult more so that we give opportunity to a few more Members to serve in the RBC.

Lastly, I would like to remind the incoming RBC that this House had a committee looking at what we needed to change in the Constitution in order for us to make this House truly the "Upper" House, as we sometimes refer ourselves to. We need proposals that can make this House truly the "Upper" House. I urge that the process be fast tracked whether it will involve a referendum or not. We have a duty as the first Senate after the new Constitution to effect that.

I beg to oppose.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Did you hear the Senator for Nyandarua County appeal to you to adjourn the House for at least 30 minutes so that further consultations can be done by the Senate Majority Leader? I once heard a Speaker of a previous House rule that the Chair cannot be used to sort out political party matters. My understanding is that regarding the membership of this Committee, a decision is made by the party or the coalition. Why would the Member want to drag our Speaker into political party matters? If the Jubilee Coalition, in its own inefficiency, is unable to sufficiently consult with its Members in the House, it should not drag the name of the Speaker into their inefficiency. Is the Member in order?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Members. The Senator for Kakamega County is completely out of order. In his previous intervention, he requested the Speaker to comment on something. My understanding of the request by the Senator for Nyandarua County is that the Chair facilitates Members to discuss issues, which we have done in this House before, and he never raised an objection. The Chair is more than ready to adjourn but that must be the will of the House. So far, it is a desire by one Member. That desire must be supported by many others who desire the same. Let us hear more interventions and then decide whether to consider him or let the matter rest there.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I thank God for the New Year and for everybody especially you. Sen. (Eng.) Muriuki is a seasoned politician and he has a good reason to make that kind of observation. However, since this is a Motion, he should have brought it as an amendment to the Motion so that we discuss the matter at length. If he so wishes, he should do that so that some of us can support him.

Looking at the membership of the Committee, I find it able. If something were not to be kept secret, I would have wished to see the attendance list of this Committee because at times, very few people consider the business of this House. Does every Member who has been nominated to this Committee apart from those that are there because of the virtue of their office according to rules of the Standing Orders, rise to the expectations of the House? That is the question that we have to ask. If it is so, then it is okay but I doubt they are qualified.

This Committee has a great duty to plant the face of this House to the country properly with the kind of work that will be tabled on the Floor of this House. The picture of the Senate in the country is disturbing. Let us accept that. Although the Senate Minority Leader says otherwise, the truth is that people out there expect us, amongst other duties, to attend all funerals and be ATMs in the villages, which is not possible as it is not one of the prescribed duties of Senators.

Mr. Speaker, Sir, Kenyans have been brainwashed by the worship of money. Governors manage the kitty that we subscribe in this House for them and so they are seen as working more. Kenyans should know the duties of Senators as prescribed by the Constitution and we should be judged and respected as such. Looking at the media, I am not one of the Senators who have been mentioned as eyeing the governor's seat - God forbid if someone has mentioned my name. Those Senators who have expressed interest in that seat have a constitutional right to do so and should not be judged that they are looking for money.

Despite all that I have said, I beg to support.

**Sen. Obure:** Mr. Speaker, Sir, I wish my colleagues every success during this Fourth Session. I also congratulate my leader, Sen. Wetangula, for the success. I know that he has gone through a very difficult time unnecessarily but I congratulate him that it is all a matter of the past.

The basis for constituting the RBC was explained. Among the criteria considered was consistency and institutional memory. Looking at the names proposed, it is my view that we are coming up with a quality Committee headed by none other than you. Personally, I have full confidence in my colleagues whose names have been proposed to sit in this Committee. I have no doubt whatsoever in my mind that this Committee has the ability and capacity to deliver on its mandate. The earlier we release them to sit and set the agenda for business of this House, the better for us all.

I support.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I support the Motion of approving the 12 Members of the RBC. A majority of these Members have served in the previous Rules and Business Committee and they have served it well. If what we discussed earlier is anything to go by, the work we had done last year; the Bills that have been passed and all the activities that we have done as a Senate, we did that under the guidance and direction of the members of the Rules and Business Committee, majority of whom are there.

So, I think they are all Senators of repute, led by yourself who is the Speaker of the House, and I think the Senate Majority Leader, who has to be there by default, is a very important person. He has to be there by default but he is also a very key person in our House and he is a no nonsense person, and I think he has led this House pretty well. I have to congratulate the Senator for Bungoma because I have not met him since he successfully went through his case with the Independent Electoral and Boundaries



Commission (IEBC) and welcome him. I think he is also a very important person and I am sure as a lawyer, he is a very useful person to the Committee.

Sen. Elachi, as my boss who is the Majority Whip - I do not know why she is not here today - is a very resourceful person. Sen. Muthama who says it as it is; the Senator who we will soon be our Deputy Majority Leader, Sen. Murkomen, ladies who are well represented by four out of the 12 and so, the gender balance is well taken care of because I can see Sen. Mugo who sits in the Parliamentary Service Commission. So, her presence here is very useful.

The Senator for Meru is also a resourceful person and an experienced politician. He has been in the House for long. There is also the Senator who is my friend and my neighbour here, Sen. (Prof.) Lonyangapuo who is a Professor of Mathematics. When numbers go wrong, this is the Senator who will make sure they get it right. Our learned colleague, Sen. Ong'era, is there, Sen. Orenge and the Secretary General of the Orange Democratic Movement (ODM), Sen. (Dr.) Zani is there.

So, this is a powerful team and I want Members to quickly endorse them so that they can go ahead and start drawing the agenda for the next sitting.

Thank you and I support.

**Sen. Wako:** Thank you very much, Mr. Speaker, Sir, for giving me this opportunity. First of all, I want to make it clear that I support the Motion because of the calibre of the people we are electing to serve on this very important Committee and because they have a track record and have proved themselves in the last three years. Having said that, I really want to agree with the sentiments expressed by Sen. (Eng.) Muriuki and I believe the "bull of Kuria". The first, two and three, I wonder why we put them in this Motion to be approved by the House when the Standing Order Nos. 176 (1) (a) (b) and (c) are very clear that the Speaker, the Senate Majority and Minority Leaders are Members.

Really, we are focusing not on those three. We are focusing on others under Standing Order No. 176 (1) (d). The Motion should be phrased in a manner that we are saying, pursuant to paragraph (d), we are now approving those nine other Members and they are as follows.

Mr. Speaker, Sir, six of the Members apart from the big three, the other three are really there by virtue of their positions either as Chief Whip, Deputy Majority Leader and so on. They are there by virtue of their positions and we understand that fully. Those who are just there and they do not have a position apart from being Senators in this House, as the Senate Majority Leader stated, we are now forming a practice - I am a bit worried - whereby once you are just a Senator not holding any office, you are in that category and you become a Member of this Committee during the first year, you now become a Member automatically for the rest of the five years. This will turn this Committee, not to a Sessional one but in effect and *de facto*, into a Standing Committee of the House.

Mr. Speaker, Sir, for future, I agree that for those who are Members by virtue of just being Senators not holding any position, may be, there should be change of that after two years. We should have some new blood after two years also going there. But as far as this is concerned for today, I support this Motion but take that into the future so that we do not have the practice that makes them the Standing Committee of the House, and coming here becomes just a mere formality. There has to be meaning in coming here.

I support.

**Sen. Orengo:** Thank you very much, Mr. Speaker, Sir. I was not going to speak until I heard what the Senator from Busia has just said. Although I also support the Motion without necessarily commenting about my membership to this Committee but I think the reasoning is a bit warped in the sense that if there was a requirement to change, as it were, and have some kind of rotation in leadership in these committees, then you cannot confine it to one particular committee. Not unless you covet, it should go to all committees. I was asking the Attorney-General *Emeritus* here that as Chair of the Legal Affairs and Human Rights Committee, if he has ever conceived of stepping down and he said he is going to be there for five years.

Mr. Speaker, Sir, even our leadership in the House, the Majority Leader here is just there because he has been imposed upon us. The party and the coalition which he leads elected him and by virtue of that, he is now in the Committee. We have another panel called the Speaker's Panel, which "the lion" from Migori is also a Member of and he does not desire to leave that particular chair although he was opposing this Motion. If you go through that argument, then logically, it will not be a question of just this particular Committee but in all positions of leadership. These experiments sometimes work and sometimes they do not.

**The Speaker** (Hon. Ekwee-Ethuro): Order. Sen. Orengo, I think you are misrepresenting the "lion" in your neighbourhood. He did not oppose the Motion.

**Sen. Orengo:** No, Mr. Speaker, Sir. I am just trying to talk about the conversation we had. The opposition came from my right. But you know, like in Yugoslavia, there was a time they thought that the best way to run a country is by having a presidency and, therefore, every one year you rotate and that was copied in Uganda. At one time, they had a presidency of about three people and within six months, there were two presidents handing over to the other.

I think Parliaments also operate on certain conventions and practices and it is good sometimes to allow the dynamics of parties and coalitions to play their role. Therefore, we should look at this not just in terms of changing the leadership as it were, but looking at how the business of Parliament is generally run. Then, I would understand why the Senate Majority Leader will be there almost permanently, like a lady called Pelosi in the United States. She has been there for so long that she is now a grandmother. Nobody ever thinks about changing her, but it is because of party and coalition dynamics.

There is a lot of sense in what Sen. Karue is saying, but if we use that logic, then everyone here should see a change of leadership. We could even say: "We are now tired with Hon. Ethuro sitting there; let us try somebody else."

*(Laughter)*

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. Is Sen. Orengo in order to confuse Standing Committees and Sessional Committees? We know that we must affirm Sessional Committees every year. The Standing Committees are elected for a five-year term. If I am elected again in the next term, I will serve again for another five years. Is he in order to confuse examples of Sessional Committees and bring in Standing Committees? There was a purpose in making Standing Committees to serve for five years. There is also a purpose for Sessional Committees and when we elect---

**The Speaker** (Hon. Ethuro): Order! I thought you were challenging him. It is for him to respond.

**Sen. Orengo:** Mr. Speaker, Sir, I understand him because he was the Attorney General for 20 years; longevity. He can stick to a position, but when it comes to others, the argument is that you better leave as quickly as possible.

Having said all that, there must be some sense and rhythm in what we are doing. Conventions and all that add up. I will be prepared, if Sen. Karue feels that somebody should vacate the position to allow somebody else an opening. When Sen. Mutula Kilonzo Jnr. was elected, I asked him where he wanted to serve. When he told me that he wanted to serve in the Committee on Legal Affairs and Human Rights, I quickly said that I would retire my position so that he could serve in the Committee. I went to the two Whips and the leadership and he ended up in that Committee.

Sen. Wako, since time is catching up with you, give up something also for the first time.

*(Laughter)*

**Sen. Wangari:** Thank you, Mr. Speaker, Sir. I have no doubt in the capacities of the Senators who have been chosen to join this very important Committee of the House. However, I am compelled to agree with Sen. Karue for one reason. If you read Standing Order No.176 (1), in fact, the seats that are grounded by law in the Rules and Business Committee are:-

- (a) The Speaker as the Chairperson;
- (b) The Senate Majority Leader; and,
- (c) The Senate Minority Leader.

Part “d” gives the Senate leadership up to nine positions of other Senators from different parties as has been the tradition. The issue of precedence in Parliament is very critical. We set a pattern that will be referred to for, say, 20 years from today. Even as we sit in this House, we see Senators referring to parliamentary sessions of yesteryears, not that it is in law, but it was decided by the Speaker or some pattern was developed.

If the law anticipated that the Rules and Business Committee stands for all the time, then I do not think this provision was important. If it is a matter of institutional memory, those offices that are present, including yours as the Chairperson, should be enough to guide the House and new Committee. I argue that because we need to see different faces also. We need to see a person with disabilities, minorities and the face of Kenya every time this is done. That can only be fair and justifiable. This is not the first time we are expressing these sentiments on the Floor. We were told to let it go and that the issue would be addressed next time. We are in the fourth year of the five-year term and this, definitely, was never anticipated to happen.

I think that keeps some Senators in some category; that they will never serve in the Rules and Business Committee, which is a very important experience in the life of a legislator. When we come back in the next Senate, we will follow what we did this term. This will be one of the precedents and pattern.

I beg to oppose this Motion.

**Sen. Lesuuda:** Mr. Speaker, Sir, I rise to support this Motion. My colleagues who have spoken have said that they have no problem with the capabilities of the Members

who have been serving in this Committee. They have worked together, created a rapport, and served us well for the last three years under your leadership. Half of them are in that Committee due to the positions that they hold in this House.

This is a very important year for us as we approach the end of the term of this Senate. Therefore, there has to be continuity in the Committee. The Members know what has been worked on and what needs to be worked on. Therefore, they should continue serving in the Committee and prioritizing some of the things that are very critical for us in this House.

This reminds me of the Committee that considered the impeachment of Governor Wambora. One of the key issues that were raised was that the same Committee that considered his case the first time considered it the second time but the House was in agreement and the opinion of every Senator was taken into consideration. Even though we, as the Senate, lost the case at the Court of Appeal, I hope that even as we go to the Supreme Court that will not be one of the issues that should be looked at.

Serving this Committee requires a lot of dedication. Given the fact that they have served us well in this House, I believe that they will continue to do so this year.

I beg to support.

**Sen. Hassan:** Mr. Speaker, Sir, I rise to support this Motion. There is a common operational philosophy that you only change something if it does not work. If it is working and serving us well, we need to just let it be. Looking at this list, these are some of the most eminent Members of this Senate. In the theory of 'The Animal Farm, there are some people who are a bit more equal than others. But I am not saying that these ones are equal; we have just allowed them, for the purposes of the sessions of the Senate, to organize our business. I believe they have done fairly well.

My concern is just about three Members; Sen. Murungi, Sen. (Prof.) Lonyangapuo and Sen. Orendo. I wonder whether they will have enough time owing to the fact that they will be running for governorship. I think we need to get a personal commitment from them that they will be attending to the business of this House, as we soldier on. I congratulate particularly my young brother, Sen. Onesmus Kipchumba Murkomen, not only for his elevation to the position of Senate Deputy Majority Leader, but also for the opportunity to serve in this important Committee of the House. I think it is part of the democratic processes in this House.

The Jubilee Government had this internal process and they found it fit to nominate the Senator for Elgeyo-Marakwet to the position of Deputy Senate Majority Leader. This is the only additional change or substitution in this Committee. I wish him well as he takes over this business. Therefore, that said and done, now that it is *de jure*, he will enjoy the full benefits of being the Deputy Leader of Majority with a car, a driver and a few another niceties which Sen. (Prof.) Kindiki is smiling so heartily about.

Mr. Speaker, Sir, this Committee should have taken into consideration a bit of the concerns but then I concur that we have so much outstanding business that we are carrying over. They understand the business so well; they have been organizing the business in a manner that I have not heard any person raising very fundamental issues with, in terms of organization of business in this House.

My prayer for those who want to serve in the Rules and Business Committee (RBC) is that they will again be in the Twelfth Parliament. If they will be in the Twelfth

Parliament, for those of you who will still be in Parliament, please make sure that they are put in this RBC. The next RBC when we stand here to approve, next year this time, will be so short lived that it will not enjoy the benefits of a full year.

I believe this Senate will be opposing any attempts to extend the life of Parliament. We shall stick to our August dates. For those of you who are running for governorship, it is very costly to have an extra five months. We will continue to support the constitutional prerogative that elections will be on the second Tuesday of August. So, I foresee this House probably rising for the last time as we bid niceties in June-July next year. So it will be that very short lived. Maybe that is the time we will also review the business set by this Committee.

Mr. Speaker, Sir, I commend these people under your stewardship, Hon. David Ekwee Ethuro, Speaker of the Senate and Chairperson of the Committee. I commend you for your extraordinary work. We do not need this issue of replacing people and moving people around. I am not trying to put up a case for myself as I also sit in Sessional Committees, and I have not been moved. I hope my Chief Whip is hearing so that he does not move me so as to continue the good work I have been doing.

As much as we have been given this option “sessional”, this Senate has not had something so structurally fundamentally flawed to fundamentally re-adjust the composition of these committees, time and again. We are looking forward to a healthy year in this Senate which is the most decisive year for all of us as a Senate and a country.

Thank you for this opportunity to speak.

**The Speaker** (Hon. Ethuro): Hon. Members, we need to conclude this business.

**Sen. M. Kajwang:** Mr. Speaker, Sir, I support this Motion. I bring to the attention of the House and particularly my colleagues who have spoken before about the membership of these committees. Standing Order No.176(4) requires that the whips shall be nominated to the Committee. So, it is not just those in Standing Order No.176(1) that form part of this Committee.

However, I do not see anywhere in the Standing Orders that says that the Whips and their deputies shall be members of this Committee. By practice, it appears that as if we have included the Whips and their deputies. That is one area we could look at to see to it that fresh blood and other people who want to gain experience in the running of the affairs of this Committee could be co-opted.

Mr. Speaker, Sir, when you look at the twelve Members, seven of them are almost mandatory. If you count the deputy Whips, you have seven people who hold positions. For the remaining five members, it will be difficult to find replacements for them. It will be very difficult to argue that Sen. Orenge should leave his position for Sen. M. Kajwang. These are people with the best experience and as far as the Constitution is concerned, they are the right people.

However, I am concerned with the functions of this Committee. If we are going to renew the term of this Committee unchanged, we must ask ourselves whether the RBC did in the past one year what it was supposed to do. One of the roles of the RBC is to adjust the Senate calendar with the approval of the Senate. I reflect on the last session this Senate had on 3<sup>rd</sup> December, 2015 when we were summoned through text messages to come and attend a very important session of this Senate and discuss a very important matter, which was a Public Audit Bill. The Bill has since found its way to the court of law for interpretation.

I call upon the RBC to be much more vigilant and tougher when it comes to the spine and ensure that the calendar of this Senate is not influenced by a cocktail at State House and the next day, Members are called to come and discuss very important matters. Another role of this Committee is to monitor and oversee the implementation of Senate business and programmes---

**The Senate Leader of Minority** (Sen. Wetangula): On a point of information, Mr. Speaker, Sir.

**Sen. M. Kajwang:** Mr. Speaker, Sir, I will accept a point of information.

**The Senate Leader of Minority** (Sen. Wetangula): Mr. Speaker, Sir, may I inform the distinguished Senator for Homa Bay that matters of special sittings do not go through the RBC. It is solely the prerogative of the Speaker.

**The Speaker** (Hon. Ethuro): Thank you, Senate Minority Leader.

**Sen. M. Kajwang:** Thank you, Mr. Speaker, Sir. Thank you Leader of Minority. At least that has vindicated the RBC.

Another role of this Committee is to monitor and oversee the implementation of Senate business and programmes. In my one year in this Senate, I still feel that there is a lot that needs to be done to see to it that Senate Business and programs are followed up and properly implemented.

Mr. Speaker, Sir, in your opening remarks for this Session, you talked about 30 Bills that have originated from this Senate. I could have missed it but I did not hear the number of Bills that have been assented to by the President. There is still that feeling that we could be churning out Bills, but when they go to the house on the hill, they are not getting the consideration they deserve.

However, how can we oversee implementation of programmes without resources and facilitation? Have we tried to be vigilant to see to it, as far as Senate Business and programmes are concerned, some and particular legislative programmes are being discussed by the Senate, for example, the Constituency Development Fund (CDF) which has been called something else, the Affirmative Action Fund which has now become legislation that we should insist must come to this Senate?

Mr. Speaker, Sir, to conclude, one of the other roles of the RBC is to propose amendments to the Standing Orders. I am not sure whether that is an exclusive mandate or it is shared by the entire Senate. I appeal to the RBC, that in this Session, if there was one particular element of the Standing Orders that we could be looking at, let us review the procedure for removal from office of a governor. When you look at Murang'a County, this House set up a special committee to consider an impeachment Motion. However, due to the hurried nature of the process, there is a feeling among the people of Murang'a that justice seems not to have been done. That is why we are still having a lot of endless squabbles in that county, which stifles development.

I call upon the RBC and all of us here, that when we look at the Standing Orders, let us revisit the procedure for removal from office of a governor and also a president, because very soon, we will find ourselves in a situation where we have to remove President Uhuru Kenyatta from office.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. I also support this Motion. At the start of this Session, I agree with it for the simple reason that a number of these Members, if not all, have had expertise over time. I have looked at the performance and I wonder why I should not be there myself. For the fourth year running, my counterpart on

the other side has been a Member and I have never complained a single day. As long as we are colleagues who are delivering, then we should appreciate and allow others to proceed.

Mr. Speaker, Sir, the leadership of this Committee should create quick understanding and dialogue so that we can move business faster. If we look at Standing Order No. 176 (5) (b) and (c) on monitoring and overseeing implementation of the Senate Business and on implementing the Standing Orders, respecting the scheduling or programming of the Senate and functioning of its Committee, I have a serious issue with how business by the Committees are conducted. I have consistently raised this when we meet in the leadership retreats. Do we really require 15 to 20 committees in a House that constitutes 67 Members? A number of the Members have opposed this. We must reduce this because what we need is effective committees. We would rather merge committees and perform better than having a large number.

Finally, the Rules and Business Committee should prioritize the legislative agenda that will build on the visibility of the Senate. We have always complained that we are not visible out there. So, the Committee should help us prioritize issues that will put us much more in the public view and in a better way than what we have done in the past.

I support.

**Sen. Mositet:** On a point of order, Mr. Speaker, Sir. Having listened to Members who have contributed to this Motion, apart from a few, the rest are supportive of it. This Committee requires time to prepare for the business to be transacted tomorrow and the days after. Is it in order if I ask the Chair to call the Mover to reply?

**The Speaker** (Hon. Ethuro): Order Members. You are perfectly in order. I, therefore, put the question that the Mover be now called upon to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I do not intend to take much time. I thank the Members who have contributed. On the need to maintain consistency, even for the other Sessional Committees, we have largely retained the same membership unless when there is a specific issue, for instance, where Sen. Keter is no longer a Member of Senate and he has to be replaced. After the by-election, the new Senator will have to be allocated a committee.

The Senate Minority Leader is talking about the “would be” Senator for Kericho County from the Kenya African National Union (KANU). I am talking about a Senator of the Senate of the Republic of Kenya. In terms of the party, it depends on the voters. It is good for us to be consistent even when there is a Sessional Committee. Unless there is compelling reason, we should not disrupt the business.

I am grateful to all the Members who supported and I beg to move.

**The Speaker** (Hon. Ethuro): Order Members. You will also allow me to add that:-

One, just because it is a Sessional Committee does not mean it must be changed but that you are accorded an opportunity to consider changes where necessary. When there is no necessity, we do not change it for the sake of it.

Two, according to Sen. Wako, he asked why we have to approve the positions which are already provided by the Standing Orders. The same Standing Orders state that the membership must be approved by the House. We are only implementing what the Standing Orders require of us.

I will, therefore, put the question.

*(Question put and agreed to)*

### ADJOURNMENT

**The Speaker** (Hon. Ethuro): Order, Members. Having concluded today's business on the Order Paper, the House stands adjourned until tomorrow, Wednesday, 10<sup>th</sup> February, 2016 at 2.30p.m.

The Senate rose at 4.35 p.m.