

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 2nd September, 2014

Special Sitting

*(Convened via Kenya Gazette Notice
No.5960 of 21st August, 2014)*

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

PROCEDURE TO BE FOLLOWED WHEN CONSIDERING THE NATIONAL
ASSEMBLY AMENDMENT THE COUNTY ALLOCATION OF REVENUE BILL
(SENATE BILL NO. 13 OF 2014)

The Speaker (Hon. Ethuro): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (5), on 20th August,2014, I received the following message from the Speaker of the National Assembly regarding the approval by the Assembly, with amendment, the County Allocation of Revenue Bill (Senate Bill No. 13 of 2014):-

Pursuant to the provisions of Standing Orders Nos. 41 and 151 of the National Assembly, I hereby convey the following Message from the National Assembly-

Whereas the County Allocation of Revenue Bill (Senate Bill No. 13 of 2014), which was published in the Kenya Gazette Supplement No.52 of 16th April, 2014 as a Bill originating in the Senate, and was passed by the Senate with amendments on 5th August, 2014;

Whereas the Senate forwarded the County Allocation of Revenue Bill (Senate Bill No. 13 of 2014) on 6th August, 2014 for the concurrence of the National Assembly;

And Whereas, through a resolution supported by at least two-thirds of its membership, in accordance with Article 111 of the Constitution of the Republic, the National Assembly amended the said Bill on 19th August, 2014;

Now Therefore, in accordance with the provisions of Article 111 of the Constitution and Standing Order Nos.151 (1) and 234 of the National Assembly, I hereby

convey the decision of the National Assembly, the consequence of which is that the said Bill may now be forwarded to the President for assent.

Hon. Senators, this message was received while the Senate was in recess and vide by letter Ref. No. SEN/L&P/MSG. 2014/(9) dated 27th August, 2014. I circulated the Message to all honourable Senators pursuant to Standing Orders No. 40(5) and 150.

Due to the urgency of the subject of the Message and in accordance with Standing Order No. 29(5), the Speaker convened this Special Sitting of the Senate to deliberate on the matter.

Let me, therefore, take this opportunity to applaud all Senators for attending this sitting. I will now give guidance on the procedure we shall use, given that this is the first time that the House is dealing with a special Bill which has been amended by the National Assembly.

As listed in the Order Paper and pursuant to Standing Order 151, the House, in plenary and as appointed by the Rules and Business Committee, shall consider the Motion and I quote:-

“THAT, the amendment by the National Assembly to the County Allocation of Revenue Bill, 2014 be now considered.”

It is after the Motion is approved that the House shall proceed to Committee of the Whole to consider the amendment as set out in Standing Order 152. For the avoidance of doubt, Standing Order 152 states, and I quote:-

“Where the Senate has resolved that the amendments by the National Assembly to a Bill be considered, each amendment shall be read by the Clerk and may be agreed to or rejected in accordance with Article 112(2) of the Constitution.”

Standing Order 153 further amplifies the procedure as follows:-

“When the Senate has concluded the consideration of the amendments by the National assembly to a Bill originating in the Senate and the Senate-

(a) passes the Bill as amended, the Speaker shall refer the Bill to the President within seven days for assent; or

(b) rejects the Bill as amended, the Speaker shall refer the Bill to a Mediation Committee under Article 113 of the Constitution.”

Hon. Senators, to conclude, it might be worth reminding you that we are only dealing with the amendment from the National Assembly to Clause 1 which you may either approve or reject. We are not interrogating the Bill afresh; we had already gone through all the Motions of the Bill.

(Applause)

I hope that we are all reading from the same page in terms of this particular procedure.

I thank you.

Next Order!

Order, Senators! Although I have quoted it in my communication, but it is important that you receive the Message as communicated to the House.

MESSAGE FROM THE NATIONAL ASSEMBLY**APPROVAL BY THE NATIONAL ASSEMBLY OF THE COUNTY ALLOCATION
OF REVENUE BILL (SENATE BILL NO. 13 OF 2014)**

The Speaker (Hon. Ethuro): This is the message to the Senate on the subject of approval by the National Assembly of the County Allocation of Revenue Bill (Senate Bill No.13 of 2014. Pursuant to the provisions of Standing Orders No.41 and 151 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

Whereas the County allocation of Revenue Bill (Senate Bill No. 13 of 2014), which was published in the Kenya Gazette Supplement No.52 of 16th April, 2014 as a Bill originating in the Senate and was passed by the Senate with amendments on 5th August, 2014;

Whereas the Senate forwarded the County allocation of Revenue Bill (Senate Bill No. 13 of 2014) on 6th August, 2014 for the concurrence of the National Assembly;

And whereas, through a resolution supported by at least two-thirds of its membership, in accordance with Article 111 of the Constitution, the National Assembly amended the said Bill on 19th August, 2014;

Now therefore, in accordance with the provisions of Article 111 of the Constitution and Standing Order 151(1) and 234 of the National Assembly, I hereby convey the said decision of the National Assembly, the consequence of which is that the said Bill may now be forwarded to the President for assent.

It is signed by the Hon. Justin Muturi, Speaker of the National Assembly, dated 20th August, 2014.

Next Order!

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

The Speaker (Hon. Ethuro): I do not see your request. What is it?

Sen. Murungi: Mr. Speaker, Sir, it is not working.

The Speaker (Hon. Ethuro): How can it not be working yet I can see a request from Sen. Charles Keter Cheruiyot from Kericho?

Sen. Murungi: Mine has a virus, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed, Sen. Murungi.

POINT OF ORDER**CLARIFICATION ON WHETHER THE HOUSE HAS CONVENED TO
DISCUSS CRA CEILINGS FOR COUNTY
EXECUTIVES/ASSEMBLIES**

Sen. Murungi: Mr. Speaker, Sir, I rise on a point of order to seek clarification on the Order Paper for today. I can see that the business appearing as Order No.3 is a Motion on the amendment by the National Assembly to the County Allocation of Revenue Bill (Senate Bill No.13 of 2014).

Mr. Speaker, Sir, as Members, we have received a document on our desks also relating to the sharable revenue allocated to county governments. This is a communication

from the Commission for Revenue Allocation (CRA) and it has about five items, some of which are as follows: It states the sharable revenue allocated to county governments in the Financial Year 2014/2015. Then it gives recommended CRA ceilings for the county executives and also recommends CRA ceilings for county assemblies.

Mr. Speaker, Sir, it is now in the public domain; in fact, many people think that the Senate is meeting today to discuss the ceilings to the county assemblies and the county governments regarding the revenues allocated to them.

Mr. Speaker, Sir, I would like clarification from the Chair as to whether what we are discussing today is the amendment from the National Assembly on the Bill which we passed in the Senate or whether we have come here to discuss the ceilings which have been recommended by the CRA to the county governments and the county assemblies.

Mr. Speaker, Sir, this is a very hot issue and there are a lot of misleading stories going on out there that, indeed, the Senate has fixed ceilings for expenditure by county assemblies and county governments. So, we need a clarification so that we know how to approach this debate.

I thank you, Mr. Speaker, Sir.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the point of order that Sen. Murungi is raising is, indeed, very important. But as you give your direction, we have to be very careful. This Bill, before it found its way in the National Assembly, this House voted, adopted and agreed that everything that is in this Bill is supposed to be assented to by the President but then we went and sought concurrence from the National Assembly. The National Assembly has concurred with this House on everything apart from the date of commencement.

Mr. Speaker, Sir, I beg that you find that it will be completely out of order for this House to consider anything to do with ceilings, because that is not why we have come here. We have come to cure the little concern of the commencement date, as raised by the Lower House.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the point that the distinguished Senator for Meru is raising is important, but it must be looked at in a much broader context. It is an open secret now that the question of the so-called ceilings is part of the gymnastics and sweeteners being offered to the Members of the County Assemblies (MCAs) by certain people to lure them away from the referendum.

Mr. Speaker, Sir, you even must have seen some leaders on television alleging that they are going to remove ceilings, which were not there in the first place, to hoodwink MCAs to believe that by standing against the referendum, they will get these sweeteners and goodies, so that the referendum can fail. Those tricks will not work. I do not want us to flog a non-issue. There are no ceilings in this Bill; there was only a recommendation that the Commission for Revenue Allocation (CRA) to recommend ceilings with the approval of the Senate. We are not approving anything. We are only dealing with a date.

Mr. Speaker, Sir, I want to urge you that we move on to the real business of the day. For those who are dangling sweeteners to MCAs, be advised that they will be eaten, but they will support the referendum.

Sen. Murkomen: Mr. Speaker, Sir, first, I think that the referendum is not a subject in this House. It is not part of the debate of the House. It not even in the agenda and we do not know whether or not there will be a referendum. This House does not rely

on newspaper cuttings and stories that are outside there. Secondly, it does not matter what people debated out there. This House debates on Motions and Bills that have been tabled in the House.

Mr. Speaker, Sir, the question that Sen. Kiraitu has raised is very important. I was not seated yet when you were giving your Communication, but I thought that the law is clear that when a Communication comes from the National Assembly, you only consider that which has been communicated. We have no authority to persuade or change that Communication, unless we disagree with the date. But be that as it may, you know very well that Sen. Mutula Kilonzo Jnr., Sen. Omar Hassan, Sen. Okong'o Mong'are and I vehemently opposed the setting of ceilings when this debate was there before.

Mr. Speaker Sir, at this stage, we are not talking about the ceilings. However, we must tell the nation clearly that we passed a law that says that this House will have the power to determine the setting of ceilings for county assemblies and county executives, as recommended by the CRA. My stand on that issue remains as it was; that we have no power to micromanage the county assemblies or deal with matters of setting ceilings. We must not deal with the county assemblies as bosses versus juniors. They are our colleagues and we must respect them. If those ceilings come to this House, I will oppose them, like I was opposed before.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! Order, Senators! By the way, that was a point of order raised by a Member to the Speaker. Now it has found its way to some other neighbourhoods.

(Sen. Wetangula consulted loudly)

Sen. Wetangula, it equally applies to you. With that understanding, why do you not allow me to respond to it and we proceed? You can still canvass some of the issues when you contribute to the Motion.

CONSIDERED RULING

THE ISSUE OF CRA CEILINGS TO COUNTY EXECUTIVES/
ASSEMBLIES IS NOT BEFORE THE HOUSE

The Speaker (Hon. Ethuro): The distinguished Senator for Meru County has sought a clarification on what is the business for today, although I do not know what kind of sources he is quoting. He made reference to the Order Paper for a Special Sitting. The Order Paper is very clear. Now we are under item number three on the Order Paper, which is the Motion; THAT, the amendment by the National Assembly to the County Allocation of Revenue Bill, Senate Bill No.13 of 2014 be now considered.

As I made abundantly and manifestly clear in my Communication from the Chair, this is our Bill as the Senate, originating from the Senate. As required, when the President of the Republic assents to a Bill, it becomes an Act of Parliament. Parliament comprises the two Houses. So, we took it to the National Assembly as provided in the law for their concurrence. As some of you have already submitted, the National Assembly concurred

really in its entirety, except for the small minor mundane matter of the commencement date.

I was informed that, in their wisdom, they wanted actually to expedite the release of funds. Unfortunately, it actually acquired the opposite. This is because if you look at the periods that we are talking about, it talks about “within seven days, presentation to assent, within 14 days, it will take effect.” Knowing that we are on recess and looking at the timelines in which we considered, it took them long to consider it. These Motions must play and we cannot depart from the constitutional provisions.

So, we are really here to talk about this very small mundane matter. We are not going to entertain any other matter. The agenda of this House is not set by the media. In fact, the wisdom of the Standing Orders is such that you do not make references to newspapers. I think that, that wisdom now can be self-evident today; that our agenda is being scattered around to achieve certain motives or objectives that are not known to the Speaker of this House. So, let us speak to the issue of the commencement date, which the amendment was by publication. We are not going to entertain any other matter. There is no matter before me anyway. There is also an approval procedure. If there is an amendment, it usually comes to my desk for approval to come to the House. As I stand now, none is before me, none is on the Order Paper and none is being contemplated because it will be out of time anyway. So, be guided.

Let us proceed!

MOTION

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENT TO THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.13 OF 2014)

Sen. Keter: Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I beg to move the following Motion:-

THAT, the amendment of the National Assembly to the County Allocation of Revenue Bill, 2014 be now considered.

Mr. Speaker, Sir, as you have put it correctly, it is a minor amendment which was inserted by the National Assembly with regard to the commencement date. As you have put it, whether this amendment was there or not, upon the signing of the Bill, it would have automatically been in force and, therefore, the rationale of marshalling 250 Members of Parliament to agree with us. The only insertion which they did was the commencement date. However, be it as it may, it has been done and we are here today. We had to take off some time from our recess to be here and I want to thank the Senators for having come back even though it is a small amendment.

I want to urge my colleagues that we support this amendment which has no effect at all; it will not change the law itself and, therefore, we should not waste a lot of time on it because it is straightforward. I would like to caution my colleagues that next time when they are making serious amendments, they should also consider the fact that any change means that the Bill reverts to the originating House. I would like to urge that next time we do not subject ourselves to this.

I also want to thank you because at one point, the Bill could have been sent to the President for assent without our concurrence and that would have negated our wish as the

Senate. The issues which have been canvassed by my colleague as having been reported in the media that we are meeting to discuss many other issues, today, you have clarified that we are only meeting to agree on the commencement date. The issue of ceilings is neither here nor there. It is good for the public to know that the insertion which was done is covered in Section 12 of the Bill which states:-

“Pursuant to Articles 201 and 216 of the Constitution and notwithstanding Sub-section 2, the Commission on Revenue Allocation (CRA) shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government”.

Mr. Speaker, Sir, there were no ceilings at all and so the issues that people have been canvassing in the public are not in the Bill. It is very clear in the Bill that we are waiting for the CRA to give the recommendation on the ceilings. The county assemblies have the mandate because they are like us. The National Assembly and the Senate appropriate all the monies which go to the counties and even to the national Government. Therefore, we should empower our county assemblies so that they can oversight the County Executive members as we do to the Governors. I want to put it on record that the ceilings are not there and therefore they are free to go ahead and implement their budgets.

I beg to second and ask Kerrow to second.

The Speaker (Hon. Ethuro): Order, Sen. Keter. There is no Kerrow here.

Sen. Keter: Sorry for that, Mr. Speaker, Sir. I meant Sen. Billow.

Sen. Billow: Mr. Speaker, Sir, I rise to second this Motion. I think it was an oversight on our part that we did not put a shorter period for the effective date of the Bill, given that the Bill had delayed beyond the required date. I think therefore, Members of the National Assembly---

The Speaker (Hon. Ethuro): Order, Sen. Billow! You cannot anticipate the work of another House and so there was no way you could have done so.

Sen. Billow: Mr. Speaker, Sir, what I mean is that on the face of the Bill, we could have, as the Senate which originated the Bill, indicated an effective date of a shorter period than the 14 days in the Constitution, especially given the fact that we delayed the whole exercise of guiding the Bill beyond the required timelines.

Nonetheless, I want to agree with you that it was a good intention on the part of the National Assembly to try and reduce the time so that the money would be available immediately the Bill was signed. It is therefore important and I support that. However, I also want to urge my colleagues in this House to take the matters of the Senate, particularly with regard to the issues of financial management very seriously. Our learned colleagues in this House; on the Opposition side and the Government side seem to have been completely misguided on a law that they passed in this House. The law we passed was very clear that CRA will submit recommendations, but that can only happen after the Bill is enacted into law.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the Chairman of my committee in a wholesale fashion to condemn Members of the most learned profession; distinguished lawyers *en mass* when some of us had nothing to do with what he is prosecuting? If he has any culprits in mind, let him be courageous enough to name them; and they are on his side.

Sen. Billow: Mr. Speaker, Sir, I want to state very clearly for the avoidance of doubt that the Senate Minority Leader did, in fact, contact me as late as last night to

request that I should not support the removal of the limit. He also anticipated – I want to make it very clear – and was of the view that this amount---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Mandera to engage in a theatre of the absurd, by purporting to say that I called him last night to ask him whether he was going to remove the ceiling when, in fact, I spoke to him on something totally different like I have always talked to him as a Member of the Committee? Is it in order when he knows that it is the two Members who even have been in public meetings promising MCAs that they are going to remove the ceilings? In law, it is called transferred malice.

The Speaker (Hon. Ethuro): Order. There is no excuse to exonerate yourself and then go ahead to name others. You did not have to. You quantified the numbers. I really do not know how the Speaker can help in this matter where there is privileged communication between two Members. I was about to look for Safaricom records.

(Laughter)

Since he has confirmed that there was actually a conversation, the issue is: What was the content? I do not think we need to go into such depths. In any case, Sen. Billow actually said: “Some of our learned colleagues.” I do not think we should feel like he was pointing fingers at certain people or urging the contributor to move and identify others. It is really for deliberation.

Proceed, Sen. Billow.

Sen. Billow: Mr. Speaker, Sir, the English say that: “The guilty are conscious.” Nonetheless, I want to thank the National Assembly for concurring with this House on that particular amendment because that amendment serves this country. As the stewards of devolution in this country, it is important that this House appreciates the significance of the ceilings. This is not on county assemblies. There is another misconception that quite a number of us have. The ceiling that has been included in this Bill is the budgeted ceilings on the recurrent expenditure of each county government; it is both levels of government, the Assembly and the executive. We want to put a limit on the executive regarding the recurrent expenditure that they can use for salaries, allowances and other operational work. We want to do the same on the county assemblies. When the recommendations come from the Commission on Revenue Authority (CRA), it will be in respect of both so that there is more money left for development. That is the essence of this amendment. It is not about targeting one arm of the Government or the other.

Having said that, I want to thank the national Government for finding a temporary solution to provide funding to county governments because of the delay in the transfer that has been caused by the delay in passing this Bill. This is one of the Bills that are crucial in the release of money. We were not able to meet the timelines but the national Government was able to advance all the counties at least two months of the transfers on grounds that as soon as this Bill is passed into law, then it will be recovered. I want to urge Members to pass this amendment from the National Assembly on the date, so that we immediately have counties access money.

Lastly, I want to mention that I am really worried as a Senator because of the fact that there is a dangerous trend that is emerging from the counties. This is a trend that

seems to be coming from the county governors who are averse to accountability. They do not seem to appreciate accountability by the assemblies, the Senate or the audits by the Controller of Budget and the Auditor-General. That is something that should get the Senate worried. We are charged by the Constitution with the responsibility of representing counties. We must be worried because if there is no accountability, there is the risk that taxpayers will tomorrow stand up and say: "No, let us not have money going." So, it is upon all of us to do whatever is in our ability to ensure that county governments account for all the resources that are transferred to them, courtesy of this law that we are enacting today.

With those few remarks, Mr. Speaker, Sir, I beg to second.

(Question proposed)

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I wish, from the first instance, to support the amendment although we have said it is a minor amendment. On considering the amendment, I thought that the National Assembly when considering this and suggesting this amendment which has taken some time, would have considered looking at Article 222(1) of the Constitution. This Article gives the National Assembly a leeway in which they can handle a situation where the Bill has not been assented to by the President.

This particular Article states as follow:-

"222. (1) If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorise the withdrawal of money from the Consolidated Fund."

This is one of the routes that the National Assembly could have taken in order to save time and ensure that funds get to the county governments. This applies to the National Assembly as well as the county assemblies. The route that they took may have some other reasons that probably the gain is between the National Assembly and the Senate. But it is important that this amendment passes quickly, so that we can give monies to counties to operate.

As my colleague has just mentioned, the most worrisome issue for most of us at the moment is the accountability aspect of those who are responsible for the money that we are forwarding to the counties. We see a lot of belligerence in trying to respond to the accountability issues amongst the governors who are handling this money. The Senate should be decisive on what action to take and what constitutional amendments, if any, to ensure that this money is accounted for when it gets to the counties.

With those remarks, I beg to support.

Sen. Elachi: Mr. Speaker, Sir, I also rise to support this Motion and thank the National Assembly. However, it is also time that we looked at the issues that are affecting the Senate and the county assemblies. While we diligently take responsibility for what we do to ensure that our counties are running, we have come to realise that the governors take everything for granted. The Chairperson of the CRA must start looking at these issues critically without being biased or being in support of what the governors are doing. It is important that they are accountable.

There is a trend that has developed where the governors are now taking advantage of the courts, that, that is where everything that concerns the governors will be resolved. It is

this House that needs to stop that and to tell governors that if they feel that the courts are part of the functions that were brought in for devolution, then they might as well go to the courts and request for more resources.

So, it is this House that has to stand out politically now because this is a political battle of power and we must come and tell the Governors that they were not given power by Kenyans to use it and misuse it in the name of being a governor. I think it is important that it is raised; it is important that the House now stands, defends itself; and not just the House, but also Parliament as an institution – both the National Assembly and the Senate – must look critically at what also the Governors are doing. Parliament must also look at what the Judiciary is doing in terms of either supporting devolution of this country or destroying even the sense of what Kenyans felt that they will benefit.

As I conclude, Mr. Speaker, Sir, I want to thank the Senators for coming back from recess to ensure that the counties get resources.

Mr. Speaker, Sir, I beg to support.

(Applause)

The Speaker (Hon. Ethuro): Sen. Khaniri.

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for giving me the opportunity to make my remarks on the amendments to this Bill. I rise to support this amendment and I want to urge my colleagues to support this amendment and pass it as quickly as possible so that we can give you the opportunity, pursuant to Article 112(b) of the Constitution, to present the Bill to the President for assent.

There is not much to be debated on this particular amendment. As you said, it is a very minor one. The counties that we represent in this House are in dire need of this money; they are on their knees; they are unable to implement their programmes and projects. They are even unable to pay their officers their monthly salaries and allowances and, therefore, it is important that we pass the Bill very quickly so that it can get the presidential assent and the counties can access the money.

Mr. Speaker, Sir, I just want to believe that the National Assembly made this amendment in good faith, which is to hasten the release of the funds to the counties. Because I read some mischief in this; and as you correctly said, if the purpose was to hasten the process of the release of funds to the counties, then this amendment has done exactly the opposite of that because of the procedures, bureaucracies and the laws that we have laid down in our Standing Orders for us to pass the amendment that they passed.

Mr. Speaker, Sir, as we pass this amendment, we know that funds will now be released to the counties. We will reiterate here once again that the Treasury must expedite the release of funds to the counties without any further delays. We want to avoid a situation whereby at the end of the financial year, some counties have had to take back money to the Treasury, not because of problems of their making, but because of late release. I sit in the County Public Accounts and Investments Committee (CPAIC) Chaired by Sen. (Dr.) Khalwale, and we have questioned a number of Governors as to why their counties returned funds to the national Treasury. Their response has been that some of the tranches of those funds come towards the very tail end of the financial year, therefore making it very difficult for them to spend the monies. So, we want to urge that this time, we do not want to see a repeat of that in this financial year; counties must

receive money well in advance so that they can plan to use it and use it before the closure of the financial year.

Lastly, Mr. Speaker, Sir, we also want to reiterate to the Governors that as we struggle hard to push these funds to them, they must take responsibility and they must be accountable. Accountability is a responsibility that you cannot run away from and we will insist on that. You may run – to courts or to wherever else you want to run to – but you will not hide; we will catch up with you; the law will catch up with you.

Thank you, Mr. Speaker, Sir. I beg to support.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I would like to support this Motion. May I use this opportunity to thank you for convening this sitting this afternoon; and also thank my colleagues, hon. Senators of this Senate, for finding time to come here full House.

Mr. Speaker, Sir, there are those who have been of the opinion that Members of the National Assembly (MPs) were fighting devolution. The action taken by the MPs confirms that the 290 elected Members of the National Assembly support devolution and that is why they never amended the substance of the Bill that we took to them.

Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! There are more Members than 290.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was continuing; it was my second phase.

(Laughter)

The Speaker (Hon. Ethuro): Okay.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have to make this distinction for the simple reason that the process of electing the two groups are different. I also want to thank the Nominated Members of Parliament of the National Assembly for also supporting the substance of this Bill.

(Loud consultations)

Sen. Hassan: They are called Women Representatives.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my Vice Chairperson will have time to make his contribution if he can allow me to contribute in peace.

(Laughter)

(Sen. Hassan stood up in his place)

The Speaker (Hon. Ethuro): What is your point of order, Sen. Hassan?

Sen. Hassan: Mr. Speaker, Sir, women in this country have fought long and hard to make certain quotas both at the National Assembly and at the Senate. Is it in order for my Chairperson of the CPAIC to totally ignore the women representatives in his contribution at this point?

(Applause)

The Speaker (Hon. Ethuro): Sen. Kanainza?

Sen. Kanainza: Mr. Speaker, Sir, I wanted to raise the same issue; we have 47 women who are elected to represent the counties.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. It is amazing that the points of order being raised are raised by some of the youngest Senators in this House. One would have thought that they would have been aware that amongst the elected MPs in the National Assembly, we have those women who were elected by just as many people as we are elected in this House. When I raise the issue of election, I include also those ones. What is more important, for the benefit of the country, even the so-called Nominated MPs are actually elected especially in accordance with this Constitution.

Mr. Speaker, Sir, while---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You cannot run away from facts!

(Laughter)

There is no harm in admitting that you cannot just do sums. Maybe you are better with differential calculus; but the basic arithmetic, you have lost it!

(Laughter)

I reminded you that the National Assembly has 290 elected Members, 12 nominated and 47 women representatives. That is what your two colleagues were just reminding you. Do your sum! So, if you want to take credit, give it to everybody; but you must also be careful because when you take the route you are taking, then you have to ascertain the quorum that passed the amendment.

(Laughter)

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was very busy with the proceedings of our Committee and, therefore, I will be excused if I was not alive to the sort of quorum in the National Assembly when this matter was being deliberated on. But be that as it may, I stand guided.

Mr. Speaker, Sir, while we were on recess, we have had a very pleasant experience which my Committee would like to share with this House. Following the Motion that sounded punitive by this House against the County Governments of Murang'a, Kiambu, Kisumu and Bomet, the Governor of Murang'a, has since appeared before our Committee and he has almost adequately responded to the issues that led to the kind of steps that we took. We were even trying to explore – the Deputy Speaker and me – whether there was a way in which we could expedite this report to this House so that this House could acknowledge the olive branch that has been given out by the Government of Murang'a so as to consider how we can lift that particular punitive action.

But that will come at its right time. I want to use this opportunity to congratulate Governor Mwangi wa Iria for honoring and respecting this Senate.

Mr. Speaker, Sir, I would also like to report to the House that the Governor for Kisumu, Governor Ranguma, has also made a personal communication with me and he is requesting that we expedite. He would like to come and respond to the audit queries. So, it seems to be working very well and those Members who might think that our Governors have remained headstrong, this is to the contrary.

Mr. Speaker, Sir, the Chairman of the Council of Governors also invited me for a breakfast meeting. He wanted to find out what it is that we can agree, as Senators and Governors, so as for them to vacate the court process that they have gone for in respect of these summons. So, all is well, and I hope that as we take this money to the county governments, it will be put to good use.

Mr. Speaker, Sir, my final contribution is on the new clause that we added, that is, Clause 2A which read:-

“Pursuant to Article 201 and Article 213 of the Constitution and notwithstanding Section 2, the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government.”

We all supported this particular new clause as a House. This idea of ceilings being included here was preceded by a Motion that we debated in this House, which was introduced by Sen. Murkomen, Sen. Elachi and Sen. (Prof.) Kindiki. They all were speaking to the issue of us going out of our way to make sure that we put in the law a provision that can expedite development in our constituencies and counties. I want to thank them, but also tell them to be strong, their age notwithstanding. It is not easy. You might be under pressure from some quarters to play politics with development. To see the same people who moved that Motion now telling the Members of the County Assemblies (MCAs) that they want to open up so that there are no ceilings, so that we can abuse the resources that we give to counties---

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

The Speaker (Hon. Ethuro): Order, Senators! Sen. Murkomen, do not be excited. Let him finish all that he has to say against you and then you can respond extensively to whatever it is.

(Sen. Murkomen stood in his place)

What is your point of order?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Khalwale, first, to misrepresent a Bill that is yet to come to this House? During the last debate when I wanted to refer to that Bill, you ruled me out of order on the basis that I could not anticipate debate on a Bill that is not in this House. It is a Bill that four of us co-sponsored. The issues raised therein are about development and recurrent expenditure.

Mr. Speaker, Sir, secondly, is he in order to mislead this House, when I am on record on this Bill, having vehemently opposed together with the Senator for Mombasa, my friend, Sen. Omar Hassan, together with the ceilings that were set by the Committee that he sits in? I am on record that I opposed and even caused an amendment on that section. Is he in order to try to mislead this House?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am not attempting to mislead the House. The records of this House will bear us witness. As Prof. Arthur Obel taught us in Medicine, one cannot hide the facts of life forever.

Mr. Speaker, Sir, this new clause---

Sen. Elachi: On a point of order, Mr. Speaker, Sir. Is the Senator in order to say that we are going round talking about the ceilings when I have never done so? I was one of those who brought an amendment on the ceilings and I have never backtracked on that.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, pictures have a way of misleading people. It is said that a picture is equivalent to a thousand words. So, when we see you in the same picture with those who are saying at that particular moment---

(Laughter)

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I am awaiting your ruling because this is a serious matter. I am on record as having caused the amendment to oppose ceilings on county assemblies. It is my position and it will never change. I believe that the county assemblies and the MCAs have a responsibility. Sen. Omar Hassan and Sen. Okong'o believed in the same. We forced an amendment on that section and I stand by it. It must be ruled because I am on record.

When it comes to the Bill that is proposing 60 per cent development expenditure and 40 per cent recurrent expenditure, that is a totally different matter and we will debate it when it comes. I want you to rule before the Senator goes on to mislead the public. I like the theatrics of bullfighting, but not in this House. We are dealing with serious matters of law.

The Speaker (Hon. Ethuro): I could not agree more. Sen. Khalwale, you quoted your professor and I did not want to mention names, because I would say other things. I wanted just to make reference to the fact that you cannot hide the facts of life and neither can you hide behind pictures and try to create 1,000 words from one picture, including what Sen. Elachi said or did not say. So, just own up.

Regarding the challenge by Sen. Murkomen, I am looking for the issues and will make a determination before we conclude debate. This is a serious matter and we are saying who said what. Under our Standing Orders, we are under obligation to be factual.

Proceed, Sen. Khalwale.

Sen. Sang: On a point of order, Mr. Speaker, Sir. For avoidance of doubt, I was not in any picture with Sen. Elachi and Sen. Murkomen. But I think that I have appeared in several photos with Sen. Murkomen.

Mr. Speaker, Sir, I want to seek a clarification. Sen. Murkomen has alluded to an amendment on the budget ceilings. I remember Sen. (Dr.) Boni Khalwale and I sat down and drafted some amendment which he moved. I am wondering which amendment Sen. Murkomen is talking about because I do not remember him moving it. He opposed the budget ceilings and we discussed it and brought an amendment which was moved and adopted by this House. Which amendment is he talking about?

Sen. Murkomen: Mr. Speaker, Sir, I think that it is just the usage of English. The amendment that Sen. Khalwale and Sen. Sang brought to the Floor of the House was as a result of my vehement and vigorous opposition of the ceilings as it were, and I was not alone.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! We are on that English. There is an original amendment and a subsequent amendment. What you need to tell us is what your position was on the amendment to the amendment that was carried.

Sen. Murkomen: Mr. Speaker, Sir, when the final amendment was brought that was removing the ceilings, but gave this House the power to look at the recommendation of the CRA, I allowed it to pass for the time being. But I said that when those ceilings are brought to this House, I will oppose them.

Sen. Wako: On a point of order, Mr. Speaker, Sir. I have listened very carefully to what is going on now and I would really want to move that the Mover be now called upon to reply. I am doing so because for the last half-an-hour or so, we have been going into irrelevancies of what brought us here. What brought us here was an amendment that had been passed by the National Assembly but now we are going into issues which have already been passed, such as the amendments to the County Allocation of Revenue Bill, some of which are to come and we shall debate them when they come.

So, we are taking too much time on what is not relevant before us. I have come all the way from Busia County to debate just one thing; what was the amendment by the National Assembly? From what I hear, all of us are agreed that for whatever reasons, we should pass that amendment. That amendment was passed in good faith although it may not have achieved the purpose for which it was passed. The sooner we pass this amendment so that you can now take this document to the President to give assent to it, the better.

I beg to move that the Mover be now called upon to reply under Standing Order No.98.

The Speaker (Hon. Ethuro): Hon. Senators, I tend to agree with all the things that Sen. Wako has said, but we are also full House and I am sure you did not come all the way from Busia to come and conclude the matter. I am sure you may have a useful contribution to make. Why do we not give ourselves another 15 minutes? On who said what, it is relevant because it is part of the issue being discussed.

What I also want to agree with Sen. Wako is why people feel so constrained to exonerate themselves. So, let us allow people to debate freely. It is only that sometimes it raises the issue of accuracy and being factual and it is to that extent that we persisted in those issues. Let us allow Sen. (Dr.) Khalwale to finish especially recognizing his important role as the Chairperson of one of our key oversight committees.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was just concluding because I am sure members of the public using their access to the website of the Senate have accessed this Bill. When I commented on the new clause, I was just saying that most of the leaders of this country must humble themselves. This afternoon before we came here, I ran into a huge Committee of Speakers of the county assemblies of Kenya. I will not tell you which offices they entered, but they were coming to lobby that we make sure that we remove ceilings. They entered into those offices and when I asked them why they want to have unlimited expenditure, they told me that they also want to have access to what Members of Parliament have. They told me that we must be exemplary, we must move away from using our own personal resources and if we want to lead that kind of life, we should use our own private resources.

I want to appeal to all the political players that there is no point playing jokes with serious matters of development, and telling MCAs that they will be given everything that

they want so long as they vote this way or the other way for the forthcoming referendum. That cannot be the reason. If the referendum is bad, the MCAs will reject it and if it is good, they will support it. Let whoever thinks that he will spend Kshs12 billion of public funds to please the MCAs know that the Public Accounts Committee of the National Assembly and the Public Accounts and Investments Committee of the Senate will be waiting for him and will deal with him in accordance with this Constitution. Public funds cannot be used to please people. Such funds must be used to cause development to take place in all the corners of Kenya.

I beg to support.

Sen. (Dr.) Machage: Mr. Speaker, Sir, whereas I support this amendment that was moved and approved by the “Lower House”, I appreciate that we had actually debated and passed the County Allocation of Revenue Bill in this House whose details have not been altered at all. We are told the intention was noble in fast tracking the availability of resources to the counties. Amongst many things that have been discussed in the House are issues of limits to expenditure or ceilings as one may call it. Really, I see no issue at all because after all, budgets are ceilings of expenditure. Anybody wanting to talk about ceilings should therefore dishonour any budgetary proceedings in the Houses of Parliament and in the county assembly at the county level.

I would like to remind hon. Members that it is Section 116 which gave the “Lower House” the leeway to do what they did. Again, Section 116 (3) talks of the limitations Parliament can have not to pass what would benefit them at the sitting of that period of the House. This has not been pushed down to the county governments and their legislative assemblies. There should be a section in the Constitution that limits the county assemblies from passing Motions and expenditures that directly benefit them during that session. Therefore, as we pass this Bill, the county assemblies should not think that this is money that should be misused at that level.

Mr. Speaker, Sir, we have heard that Kshs12 billion has been set aside for MCA’s consumption. Let them be notified that we are watching because that has not been factored in the Budget. If they want to appear before our Committees that they so much dread, then that is the surest way of doing so. It will no longer be acceptable to use public funds on such issues. As I support this amendment, it should be known that counties should be careful on how they spend their money. They should not appear to be in limbo at the end of the financial year, crying left and right because they misused their finances to the end of the financial year.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to join my colleagues in supporting this amendment to the Bill. I want to say that although the statement has just been inserted and it is coming later than it was expected, it would be good to remind ourselves that this House passed this Bill on 1st August and so the Senate did its work.

I am saying this because of the public who may be having a perception that the delay could be as a result of the Senate. The National Assembly, I am told, also passed this Bill on 16th August, 2014. The Bill is now here. The Bill has followed the right procedure. Article 112(1) (b) and Article 112(a) of the Constitution state:-

“(1) If one House passes an ordinary Bill concerning counties, and the second House—

(b) passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

(2) If, after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House—

(a) passes the Bill as amended, the Speaker of that House shall refer the Bill to the President within seven days for assent;”

Mr. Speaker, Sir, this means that when we conclude this business today, there are still some seven days for the Bill to be sent for assent. We cannot control the programme that will be there for His Excellency the President to sign. This clarification is essential so that people know that this House is not in the business of derailing counties.

Mr. Speaker, Sir, as I conclude, because this was a simple matter as indicated here, it is important to bring to the attention of the people of Kenya that when the money goes to the counties, the Chief Executive Officer, who is the governor and his executive officers, must be diligent in spending the people’s funds to their satisfaction. It is absurd when we read in the newspapers that sometimes some money is quietly assembled in a caucus of governors in Nairobi, they call it the Council of Governors, so that they can use it to protect and derail the programmes that are ongoing. We are talking about accountability here at the Senate, the county assemblies and the National Assembly. Nobody has the power to stop those Houses from going on with their work.

We have to some extent heard that governors are using the same money to go to courts, so that we are stopped from going on with our business. This is absurd. Indeed, we must state that the Senate is not in the business of frustrating devolution as we have been reading in the newspapers. Governors are saying that any time we raise an issue of accountability, we are playing with devolution. That is not the case. Who told them that governors are equivalent to devolution? Never! Devolution is a process that is supposed to be carried out by all that are indicated here.

The Constitution is very clear that the headquarters of a county is indicated in that county. So it follows that the office of the Governor must be in that county. When we hear that governors are hiring the best offices in the Republic of Kenya in Nairobi, this is misuse of funds. As a Member of the County Public Accounts and Investments Committee, we are keen to know how much each county will spend on renting some strange offices in Nairobi yet they already have offices at home. We want to bring this issue forward; that they should go back to where they were elected from and minimize their trips to Nairobi because Senators represent counties outside the county. I serve to protect their interests. So, if they have any issues, they should speak to that issue through their Senators as indicated by law in Article 96 of the Constitution.

With those remarks, I beg to support.

Sen. (Dr.) Zani: Mr. Speaker, Sir, Articles 110 right through to 113 and Articles 122 right through to 123 and our Standing Orders are very clear about the processing of Bills. This particular Bill has gone through these stages, having originated from the Senate to the National Assembly, who made an amendment. That amendment has come back to us. Really, what we have to do is to agree or disagree on that amendment. We are clearly saying that we agree with that amendment. In so doing, two considerations are important. What is the implication of that amendment? Does it change the content of the Bill? We are in agreement that it does not change that. We are in agreement that, that amendment be put so that the Bill comes into operation upon publication. As has been said, the idea was actually to fast track though it has had the opposite effect following Article 111(3) which would have actually expedited this Bill. But we have to deal with

what we have.

I am sure the counties are really waiting for this Bill to be enacted, so that they can receive these funds and move on with their development agendas. It is upon us to ensure that we speed up this as fast as we are doing, to make sure that they can activate the budgets they have put in place and make come true the dreams that they have for those particular counties and be able to make the counties function. Quite a number of counties have not been able to go on with their functions and activities because the money has not been disbursed to those specific counties.

The issue of accountability is critical, it is not negotiable. This is the message we have to send out clearly to the governors. The money that is being allocated is for the counties and not money that is being given to governors. It is money from public funds that has to be accounted for as Sen. (Prof.) Lonyangapuo has said. There is nothing to make anybody jittery about coming to account for what they have done within their particular counties. In fact, when this accounting is being done, it should be done to the whole country. It should be fairly comfortable for anybody who has been given funds not only to wait to be asked to account for those funds, but also to come forward and say: "I would like to account for these funds." They should try as much as possible to bring as much transparency into this as possible.

Counties have to continue to be very vigilant. What has happened in today's episode, as reported in the newspaper on the issue of Governor Ranguma, the civil society has become more active in saying: "Please, go and account for these funds." This is the direction we need to take. The Constitution is very clear about the need for participation. We are leaving this at specific levels within the counties and leaving out the citizens who can say: "These are the resources that have been allocated to the counties, we want to know how they have been spent. We want the governors to account for them."

If we enhance that part, so that is not just a responsibility for the governor or the county government but a responsibility for the whole county, we will move towards that age of accountability.

With those remarks, I beg to support.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I rise to support the Motion. The issue of accountability by the county governments - and I have said this in the past - is not negotiable. They have to account for the money that is coming from the national government, which is taxpayers' money that is going down to them. I am on record as having said that the amount of money going to the counties may appear to be a lot because it is in billions. But if you take into account that a county like Murang'a with 1.2 million people and Kshs4.6 billion is devolved to that number of people, then we realise the need for prudence in the spending of this money. Therefore, when the Senate asks for accountability because that is our prime duty under the Constitution, nobody should take it as if it is something personal, a personal pursuit or vendetta because this has to be done.

Mr. Speaker, Sir, I am happy that people have started to realize the difference between an individual Senator and the Senate as an institution. When we sat here not so long ago and debated whether or not to stop the funding to four counties, including my own county of Murang'a, the debate that went around in the country was big. The Governors, of course, said - and wrongly - that we, as Senators from those four counties failed to defend them in the Senate or before the Committee. That is a fallacy because the moment that we dealt the way we dealt, we were dealing in our collegial capacity as the

institution of the Senate. It was wrong – and I dare repeat it – it was very wrong indeed for the Governors of the four counties to point fingers at us and say that we negated our responsibility. I am going to say it again; that the accountability that is sought under the Constitution is mandatory and it has to be done, whether it is in Murang'a County that I represent or in any other of the 47 counties in this country.

Mr. Speaker, Sir, I also believe that we have an individual duty and capacity as Senators; that I have a right as the Senator for Murang'a to want to know certain things that are happening there and also ask for accountability directly. If it does not come through, then I have a right at that moment to refer it to Sen. (Dr.) Khalwale's Public Accounts and Investments Committee (PAIC) so that people can be summoned. Article 125 of the Constitution is very clear on the issue of summoning anybody; and it talks about "anybody". That article cannot be gainsaid and I do not believe that any court of law – I am sure that I am not flouting the *sub judice* rule – is going to amend Article 125 of the Constitution to read other than that the Senate of the Republic of Kenya has a right to summon anybody to come and answer questions, particularly questions of accountability.

It is unfortunate, Mr. Speaker, Sir, that when we seek accountability, people rush to court and the courts give them refuge. Because the amount of time lost – even as we know that there is a very big backlog of cases in the courts – by running to and from courts instead of doing the honorable thing and obeying the law is very unfortunate.

I am happy to report that I was asked by Sen. (Dr.) Khalwale's Committee to appear before it when the Governor for Murang'a confirmed, on his own motion or volition, that he would come and give evidence. He came and several queries were raised. What I learned that morning from that Committee is that, that Committee does not summon Governors for the fun of it; neither is it true that they summon Governors to try and humiliate them. The issues that were raised to the Governor of Murang'a were serious. It does not matter whether we are talking about Kshs100, Kshs100,000, Kshs10 million or even Kshs1 billion; money that is coming from the taxpayers has to be accounted for. That is why that Committee which is chaired by Sen. (Dr.) Khalwale was so important, and I am sure that even the Governor saw that there was need for him to appear before it, the court orders notwithstanding, because he clarified the issues. Sen. (Dr.) Khalwale has now said that most of the things that were raised with him have been cleared.

Mr. Speaker, Sir, like Sen. (Dr.) Khalwale has said, the Motion that we passed in this House to withhold the funding to the four counties, including Murang'a, was because of the intransigence and disobedience that those Governors had shown. I am on record on the HANSARD of that day as having said that the 1.2 million people of Murang'a should not suffer because of that intransigence or disobedience of the law. If the money is still going to be withheld, it is not the Governor who is going to suffer but the 1.2 million people of the County of Murang'a. Because the Governor has now obeyed the law – he has come before the Senate and answered the questions; whether satisfactorily or otherwise – then that is the reason that Sen. (Dr.) Khalwale has said – and I am hoping that he has brought this matter to your attention – that a way then needs to be found of extracting Murang'a County from the four so that it is now free to receive the funding that it is supposed to receive because of that obedience. I do not believe that we have to come here again and pass a Motion now to release Murang'a from among the four. I

believe that is administrative because there was no reason other than that; that they have not obeyed the law and the summons. There was no other reason.

So, Mr. Speaker, Sir, I believe that everything that now remains is administrative and that your office or the Clerk's Office, through your office, should now advise the Controller of Budget that Murang'a County is no longer among the four disobedient counties and, therefore, it should be removed from that list.

Mr. Speaker, Sir, having said that, I would like to conclude by saying that I truly support this Motion. I want to also thank the National Assembly for having found the need to expedite this Bill. But, again, like my colleagues have said, we have also lost a lot of time. If the Bill had been passed at that time and then it was amended for the future, by today, the money would have been released to the counties by the national Government to avert any crisis and, indeed, sent the money to the counties to meet that shortfall.

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

The Speaker (Hon. Ethuro): What is your point of order, Sen. Amos Wako?

Sen. Wako: Mr. Speaker, Sir, my point of order is that I had moved under Standing Order No.98 that the Mover be now called upon to reply and, in your wisdom, which I agreed with, you said that we should give it 15 minutes because people have come all the way from their counties and they are here; let them air their views – although what they are airing is not pertinent to the debate.

(Laughter)

Now, it is more than 15 minutes; I now move that the Mover be now called upon to reply.

The Speaker (Hon. Ethuro): Order! Order, Senators! I, indeed, agree with Sen. Wako because we had said that we allow another 15 minutes. Definitely, more than 20 minutes have passed since then. I would, therefore, wish to 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)

Sen. Keter: Mr. Speaker, Sir, I beg to move.

The Speaker (Hon. Ethuro): Order! Order, Senators! I now wish to put the question, that the amendment by the National Assembly to the County Allocation of Revenue Bill (Senate Bill No. 13 of 2014) be now considered.

This is, of course, a matter affecting counties; so, we will vote according to the counties. Do we have the requisite number of delegations?

(Loud consultations)

Order, Senators! We will take the vote. So, ring the bell for two minutes!

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order! Order, Senators! I think that the two minutes for the Bell to be rung are over. We should now prepare to vote. The voting is electronic. I will give you 30 seconds to ensure that you have logged in and your system is working. If there are any challenges, let us know. The assisted voters need to register as usual.

There was also the issue of Sen. Murkomen and Sen (Dr.) Khalwale in term of who said what, who opposed what or said what, whether vehemently, or otherwise. Since I have not been able to access the records as I had promised, I have talked to the two Senators and we have agreed. Since the HANSARD is there for everybody to see, the matter is already in the public domain and you can go and verify for yourselves. That is the ruling.

(Laughter)

Draw the Bar and close the door.

(The door was closed and the Bar drawn)

I think that now we are more than ready to vote. Voting will take one minute. You may vote now.

(The Senators proceeded to vote)

DIVISION

ELECTRONIC VOTING

(Question, that the amendment by the National Assembly to the County Allocation of Revenue Bill (Senate Bill No.13 of 2014) be now considered, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Mchache, Migori County; Sen. Madzayo, Kilifi County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Nabwala, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

ABSTENTION: Sen. Hassan, Mombasa County.

The Speaker (Hon. Ethuro): Order, Senators! The results of the Division are as follows:-

AYES: 29

NOES: Nil.

ABSTENTION: One.

Twenty six Senators voted electronically and three were assisted voters.

The “Ayes” have it.

(Question carried by 29 votes to nil)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

[The Chairperson (Sen. Kembi-Gitura) took the Chair]

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO. 13 OF 2014)

The Chairperson (Sen. Kembi-Gitura): Hon. Members, we are now in Committee of the Whole and there is only one item. Let us hope like Sen. Wetangula said, it will take ten minutes.

Clause 1 as amended by the National Assembly

THAT, Clause 1 be amended by:

inserting the words:-

“and shall come into operation upon publication” immediately after the figure **“2014”**

(Question of the amendment proposed)

Sen. Murkomen: Mr. Chairman, Sir, I rise to support the amendment. My colleagues had spoken earlier about the importance of ensuring that we have a proper working county government. This Bill will unlock the resources that are necessary for the county government to start spending. It is unfortunate as my colleagues have said that the National Assembly had to pass this delay.

I want to take note of the fact that the counties and the county assemblies have a critical role to play. One of the critical successes of devolution will be achieved if we put our feet down as both county assembly and Senate to demand accountability from the county assemblies. That accountability cannot be achieved if the institutions of accountability are frustrated in their effort to ensure that county resources are used well. That is why I am opposed to the kind of orders that the courts have been giving against this House. When we summon a governor to come and account to this House, the courts must appreciate that accountability is a primary responsibility of this House and the

county assembly. The courts must also appreciate that when you are calling people for accountability the public interest should fall on the side of those who are demanding accountability and not those who are running away from it. That is why I have always supported effort to ensure that Senators are facilitated to reach every constituency in their counties so that they are able to get the views of the public.

Mr. Chairman, Sir, my Committee on Devolved Government has just come from Garissa County and the people of Garissa told us that they would like an office for their Senator in every constituency so that they have a place to take their petitions and concerns for the Senator to bring them to this House. In the same manner, this Senate must be facilitated in terms of mobility to go and educate the public on what these resources that we are devolving are supposed to go and do at the county level. In the same way, I support the county assemblies. There is no way you are going to tell me that accountability will be achieved and that we will stop calling the governors to come to Nairobi if the county assemblies have been denied the resources to hire the necessary staff to assist their Public Accounts committees at the county level.

We were told in Garissa that some of the county assemblies have only been given money enough to pay workers and none for public participation, to hire experts and build infrastructure for them to carry out their work. That is why when you see some of us opposed to ceilings of the county governments, we are not opposing just for the sake of it. We are opposing in a context of ensuring that accountability is achieved at the local level. The county assemblies must be enabled to reach their constituents and collect their views so that when they come to the House they have that capacity.

My colleagues from the other side spoke earlier, particularly Sen. (Dr.) Khalwale, about county assemblies---

(Loud consultations)

The Chairperson (Sen. Kembi-Gitura): Order, hon. Senators! Let us consult in low tones so that we can hear each other.

Sen. Murkomen: Mr. Chairman, Sir, unfortunately, I do not agree with them. Those people who want to demean the county assemblies, those who want us to believe that the county assemblies are lesser beings, junior, institutions that should not be respected---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. I do not want to interrupt the distinguished Senator for Elgeyo-Marakwet. At this stage, the normal practice is to make short interventions on the amendment. Other than give us a treatise on what you believe in, or you do not believe in, and open debate which you have just closed, it is just to make small interventions that will enrich whatever we were doing and we move on.

The Chairperson (Sen. Kembi-Gitura): I do not know which Standing Order you are quoting, but I believe that I cannot stop people from debating if they want to. I know we have debated the issues very exhaustively, but at the same time, I will stop people from debating because the rules do not allow me to do so. If you point out to me that particular Standing Order, then I will do it immediately.

Sen. Murkomen: Thank you, Mr. Chairman, Sir. I totally believe that going forward, our county assemblies must be allowed to grow. They must be empowered.

They must not be strangled. They must not be demeaned. The language that has been used by my colleagues on the other side, particularly is to imagine that MCAs are lesser, intelligent officers that can be hoodwinked by anyone and that they are being given Kshs12 billion so that they can avoid the referendum. The issues and the things that the MCAs have requested are issues that are requested out of right. Show me one Senator or one Member of the National Assembly who has opposed matters of welfare.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. Is it in order for the Senator to continue playing to the gallery on matters of absolute irrelevance to the amendment? The amendment before this House is whether the date can be changed or not. That is all, to reduce from 14 days to seven days. Now we are engaged in unhelpful platitudes about nothing.

The Chairperson (Sen. Kembi-Gitura): Sen. Murkomen, of course, there is the issue that the debate must be relevant to the Motion. But on the other hand, Sen. Wetangula, I challenge you to show me the Standing Order you are relying on to stop Sen. Murkomen from continuing with his debate. Quote it and I will deal with it.

Sen. Murkomen: Mr. Chairman, Sir, that is the language I am opposed to. When we talk of the welfare and strengthening of county assemblies and the money we are allocating to the counties, this is so that it can serve county assemblies. However, some of our colleagues do not believe in the county assemblies. That is why they are using words like “irrelevance” “platitude” and so on. Show me one Senator or Member of the National Assembly who has opposed matters of welfare. When we are talking about the issue of welfare of county assemblies, it becomes a crime and irrelevant. That is not acceptable.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. Standing Order No.109 is on Irrelevance or Repetition. First of all, the Senator is continuously repeating himself that he has respect for MCAs. He is being irrelevant. The issue before us is whether to change the date or not. It is not about whether we respect MCAs or not.

The Chairperson (Sen. Kembi-Gitura): Sen. Wetangula, if you read that Standing Order in context it is in the volition of the Speaker or the Chairperson of the Committee after having called attention to the conduct of a Senator who persists in irrelevance or tedious repetition.

The Senate Minority Leader (Sen. Wetangula): When the Speaker is not doing it he can be allowed---

The Chairperson (Sen. Kembi-Gitura): Order, Sen. Wetangula! We need to have a bit of respect and decorum. I have not called him because I have not found the need to call him to account under Standing Order No.109. If you do not have another Standing Order to show me, Sen. Murkomen must finish what he saying.

Sen. Murkomen: Mr. Chairman, Sir, had I been allowed to proceed, I would have concluded by now.

Sen. Mutula Kilonzo Jnr: On a point of order, Mr. Chairman, Sir. In support of what Sen. Wetangula is saying---

The Chairperson (Sen. Kembi-Gitura): Order, I have ruled on that Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr: Mr. Chairman, Sir, but it is fair that if Sen. Murkomen will hold brief for the county assemblies, he must also remember and tell the public that

these ceilings also apply to the county governments. He cannot continue appearing as if he wants to move from this House to another House.

The Chairperson (Sen. Kembu-Gitura): Sen. Murkomen, you have heard the sentiments of your colleagues. Shall we proceed?

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairman, Sir. I seek guidance from the Chair. We are in the Committee of the Whole. What are we supposed to do here? We are in the Committee of the Whole to consider the Bill at hand clause by clause. However, if we are debating what we have already agreed on and nobody has a quarrel with, with your guidance, what are we really debating?

The Chairperson (Sen. Kembu-Gitura): Thank you, Sen. (Eng.) Muriuki. It is important that we look at this issue. This is the first time that we are dealing with a situation like this one because we are used to the Committee of the Whole when we have amendments then we call out clauses and we vote on them either individually or in clusters. The procedure is the same. I proposed a question and hon. Senators showed interest in dealing with it. Obviously, the only issue that I could deal with as the Chairperson of the Committee of the Whole, is to decide whether or not, under Standing Order No.109 that Sen. Wetangula has shown me, what has been said is relevant to what we are doing.

All we are trying to do is to approve the National Assembly amendment to Clause 1. You are correct Sen. (Eng.) Muriuki, the debate ought to have been when we were debating in plenary. However, now that the floor is open, all I can ask the Senators is to try as much as possible to be relevant to the question that I have proposed so that we can conclude.

Sen. Murkomen: Mr. Chairman, Sir, we are wasting more time.

The Chairperson (Sen. Kembu-Gitura): Who is wasting time? I thought you said I am wasting time.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairperson, Sir. For avoidance of doubt, Standing Order No.171 states:

“A Committee of the Whole shall not consider any matter other than a matter which has been referred to it or which it is required by these Standing Orders to consider.”

What are we dealing with here? What has been referred to us? What has been referred to us is to change the date from 14 days to seven days. That is what we are in committee for. Debate is over. It is done. We do not have many clauses, it is only one. The only clause before us is whether to change the date from 14 days to seven or not.

Hon. Senators: Exactly!

The Chairperson (Sen. Kembu-Gitura): Well, are you finished?

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, if you read that with the earlier Standing Order on tedious repetition and irrelevancies, then you will find that the distinguished Senator for Elgeyo-Marakwet is prosecuting a case that is neither here nor there. He is, probably, trying to appease somebody he has stepped on.

The Chairperson (Sen. Kembu-Gitura): Sen. Wetangula, are you contributing?

Let me correct some matters. It is important that we all agree on these issues so that we find a way forward. Standing Order No.171 says that:-

“A Committee of the Whole shall not consider any matter other than a matter which has been referred to it or which it is required by these Standing Orders to consider.”

I have read to you what we are supposed to consider. I proposed the question. If you check, you will find that it is virtually the same question that was proposed by the Speaker when we opened the debate after it had been moved and seconded. So, what are we supposed to consider? We are considering whether or not we will approve the amendment. That is what we are considering for the avoidance of doubt. I do not know whether you are saying that there should be no debate on that because if you say there should not be debate on that, then we are changing our rules.

The next question that arises is on Standing Order No.109, which Sen. Wetangula has referred to, on whether or not matters are relevant. If you are putting the challenge to me whether or not they are relevant, then I can understand and rule on that. However, Standing Order No.171, does not help you. Sen. Murkomen, I must now insist that you now conclude or be completely relevant to the issues at hand, so that we are able to move forward.

Sen. Murkomen: Mr. Chairman, Sir, if I may briefly touch on the issue of relevance, when you spoke earlier, this issue must not be defined very narrowly. I am saying this because in your contribution you ably demonstrated that even issues related to accountability in Murang'a County were part of relevance to this debate. Sen. (Dr.) Khalwale took a wider interpretation. When it comes to me why does somebody want to constraint that position? I am saying this with maximum respect because I know very few people support the county assemblies. County assemblies have become avenues for throwing stones by even the institutions that are supposed to protect them and understand their welfare.

Mr. Chairman, Sir, I am saying this because we want to ensure that the resources we devolve are protected from those who want to devour them. The only way we can protect them is to say that as we devolve these resources, accountability must be strengthened. Accountability cannot be strengthened if low ceilings are set for county assemblies, who are supposed to carry out that responsibility. That is why you see some of us very strongly supporting county assemblies to get more resources for purposes of carrying out accountability. That is why you find that I have proposed that the county assembly clerk and the Speaker, perhaps, are supposed to sit in the economic forum so that their views are gathered and be considered when we are setting the ceilings.

Mr. Chairman, Sir, as I concluded, I want to say we, as a House and as a Senate, our responsibility is to protect counties---

The Chairperson (Sen. Kembu-Gitura): Order! Sen. Abdirahman, are you raising a point of order?

Sen. Abdirahman: Mr. Chairman, Sir, just before we moved into this session, there was a request by the Senator for Busia, Sen. Wako and I remember I was even called upon to contribute and which I would have ably done--- Besides the irrelevancies we are talking about and the provisions of the Standing Orders, there seem to be a common understanding from both sides of the House that we conclude debate on this matter – whether it is at Committee Stage or even at Plenary.

Mr. Chairman, Sir, there was a common understanding and that is why we actually agreed on that. We do not mind staying here all day, but we do not want to lose

membership; people are moving out one by one. I think based on that understanding, you should limit time if we have to allow contributions.

Thank you, Mr. Chairman, Sir.

Sen. Abdirahman Yes, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): You are asking me or the House generally to reduce the talking time to how many minutes?

(Several hon. Senators spoke off record)

No, you see, two things are happening here; that is the rule of relevance has not been applied yet. Is that right? I am confident that I am squarely within the law in doing what I am doing. The only question, of course, is the one of practicability, because if Senators go home or leave the Chamber because of us continuing talking, then of course we shall lose the purpose which brought us here all the way from recess. However, I am not going to muzzle debate. So, it is a question of if a Member moves, we close the debate, then I will make a ruling on that one, but nobody has made that request yet. In fact, nobody has made a request that we also reduce the talking time, if we must contribute like Sen. Abdirahman has said so eloquently. So, you have the key; I do not!

Sen. Murkomen: Thank you, Mr. Chairman, Sir. Can I conclude?

(Several Senators stood up in their places)

The Chairperson (Sen. Kembi-Gitura): Sen. G.G. Kariuki, you are not here, but I can see you. What is it?

Sen. G.G. Kariuki: Mr. Chairman, Sir, I think this matter is very important, being the first kind of amendment that we are debating this evening. Because we have debated about the amendment in Second Reading, the whole House agreed, and we have already voted. So, we have already left that issue behind us. Now, the issue here is, if we do not have the amendment on amendment, there will be no need for us to debate anything because there is no amendment on the amendment. Now, the issue of being irrelevant is coming because we are trying to sneak in what we are supposed to speak during the Second Reading.

Mr. Chairman, Sir, I am very sure that you are aware that some of us would want to continue speaking for reasons we do not know.

Thank you, Mr. Chairman, Sir.

(Applause and laughter)

The Chairperson (Sen. Kembi-Gitura): You have heard him.

Yes, Sen. Murungi?

Sen. Murungi: Thank you, Mr. Chairman, Sir. We are in the Committee Stage and I think the traditions of the House are very clear that at the Committee Stage, it is not a time for prolonged debate; it is a time for seeking clarifications and then we move on.

Mr. Chairman, Sir, I think many Senators are using this opportunity to impress the county assemblies because they know they are watching us on television.

(Laughter)

Mr. Chairman, Sir, I think it is time for us to close this debate.

An hon. Senator: Exactly!

Sen. Murungi: Mr. Chairman, Sir, would I be in order to request you to call upon the Mover to reply?

Hon. Senators: Yes!

The Chairperson (Sen. Kembi-Gitura): Sen. Murkomen, you know it is not easy for me as the Chairperson to stop you, because I do not have that power. Because if the time that you have been allowed and if the hourglass is still pouring sand, it is not in my place to stop you. On the other hand, as you appreciate, we are in the Committee Stage and you have heard the sentiments of Senators. As you are aware, even in the earlier debate, it was curtailed because people felt that sufficient amount of ventilation had been done and that we should, therefore, move to Committee Stage. That proposal was made by Sen. Wako. So, again, in appreciating that without forcing you to end your contribution, may I request you do so. I can see a lot of interest here already.

Sen. Murkomen: Mr. Chairman, Sir, I want to thank you---

(Loud consultations)

Mr. Chairman, Sir, can you protect me?

Mr. Chairman, Sir, I want to thank you profusely for your wisdom in guiding the alterations that came in between us because it is for posterity. Therefore, I want to say that we continue standing with the county assemblies and the matters of accountability. We, as a House, are not saying that we are encouraging irresponsibility by the county assemblies or the executive at the local level. However, the issues must be put straight that, at the county level, capacity for accountability must be built. Facilitating the county assemblies to do their job is our responsibility as a House to protect them and defend them.

Mr. Chairman, Sir, for all the things I have said, I beg to support.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. Murkomen.

Sen. Murkomen: You can now put the question, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): I am having a lot of interventions; I do not know whether you still want to intervene, because there is nothing now.

Yes, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Chairman, Sir, as you have been told, we are guided by traditions. If you look at Standing Order No.110(e), despite a lot of repetition in complaints by Members of this House, where a Member deliberately continues to give a speech actually abusing a privilege, like you have put it, that is disorderly; it is total disorder. I believe you can curtail and limit the period of speeches in a Committee Stage.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Machage.

Sen. Wako, are you seeking the Floor?

Sen. Wako: On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Have you finished it?

Sen. Wako: I have not.

The Chairperson (Sen. Kembi-Gitura): Okay. Since Sen. Wetangula is there, let him raise his issue first.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, just for the record, because we are all on a learning curve, I heard the Chairman say that he has no authority or capacity to stop a Member from speaking. Standing Order No.175 says that in the Committee of the whole, the rules of debate in ordinary Motions apply. Standing Order 175 says that in the Committee of the Whole the rules of debate in ordinary Motions apply. If those rules apply then a Member taking the Floor, other than the Senate Majority Leader and Senate Minority Leader has ten minutes. The distinguished Senator for Elgeyo-Marakwet has been addressing us irrelevantly for the last 20 minutes. In fact, you could have stopped him at the 10th minute. So, I just want to put the record straight that it is not true that the Chair has no authority.

Sen. Wako: Mr. Chairman, Sir, I am a bit at a loss that we have prolonged this issue unnecessarily. For the sake of the future, I want it to be made very clear that the practices of this House of the Standing Orders – and I have the authority of Erskine May – is that the type of contribution that was engaged in during the Committee stage is appropriate only during the Second Reading. In fact, even our own Standing Orders give us more latitude. You can speak for ten minutes and others half-an-hour during the Second Reading or if there is a proper Motion before the House. During the Committee Stage, and I can quote Erskine May, you are not supposed to make those lengthy contributions. In fact, you should not even speak for more than a minute or two. You just need to seek a clarification here and there or make an amendment here and there, and proceed on. During the Third Reading, again, you can make half-a-minute contributions. It is only during the Second Reading that you can engage in ten or 20 minutes discussions. Therefore, my colleague, Sen. Haji, missed out on the main Motion, which was before this House and was trying now to say the same things that he should have said at that time. I hope that for the future that should not be allowed.

Thank you.

The Chairperson (Sen. Kembi-Gitura): Even as we proceed, and for the sake of good order, I just want to make two points. You are talking about traditions. I know a very good number of you are very seasoned Members of Parliament and legislators. However, in the Committee, contrary to what Sen. Wako is saying, normally we do not time debate. That is why there is no hour glass here. We are not timing the debate because traditionally in the Committee stage we do not curtail the number of minutes that one would like to speak for. That needs to be understood. The point that I am trying to make is that you can throw it at me again, but unless and until, I move under Standing Order 109, about irrelevant contribution, as far as I am concerned, there is no other avenue open to the Chairperson of the Committee of the Whole.

I do not, of course, agree with Sen. (Dr.) Machage about Standing Order 110(e). I do not know where he gets the idea that there is an otherwise abuse of privilege. I did not see that. So, if all of us agree on that then even the people who are seeking the Floor, may decide whether or not they want to take the Floor. However, you must remember that we are operating in context of the Question that I proposed, otherwise, there would be no point of proposing the Question. We would have put the Question immediately and gone to vote. So, maybe you should show me the Standing Order that allows me to skip that very important stage, and then you can tell me that as the Chairperson of the Committee

of the Whole, I am wrong. Nobody has shown me that yet. So, it is a question of deciding how you want to proceed.

Now, I have three requests for the Floor. I have the Senate Majority Leader, Sen. (Prof.) Kindiki, Sen. Omar Hassan and Sen. Kimani Wamatangi. Shall we agree that each of you has a maximum of two minutes? Is that acceptable, so that we move from the point of unknown to the known?

Hon. Senators: Yes!

The Chairperson (Sen. Kembi-Gitura): Those three are the only ones who have sought the Floor and I will grant them the Floor in that sequence. Each one of them will take a maximum of two minutes.

Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Chairman, Sir. This amendment seeks to reduce the time for the operationalization of this Bill from 14 days to seven days. I support this amendment because it will ensure that our counties get money quicker and faster, because right now services are grinding to a halt as a result of the delay in the release of funds.

Mr. Chairman, Sir, the second point that I want to make is that I am also of the view that this money, when released, should serve the people of Kenya. That is why I want to join hands with those who are saying that for this money to do the work that we want it to do, we must make sure that our counterparts in the county assemblies are able to ensure that there is accountability at that level. I want to go on record that there are people who want to intimidate us here by saying that we are supporting county assemblies. We are not supporting county assemblies as matter of choice. We are protecting counties and county governments, including county assemblies. It is for that reason that we are saying now for every Kenyan to hear, that for accountability to be at the county level, the county assemblies must be strong. There should be no arm-twisting by trying to introduce ceilings. If they introduce them we are not afraid to say that we will oppose any ceilings now, in future and forever more.

Thank you.

Sen. Hassan: Thank you, Mr. Chairman, Sir. In the spirit of transparency, I just want to declare that I have abstained as the Senator for Mombasa County and voted “No” in the previous ones. This is because my hue and cry is the same; that whether you elongate or shorten the period or it stays as the Constitution stipulates, it does not increase the resources to Mombasa County, which is one of the counties that get lesser resources given the wage bill that it has.

Mr. Chairman, Sir, as we move forward I hope that in subsequent planning and budgets we will be able to consider formulas that will ensure that, at least, we meet the obligation to pay our wages as Mombasa County. I call upon both the Senate Majority Leader and Senate Minority Leader to ensure that, at least, we protect all the counties and not just one or two counties, so that we ensure that Mombasa County is able to foot its obligations in terms of paying wages, outside the revenue that it collects.

I thought it is important and necessary that I explain the reason for my “No” vote and abstention. I hope that in the coming financial years, we should be able to address the issues that I have been articulating concerning Mombasa County, through mitigation and consultations, so that, that deficit in terms of the wage bill is bridged and as we allocate resources, none of the counties is prejudiced.

Mr. Chairperson, Sir, I still abstain.

Sen. Wamatangi: Mr. Chairman, Sir, first, I want to support the amendment. Indeed, it is quite timely and right that this amendment came to this House, to ensure that county assemblies get their money in time.

Secondly, we also need to ask ourselves: When the money goes to the county assemblies, do we, as the Senate, want to follow up and make sure that it is spent responsibly? The answer is "yes." The Senate must and has a duty to ensure that this money is put to proper, right and good use, so that it serves the people of the counties.

Mr. Chairman, there are two questions that I would want to address. The first one is: We know that MCAs are requesting for mortgages which are loans. If they can be accommodated within that scheme, well and good, because they will pay back. Do we want a strong county assembly? The answer is yes, we want them to be strong. They have made applications in public to be given offices. If that can be availed just as the Senators have asked for offices, so be it because we want them to be strong. The final question that I would like to address is this question of ceilings.

Mr. Chairman, Sir, there is a document here that has been circulated by the CRA and looking at it randomly if you pick on, for example, Bungoma County Assembly---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. Indeed, I am at a loss for us to engage in what I am hearing. The distinguished Senator for Meru raised the issue of that document and the Speaker ruled it irrelevant and out of place in the proceedings of today. How can it be a point of reference or authority for debate or argument?

The Chairperson (Sen. Kembi-Gitura): I must say that I was not here when the ruling was made and so I am not aware of it.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, the ruling was made and the Clerk can advise you.

Secondly, this budget allocation we are passing is not for the county assemblies, it is for the county government which includes the executive and the county assembly and so it is wrong, false and pretentious to stand here and appear to be championing a cause for the county assemblies. We also have county assemblies that we support and we work with them. This money is going to the county government where it will be shared between the---

The Chairperson (Sen. Kembi-Gitura): What is your point of order?

The Senate Minority Leader (Sen. Wetangula): Is it in order for Members across the Floor to continue addressing the gallery for reasons that I already said on the Floor of this House earlier on, when the issue here is very simple; do we change the date or we do not change the date?

The Chairperson (Sen. Kembi-Gitura): Sen. Wamatangi, you have heard. I was not here when the Speaker made the communication from the Floor but since I have been made to understand that he ruled that document of no consequence to these proceedings, I do not think you can refer to it.

Sen. Wamatangi: Mr. Chairman, Sir, I was just winding up. For the record, if the distinguished Senator was rising to save time for the House, he has taken twice the time I took.

Even if I do not refer to the document, the fact is that some county assemblies have asked for more money to spend in the county assemblies while others have asked

for less. Others have asked for money that is equivalent to the budgets that they have already provided.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I had ruled that only those three Members will talk. However, very exceptionally, I will allow Sen. Sang one minute and he will be the last person to speak.

Sen. Sang: Thank you, Mr. Chairman, Sir, for this opportunity. I want to support this amendment, but I also want to say that the issues you are hearing our side raising all along with regard to the county assemblies is because this Senate has endeared itself as one of the institutions that protects devolution. Some of the committees of this House have invited Governors to come and shed light on a number of issues that are going on in our counties and the Council of Governors have claimed that that should be done by the county assemblies and not the Senate.

When you look at the county assemblies, the reason they are unable to do proper oversight is because they are not adequately facilitated. We need to provide adequate facilitation to the county assemblies to ensure that they are able to do oversight. We are conscious when we pass this law and the resources go to the county governments. If the CRA and the Council of Governors insist on budget ceilings, the county assemblies will not get the adequate resources that they need for oversight. Therefore, we need to support them, give them adequate resources for them to undertake their constitutional responsibility of oversight.

I support the county assemblies and the Motion.

The Chairperson (Sen. Kembi-Gitura): That marks the end of debate. Can the bars be now drawn?

(The bars were drawn)

We will now move on to have the electronic voting. Hon. Senators, could you, please, log in so that we know the attendance? If you do not log in, you will have to be assisted to vote. You have 30 seconds to vote starting now. Let the Senators who wish to be assisted to vote to come forward.

DIVISION

ELECTRONIC VOTING

(Question, that the National Assembly amendment to Clause 1 of the County Allocation of Revenue Bill (Senate Bill No.13 of 2014) be approved put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. (Dr.) Kuti, Isiolo County; Sen. Elachi, Nairobi County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Chelule, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Munyes, Turkana County; Sen.

Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Nabwala, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County, Sen. Wamatangi, Kiambu County and Sen. (Dr.) Zani, Kwale County.

ABSTENTION: Sen. Hassan, Mombasa County.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the vote is in. The results are as follows:-

AYES: 27

NOES: Nil

ABSTENTION: One

The "Ayes" have it.

(Question carried by 27 votes to nil)

(Clause 1 as amended by the National Assembly approved)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I order that the bars be opened.

(The bars were opened)

Sen. Keter: Mr. Chairman, Sir, I beg to move that the Committee of the Whole doth report to the Senate its consideration of the National Assembly amendment to the County Allocation of Revenue Bill (Senate Bill No.13 of 2014) and its approval thereof.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I will put the question which is that the Committee doth report to the House its consideration of the National Assembly amendment to the County Allocation of Revenue Bill (Senate Bill No.13 of 2014) and its approval as thereof.

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

REPORT AND CONSIDERATION OF REPORT

THE NATIONAL ASSEMBLY AMENDMENT TO THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL No.13 OF 2014)

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the National Assembly amendment to Clause 1 of the County Allocation of Revenue Bill (Senate Bill No.13 of 2014) and approved the same without amendments.

Sen. Keter: Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

Sen. Murungi seconded.

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, seeing that nobody is interested in debating this issue, I will proceed to put the question which is: That the House do agree with the Committee in the said report.

(Question put and agreed to)

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we have concluded the business which brought us here today, which was a special sitting of the Senate.

The House now stands adjourned until Tuesday, 23rd September, 2014 at 2.30 p.m.

The Senate rose at 5.20 p.m.