

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Tuesday, 15<sup>th</sup> September, 2020**

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

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

#### PRAYER

**The Speaker** (Hon. Lusaka): Hon. Members, let us observe some social distancing, please.

There is a report of the Standing Committee on Justice, Legal Affairs and Human Rights. Proceed, Chairperson.

#### PETITIONS

##### REPORT ON PETITION: IMPLEMENTATION OF THE TJRC REPORT

**Sen. Omogeni:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Tuesday 15<sup>th</sup> September, 2020.

The Report on Consideration of a Petition by Mr. Benard Wahere and Ms. Jackline Mutere on Implementation of the Report on the Truth, Justice and Reconciliation Commission (TJRC).

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to Standing Order No.218 and is mandated inter alia consider all matters relating to constitutional affairs, the organization and administration of law, justice, elections, promotions of principle of leadership ethics and integrity agreements, treaties, conventions and implementations of the provisions of the Constitution on human rights.

Mr. Speaker, Sir, the Committee is composed of Members whom we all know. On Tuesday, 16<sup>th</sup> May, 2019, the Speaker reported to the Senate the Petition by Mr. Benard Wahere and Ms. Jackline Mutere on implementation of the Report of TJRC.

Pursuant to Standing Order No.232 (2) of the Senate Standing Orders, the Petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. In the Petition, the petitioners noted that following the amendments of TJRC Act in 2013, which rendered implementation of the TJRC Report conditional upon its consideration by the National Assembly, it has not been possible for other State agencies to implement the recommendations of the TJRC.

Mr. Speaker, Sir, this has become a source of great frustration and consequential demoralization for thousands of Kenyans still nursing injuries as well as physical, emotional and psychological scars from the dark years of our country's history.

The petitioners, therefore, prayed that the Senate-

(i) Requests transmission of the Report from the National Assembly to the Senate for consideration and adoption.

(ii) Passes all necessary legislations to enable victims of gross human rights violations as identified in the TJRC process to receive physical and psychological support.

(iii) Implements the recommendations of the TJRC Report that concern counties in particular the establish and funding of gender based violence recovery and rehabilitation centres in the 47 counties.

(iv) Urges the National Assembly to consider the TJRC Report with a view to advising the nation on critical steps toward its implementation pursuant to Section 49 of the TJRC Act 2008.

(v) Causes the establishment of the parliamentary select committee to oversight the implementation of the TJRC Report recommendations and promote national healing and reconciliation.

Mr. Speaker, Sir, the Committee proceeded to consider the Petition. In this regard, the Committee held meetings with the petitioners and the Solicitor General and further received written submissions on the matter from the Office of the Attorney General. The main issues that the Committee had to address are how to unlock the process of implementing the recommendations contained in the TJRC Report.

Hon. Senators, may recall the TJRC Act 2008 was amended by the National Assembly in December 2013 among others deleting Paragraph 49 (3) thereon which provided that implementation of the TJRC Report would commence within six months upon publication. The provision as amended provides that the implementation of the TJRC Report shall only commence after consideration of the Report by the National Assembly.

Mr. Speaker, Sir, although it is exactly seven years since the TJRC Report was submitted to the National Assembly on July 2013, it is yet to be formally scheduled for consideration and debate by the National Assembly, which will unlock the implementation of its recommendations by the various agencies and organs of the national and county government.

The Committee noted that during the State of the Nation Address delivered to Parliament on Thursday, 26<sup>th</sup> of March, 2015, His Excellency the President *inter alia*-

(1) Urged lawmakers to expedite the process of the TJRC Report seen as critical in formulation of a reparation framework.

(2) Instructed the National Treasury to establish a fund of Kshs10 billion over the next three years to be used for---

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I hate to interrupt my good friend, the Senior Counsel, Sen. Omogeni, but I just want to bring it to your attention that Sen. Omogeni is totally out of order. This is in reference to our own Standing Orders and in particular, Standing Order No. 232 (2), which he referred to when he started to issue the report.

Mr. speaker, Sir, the Standing Order No. 232 (2) states that-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than 60 calendar days from the time of reading the Prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than 30 minutes.”

Mr. Speaker, Sir, the Standing Orders are very clear that once the Committee is done with the report, they are supposed to table it. He is not supposed to read. He is reading it. He is, therefore, contravening two Standing Orders. The first one is Standing Order No.232 (2) and the one that states that no speeches shall be read.

Mr. Speaker, Sir, is the Senior Counsel in order?

**The Speaker** (Hon. Lusaka): You are actually out of order. So, just table the Report.

**Sen. Omogeni:** Mr. Speaker, Sir, I stand guided, but the practice has been that on a matter of national importance like this, I highlight the key recommendations to enable the House to note. However, if I am directed so, I will lay it before the House and rest the matter.

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

**The Speaker** (Hon. Lusaka): Okay. Thank you. Report from the Standing Committee on Agriculture, Livestock and Fisheries. Chairperson, kindly proceed.

REPORT ON PETITION: RECOGNITION OF GRADUATES  
OF RANGE MANAGEMENT COURSE TO TREAT LIVESTOCK  
DISEASES AND OFFER RELATED EXTENSION SERVICES

*(Tabling of the report on the Petition deferred)*

Petition by Sen. (Dr.) Michael Mbito.

Petition number three is a Petition to the Senate by Joseph Mikolela to be presented by Sen. (Dr.) Mbito.

THE PLIGHT OF SEED FARMERS IN TRANS-NZOIA COUNTY

*(The Petition deferred)*

Sen. (Dr.) Mwaura, kindly, present the Petition.

NHIF COVER FOR KIDNEY POST-TRANSPLANT MEDICATION

**Sen. (Dr.) Mwaura:** Mr. Speaker, Sir, I beg to present the following Petition on behalf of the Petitioners as follows-

A petition to the Senate concerning the National Hospital Insurance Fund (NHIF) cover to kidney post-transplant medication. We, the undersigned citizens of Kenya, and in particular, kidney transplant survivors and families draw the attention of the Senate to the following-

(i) That, kidney failure has been on the rise globally and nationally in the recent years causing about 2.1 per cent of the total deaths according to the World Health Organization (WHO) resulting to early deaths of youth, children and the aged.

(ii) That, the growing burden of kidney diseases has been raised as one of the most significant barriers to the attainment of the Universal Health Care (UHC)

(iii) That, the individuals are having difficulty in accessing quality post-transplant health care since there are only a few hospitals in the country which have the capacity to conduct transplant.

(iv) That, in line with the Big Four Agenda's Universal Health Care, NHIF covers dialysis with most patients succumbing to death.

(v) That, post-transplant medication is very costly and if the patients miss immune suppressant drugs due to financial issues or any other reasons, the transplanted kidney is rejected in the body and they either die or start the process of transplant once again.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Just a minute, Sen. (Dr.) Mwaura. Hon. Senators, let us observe social distancing. Let us also respect the House. We can consult, but in low tones and in an orderly manner.

**Sen. (Dr.) Mwaura:** Can I proceed, Mr. Speaker, Sir?

(vi) That, many patients opt to stay at dialysis stage than go get transplanted because NHIF does not support post-transplant medication which ranges from Kshs30,000 to Kshs60,000 per month.

(vii) That, NHIF provides post-transplant cover to patients who have a comprehensive medical cover for civil servants leaving a huge number of Kenyans from this programme.

(viii) That, we have made the best effort to have these matters addressed by the relevant authorities of which they have failed to give us a satisfactory response.

(ix) That, none of these issues raised in the Petition is pending in any court of law, constitutional or any other legal body.

Therefore, your humble petitioners pray that the Senate investigates this matter and-

(i) Initiates price subsidy for post-transplant medicine in a more affordable way.

(ii) Intervenes in the provision of post-transplant drugs under NHIF cover.

(iii) Intervenes for the groups to obtain a proper cover that is not to be determined by job groups.

Your petitioners humbly pray.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Petition. I thank Sen. (Dr.) Mwaura for bringing this Petition to the Floor of the House. UHC is one of the Big Four Agenda. As the Senate, we have to support people with chronic diseases. There are people who need dialysis.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Order, Sen. Kang'ata! Sen. Hon. Senators, you are not going to tell the Speaker how to run the House. We have an Order Paper. Let us respect our Standing Orders and the Order Paper.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity.

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Murkomen?

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I do not know whether I am in order; I will need your direction and guidance. The mood in the House and in the country is that we came here to discuss the division of revenue among counties.

I know that Petitions are important. All of them are in the Order Paper, including the formula itself. Am I in order to suggest that we progress first to the question of division of revenue among counties, then come back to progress with the business of dealing with petitions? Kenyans and the counties, especially have been waiting for our decision. Since there is a false accusation that this House is not ready to make a decision, I want Kenyans to know that we are eager and anxious to dispense with this matter and then progress. Am I in order to request for the rearrangement of the Order Paper?

**The Speaker** (Hon. Lusaka): I will give direction in a few minutes. In the meantime, proceed Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this important Petition that affects millions of Kenyans. UHC is important because there are Kenyans with chronic diseases. There are those who suffer from blood pressure and others need dialysis on a weekly basis. Families are suffering because you will find that the head of the family is looking for money for dialysis since he is not covered. There is need to ensure that National Hospital Insurance Fund (NHIF) covers dialysis patients, so that the families are cushioned.

As I speak about dialysis patients, there are patients suffering from cancer and no one cares about them. There is need for NHIF to ensure that it is doing something about Kenyans. As the Senate, we must cushion families. There are a number of Kenyans who are suffering from different diseases and nobody cares. There is need for this Petition to be taken to the right Committee and for it to ensure that it expedites. The onus is ours to ensure that we support the common man.

Thank you, Mr. Speaker, Sir. I support the Petition.

**The Speaker** (Hon. Lusaka): Sen. Linturi, proceed.

**Sen. Linturi:** Mr. Speaker, Sir, I agree with the comments made by Sen. (Dr.) Mwaura in this Petition. Further, UHC under the Big Four Agenda of the President of this Republic is something that we cannot wish away and is so important to this country.

Mr. Speaker, Sir, if we are to succeed in ensuring that there is UHC in this country, transparency, honesty and genuineness is required in the manner we conduct ourselves in terms of advice and how hospitals treat our patients. I do not know whether people are aware that right now even when those covered under NHIF are admitted to any hospital in this country, there is pre-authorization before any hospital accepts to treat you. The sad thing is that even after treatment, patients are forced to stay in hospitals awaiting payment from NHIF because they appear to not have enough money to guarantee claims forwarded to them by hospitals.

Mr. Speaker, Sir, we need to think about this matter seriously. The worst situation is where one is sick and requires urgent treatment and there is nobody to show up to support or offer the service.

Finally, for those who have interacted with our Level 5 hospitals, and I want everybody listening out there to countercheck information being shared by people who work in different hospitals that suppliers of UHC equipment or drugs supposed to be under the scheme are only dropped in hospitals with no deliveries or Local Purchase Orders (LPOs) being signed. As a result, our hospitals cannot account for what is delivered to them.

As we think wholesomely on this matter, let us ensure there are proper systems to check on this. Otherwise, this may end up being a big scandal like the Medical Equipment Scheme (MES) and what is happening in Kenya Medical Supplies Authority (KEMSA). We are in a situation where everything being done is driven by how much money we make from poor and dying Kenyans.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Onger, proceed.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to speak on an area that I am an expert. I am the one who started the renal biopsy in this country to determine the level of renal disease in the country. It was clear that far from other causes we located in Europe, there were other tropical elements in Africa that led to kidney failure. The situation is that those with kidney failure will succumb or develop end stage renal failure and die without any intervention. If there is any intervention, through the dialysis that is provided by Level 5 hospitals in each county, including Level 4, this can only be sustained if there is regular dialysis.

The cost of dialysis is very expensive and, therefore, unsustainable for people who come from poor families. If they have a chance, a donor transplant is given when there is a kidney match. To maintain that transplant to be functional, you have to give them drugs that will suppress the reaction, what we call immune suppressive agents. Again, these drugs are out of reach for the ordinary *mwananchi*. They need to be monitored because there are sometimes complications that relate to some of these drugs.

Mr. Speaker, Sir, in short, this Petition has come in timely because quite a large percentage of our people are suffering from kidney failure. Some of them progress to renal transplants, which then require what we call maintenance immunosuppressive therapy. One of such drugs, which is called cyclophosphamide is a fairly expensive drug and other related immunosuppressives in the market that will sustain a patient's life for life are fairly expensive drugs and cause some complications.

Fortunately, when these drugs are given in an appropriate measure---

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

**The Speaker** (Hon. Lusaka): What is your point of intervention, Sen. Haji?

**Sen. Haji:** Mr. Speaker, Sir, I am sorry for interrupting my good friend. I do not know whether there is something wrong with the microphone here. There is a lot of loud consultations and it is hurting us.

**The Speaker** (Hon. Lusaka): Technicians, check the microphones.

Proceed, Sen. (Prof.) Onger.

**Sen. (Prof.) Onger:** Mr. Speaker, Sir, it is important for the lifesaving action of drugs to be taken when they are attending the normal dialysis sessions. They need those drugs to sustain them. If they are lucky to get a matching kidney transplant, then they

now need drugs to suppress any reaction that may come from those drugs. These drugs are expensive and require mentoring and evaluation from time to time.

Mr. Speaker, Sir, this Petition which is before this House will give us an opportunity to survey how UHC is able to take care of these patients who are a fairly large percentage of the people. Otherwise, we will be dealing with people with kidney failure. It will, therefore, become very expensive for this country to maintain them on dialysis. Otherwise, if properly done, they can survive, live a normal life, and support their families.

I thank you, Mr. Speaker, Sir.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I rise to support this Petition. As a country, we need to re-examine ourselves regarding healthcare. Even before we come to this complicated case of a kidney transplant and the effects thereafter, each of us knows the kind of bills we pay to hospitals. Most of our ordinary people cannot afford even our primary healthcare, which lead to this kind of complication needs a lot of attention. I hope that the Committee will go deeper into this matter.

Mr. Speaker, Sir, I wish to also draw attention of the Committee to the issue of UHC which had been started as a pilot project in four counties, Machakos, Kisumu, Isiolo and Nyeri. It came about a year ago and just as it came, it collapsed about a couple of months ago. Many people are suffering today because even if they use the NHIF, they will be required to pay and wait for some three months.

I wish that this Committee delves into the same matter. This because the issue of the transplant, the complications and the costs thereof that has been narrated in the Petition is unavoidable to the common man. Not just the kidney transplant, there are diseases like cancer and others. People are suffering from high blood pressure, diabetes, pneumonia and other ailments.

Today, let us be fair. We devolved healthcare, but we are witnessing strikes and hospital operations grinding to halt in some counties. Therefore, I wish that this matter is looked into wholesomely. The truth of the matter is that the most important thing to any human being, and the most important service that a Government can give to its people is affordable health care. After that, healthcare comes second. All these other things can come in another category. Today in this country, many common people cannot afford healthcare. For those who have gone through a transplant, it is just a nightmare.

I, therefore, support this Petition and ask that this matter be looked into wholesome manner. In this respect, let us all condemn corruption. Let us stand with the fight against corruption because the resources of this country should assist the people of Kenya and not disappearing in the manner we hear.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Lusaka): Sen. Halake.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I stand to support Sen. (Dr.) Mwaura's Petition. When the President decided to make UHC as one of his Big Four legacy agenda items, it was a really amazing thing because it is a constitutional implementation mechanism. Article 43 of the Constitution is very clear to everybody that every person has a right to highest standards of healthcare, especially people that need it the most. These are people that have post-operative care and are dealing with things such as kidney failure. They are the neediest in the society. Therefore, insurance should ideally be coming in at our hour of need.

In this case, to be told that they do not get any post-operative care is really sad. I hope that this House will do justice in the implementation of Article 43 of the Constitution and in the support of the Big Four Agenda as far as UHC is concerned. We need also to ensure that our people have dignity even in sickness.

Mr. Speaker, Sir, I have sponsored a Bill on the dignity of human beings, the preservation of human dignity and enforcement of socio-economic rights. I cannot think of a better thing for us to be dealing with than the healthcare of people that have life threatening kidney failure. Non-communicable diseases (NCDs) are becoming the number one killer of our people.

I know that in the past, a lot of focus has been given to communicable diseases. With the Coronavirus Disease (COVID-19), all our attention is on communicable diseases, but we still have non-communicable diseases as a number one killer in this country. Kidney failure is one of them.

Mr. Speaker, Sir, I hope that the Committee on Health which is going to deal with this Petition, comes to wide ranging recommendations that are going to ensure that we implement our Constitution, support our President in the implementation of his Big Four agenda as regards to health coverage, but more importantly, we preserve the dignity of our people by giving them the most basic healthcare that they deserve.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Lusaka): Hon. Senators, we have overshot the time on petitions.

Hon. Senators, pursuant to Standing Order No.232(1) the Petition is hereby committed to the Standing Committee on Health for its consideration. In terms of Standing Order No. 232(2), the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the table of the Senate.

I thank you.

Next Order. Proceed, Chairperson Committee on Education.

## PAPERS LAID

### REPORT ON THE KENYA SIGN LANGUAGE BILL, 2019

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the table of the Senate today, Tuesday, 15<sup>th</sup> September, 2020:

Report of the Standing Committee on Education on the Kenya Sign Language Bill (Senate Bills No. 15 of 2019).

*(Sen. (Dr.) Milgo laid the document on the table)*

**The Speaker** (Hon. Lusaka): Proceed, Senate Majority Leader.

### THE 2019 KENYA POPULATION AND HOUSING CENSUS BASIC REPORTS (VOLUME II, III AND IV)

*(Laying of document deferred)*



**NOTICE OF MOTION**ALTERATION OF THE SENATE CALENDAR FOR  
THE 2020 SESSION

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to give notice of the following Motion-

THAT, pursuant to Standing Order Nos. 28 and 29, and the Resolutions of the Senate made on 27<sup>th</sup> February, 2020 (approval of the Senate Calendar), 17<sup>th</sup> March, 2020, 14<sup>th</sup> April, 2020, 2<sup>nd</sup> June, 2020, 16<sup>th</sup> June, 2020, 23<sup>rd</sup> June, 2020 and 4<sup>th</sup> August, 2020 (alteration of the Senate Calendar), the Senate now resolves to further alter its Calendar in respect of Part IV and Part V, to hold two sittings in each week on Tuesdays and on Thursdays, beginning on Tuesday, 15<sup>th</sup> September, 2020, and on Thursday 17<sup>th</sup> September, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

**The Speaker** (Hon. Lusaka): I now direct that we go to Order No. 13. Proceed, Senator Majority Leader.

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. (Dr.) Ali?

*(Sen. Ali spoke off record)*

It is a notice of Motion. The Motion is yet to be moved.

**Sen. (Dr. Ali):** Okay, Mr. Speaker, Sir.

**MOTION**ALTERATION OF THE SENATE CALENDAR FOR  
THE 2020 SESSION

**The Senate Majority Leader** (Sen. Poghisio): Thank you, Mr. Speaker Sir. I beg to move-

THAT, pursuant to Standing Orders 28 and 29, and the Resolutions of the Senate made on 27<sup>th</sup> February, 2020 (approval of the Senate Calendar), 17<sup>th</sup> March, 2020, 14<sup>th</sup> April, 2020, 2<sup>nd</sup> June, 2020, 16<sup>th</sup> June, 2020, 23<sup>rd</sup> June, 2020 and 4<sup>th</sup> August, 2020 (alteration of the Senate Calendar), the Senate now resolves to further alter its Calendar in respect of Part IV and Part V, to hold two sittings in each week on Tuesdays and on Thursdays, beginning on Tuesday, 15<sup>th</sup> September, 2020, and on Thursday 17<sup>th</sup> September, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020 be altered accordingly.

Mr. Speaker, Sir, this is very straightforward as requested by Members themselves that they would like to be meeting twice in a week from this week so that we can cover much ground. The Members support this and we move our Sessions to two days in a week.

I beg to move and ask the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker Sir, I beg to second.

*(Question proposed)*

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I beg to move the following amendment to the Motion on the alteration of the Senate calendar-

THAT the Motion be amended by deleting the words “to hold two sittings in each week on Tuesdays and on Thursdays beginning on Tuesday 15<sup>th</sup> September, 2020 and on Thursday 17<sup>th</sup> September, 2020 and substituting thereof the words “to hold sittings as provided for in the Standing Order No.31(1) namely Tuesdays, Wednesdays and Thursdays commencing at 2.30 p.m.

We have had meetings once a week for nearly two months. The way things are, we are not able to finish whatever we need to do in this House. The Commission on Revenue Allocation (CRA) Formula has been on throughout the last one month and we are not going anywhere. We need more time and more sitting days to discuss these issues. I beg to move and ask Sen. Linturi to second.

**Sen. Linturi:** Mr. Speaker, Sir, I rise to second the amendment to the Motion by Sen. (Dr.) Ali. The Senate has several reports to adopt. We have so many reports from Committees that need to be considered and adopted by this House.

The proposal that has been made by the Senate Majority Leader means that we will travel from our constituencies on a Tuesday to attend an afternoon sitting skip a day, Wednesday, doing nothing in Nairobi and then come back to the Chamber for another sitting on a Thursday. That is waste of time.

I support Sen. (Dr.) Ali that we should resume sitting on Tuesdays, Wednesdays and Thursdays because we have a lot of work to do. It is necessary to use our time prudently because we travel from our constituencies to attend sittings. We cannot waste a whole day doing nothing.

I beg to second.

*(Question of the amendment proposed)*

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Malalah.

**Sen. Malalah:** Mr. Speaker, Sir, I rise to support this amendment. We need to resume our normal sittings because we have a lot of work in our in-tray. We have had a very serious matter before this House for 10 good sittings. It is very important for us to provide time for this House to meet on Tuesdays, Wednesdays and Thursdays as provided for in our Standing Orders because we have a lot of business to dispense.

I sit in the Senate Business Committee (SBC); therefore, I know that there are many pending Bills, Statements and Motions. There are many Bills that are stuck at the Second Reading stage because we do not have adequate time to meet and deliberate on business.

I would like to note that we have seen normal business resuming in this country. We have witnessed political rallies across this country. If political rallies are taking place three times a week, why can the Senate not sit three times a week? It is upon this House

to consider this amendment because this House transacts very important business on behalf of this country.

I request my colleagues to consider the amendment that has been proposed by Sen. (Dr.) Ali to have the Senate sit three times a week as opposed to the initial Motion, which had proposed that we sit two times a week.

I beg to support the amendment.

**Sen. Kinyua:** Mr. Speaker, Sir, I rise to support the amendment by Sen. (Dr.) Ali. We have a lot of work pending before the Senate. The COVID-19 curve is flattening, therefore, I believe that if we sit three times a week, we are going to achieve more progress than what we are able to do by sitting once a week.

Many Kenyans are complaining that we have taken too long to come up with a third basis for revenue allocation among the counties. We have taken so long in coming up with a formula because we only meet once a week. If we had sittings three times a week, we would have taken a shorter time in coming up with a third basis for revenue sharing.

I beg to support the amendment by Sen. (Dr.) Ali for us to meet three times a week so that we can expedite our work as a Senate.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, we are in September of 2020. From the proceedings of the last Senate, I suspect that you will have difficulties in 2021 to get Members here because a majority of us will be campaigning.

Secondly, reggae is back. The campaigns have started. We should sit three times a week between now and December to clear the deck of all the pending business before we get into the era of electoral reform. In the last Parliament, Sen. Orengo and Sen. Murungi co-chaired a joint committee on electoral reforms.

The Senate must participate in the preparations for a free, fair and transparent election. We cannot have pending business in 2021 and 2022. I support the amendment proposed by Sen. (Dr.) Ali to sit three times a week for us to clear pending business.

Mr. Speaker, Sir, I am sure that you are aware by now that your counterpart in the National Assembly has issued a communication on about 10 Bills from the Senate that went to the National Assembly. One of the Bills that the Speaker of the National Assembly gave a communication on is the County Boundaries Bill that was sponsored by Sen. Khaniri, the Senator for Vihiga County. The other Bills include, the Mental Health Bill, a Bill by Sen. (Dr.) Zani and many others.

I ask you to make an official communication on the Bills that the Senate had forwarded to the National Assembly. You had communicated to me to have those Bills sponsored jointly by the Members of the Senate and the National Assembly but I would like to state that, that is additional work. There is no shortcut of protecting counties on their boundaries unless we have legal framework.

From the report that I read from the Sen. Haji led Committee, the framework of Article 188 of the Constitution on county boundaries is not going to change even by their report. County boundaries will still be the mandate of the National Assembly and the Senate. I hope that the Speaker can communicate in the next sitting on these important issues that the Senate passed and the National Assembly has declared those Bills as Money Bills.

Mr. Speaker, Sir, I am not sure if you will be here in the next Parliament. It will be well for you to have as many Bills assented to in this Session now that we have very good cooperation with State House.

I saw photos of Sen. Orengo and Sen. Poghiso in the newspapers today at the 'Big House.' I hope that means that we will get the business of the Senate going to the State House directly without necessarily using any other middle ground. The bridge has been created.

I thank you.

**The Speaker** (Hon. Lusaka): I will make a communication in our next sitting because as Sen. Mutula Kilonzo Jnr. has stated, the leadership of this House has had some informal discussions on why Bills emanating from any House should not be lost on a technicality. I will give a proper communication later.

Kindly proceed, Sen. Poghiso.

**The Senate Majority Leader** (Sen. Poghiso): Mr. Speaker, Sir, you also have to make a communication on how we arrived at the proposal to have two sittings per week. We are just beginning to add the number of sitting days since the first case of COVID-19 was reported in Kenya. We were just following protocols. I would just like to remind Members that this is their calendar and that they can change it any time.

They do not have to bring an amendment on the floor of the House to change what they can change any time. The reason the SBC has proposed to have two sittings in a week is to adhere to the COVID-19 protocols. It had been proposed that Wednesday be used for fumigation of the Chamber after the Tuesday afternoon sitting.

The Speaker should let this House know through a communication whether we can resume normal sittings. Once we are back to having normal sittings, we do not have to ask for permission from anybody. We will be free to change our calendar as we wish. I would like to alert the Members that they are free to make any changes to the Senate calendar.

**The Speaker** (Hon. Lusaka): What is your point of intervention Sen. (Dr.) Ali?

**Sen. (Dr.) Ali**: On a point of order, Mr. Speaker, Sir. Is the Senate Majority Leader in order to insinuate that I have done an amendment illegally? Is he in order to rubbish the amendment that I have proposed?

**The Speaker** (Hon. Lusaka): I think he did not rubbish it. He was giving his views.

Sen. Orengo, let us proceed.

I had called Sen. (Eng.) Hargura.

**Sen. (Eng.) Hargura**: Thank you Mr. Speaker, Sir, for giving me this opportunity.

Initially, when we reduced our Sittings to one day, there was a reason. As we know, the situation is improving and we have a lot of work to do.

Therefore, I support the Motion as amended so that we can clear the backlog of what we have, especially the contentious issue of the Commission on Revenue Allocation Formula, which due to one-day sitting, we have taken two or even more than two months which could have been done in two weeks.

I urge my colleagues to support this amendment so that we get back to business and clear the issue of the formula plus all the pending Bills. If you check our Order

Paper, it is always heavy but nothing is done at the end of the day. We are just producing paper without executing our responsibility.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, what is your point of order?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. Members want to contribute to this, but many are taking the opportunity to discuss the larger Motion while we are still at the amendment stage. Why can you not put the question on the amendment, then those who want to contribute can contribute to the Motion.

Remember, we have very serious business on the Revenue Formula that we would want to listen to, get an update and make a decision as a House.

Mr. Speaker, Sir, I ask that you put the question.

*(Question of the amendment put and agreed to)*

*(Question of the Motion as amended proposed)*

**The Speaker** (Hon. Lusaka): Order Senators. We are now back to the Motion as amended.

**Sen. M. Kajwang':** Mr. Speaker, Sir, even though I do not have strong views on this Motion because it is procedural, we must remind ourselves that we passed a resolution that allows hybrid sittings of this Senate.

I have heard colleagues say that because people are doing rallies and people are going for reggae concerts, we should also do the same. It is not right that we do the wrongs that others are doing because they are doing it.

More fundamentally, you and the leadership need to assure this House that if we are going to sit for three days in a week, that we are going to have an element of virtual sittings in those three days.

We have been in this Parliament from the last one and this one. There was a time when there was a lot of pressure when I was chairing the County Public Accounts and Investments Committee (CPAIC) that I should bring reports to this House for consideration of the House.

When we brought 60 reports, it was only Sen. Olekina, Sen. (Prof.) Onger, Members of the County Public Accounts and Investments Committee (CPAIC) and I, who were here to discuss those reports.

The debate on revenue does not need 10 sittings; it just requires goodwill. To argue that we need more sittings to pass the Revenue Formula is like arguing that you need nine men to achieve conception.

Mr. Speaker, Sir, please assure us that we shall be sitting virtually. That way, I can go to Homa Bay, talk to fishermen and at the appointed time, I can log in. I can assure you that this House will be more productive the way we have been more productive in Committees where we have allowed virtual sittings.

I support, but please allow hybrid sittings to be the norm rather than the exception because the last time I asked, I was told that it is the Senate Business Committee (SBC) to determine which one should be hybrid or not.

If we had virtual sittings where people can vote virtually, our friends like Sen. Malalah, who like sitting in the boots of Subaru vehicles, can vote from the boot of a Subaru. He does not have to be in this House.

I support.

**The Speaker** (Hon. Lusaka): Sen. Murkomen, what is your point of order?

**Sen. Murkomen:** Mr. Speaker, Sir, is Sen. M. Kajwang' in order to belittle the situation that befell Sen. Malalah and, particularly, the fact that he was sitting inside a Subaru vehicle because he was illegally arrested in circumstances that the Inspector-General of Police and the Director of the Directorate of Criminal Investigations (DCI) confirmed yesterday; that they were not sure who ordered it?

It is in the public domain that Sen. Malalah has told the country that his life is in danger. It is part of serious public discourse.

Is it in order for Sen. M. Kajwang', who is young and I thought, progressive, to belittle that serious situation that a colleague is facing in this House?

**The Speaker** (Hon. Lusaka): Sen. Wetangula, what is your point of order?

**Sen. Wetangula:** Mr. Speaker, Sir, I have no doubt that Sen. M. Kajwang' said it in jest and we should allow some comic relief in the House. Sen. Malalah is here and he has not protested. Do not wail louder than the bereaved.

That is not the issue that I stood up for. The mood is very clear that we have more serious work than extending the calendar or dealing with the sittings. I want to move that, the Chair puts the question on this Motion as amended so that we can go to more serious work.

On behalf of Sen. Malalah, I want to encourage him that Sen. M. Kajwang' is not a malicious man and I am sure he said it in jest.

Let us move on.

**The Speaker** (Hon. Lusaka): Order Senators.

**Sen. Madzayo:** Bw. Spika siku ambayo Sen. Malalah alishikwa na kutiwa ndani ya gari aina ya Subaru ya rangi ya kijani, nilikua kwa nyumba yake. Nilikua hapa jana katika hili Bunge la Seneti, nikamuona Sen. Malalah akilia hapa mbele ya Maseneta wenzangu.

Leo hii tukiambiwa kwamba Sen. Malalah alikua analia machozi ya mamba, ilhali aliweza kueleza kinaga ubaga sababu ya yeye kulia na kwa sababu gani anataka kuliwa na mamba---

Kwa hivyo, ikiwa tutachukua swala la kwamba alijitia ndani ya Subaru mimi sikujua kuwa Sen. Malalah alikua anafanya mzaha. Je, ni sawa kwa Sen. M. Kajwang' kusema kwamba Sen. Malalah anapenda kukaa katika buti ya Subaru?

**The Speaker** (Hon. Lusaka): Order, Members!

I know that was a grave matter, but I want to ask all of us to be a bit sensitive when we make certain contributions.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, pursuant to Standing Orders 28 and 29, and the Resolutions of the Senate made on 27<sup>th</sup> February, 2020 (approval of the Senate

Calendar), 17<sup>th</sup> March, 2020, 14<sup>th</sup> April, 2020, 2<sup>nd</sup> June, 2020, 16<sup>th</sup> June, 2020, 23<sup>rd</sup> June, 2020 and 4<sup>th</sup> August, 2020 (alteration of the Senate Calendar), the Senate now resolves to further alter its Calendar in respect of Part IV and Part V, a) to hold sittings as provided for in the Standing Order No.31(1) namely Tuesdays, Wednesdays and Thursdays commencing at 2.30 p.m., and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

**The Senate Majority Leader** (Sen. Poghiso): Mr. Speaker, Sir, following on that, I would like to request that you allow Members to convert now into a *Kamukunji* as discussed today in the Senate Business Committee, so that we can go and discuss the issues of the formula. It is important; this is not a request for a Motion. This is a request for the Speaker to allow this House to adjourn for a short time or allow us to go and convert ourselves into a *Kamukunji* so that we can---

*(Loud consultations)*

I am actually requesting that you help this House convert into a *Kamukunji* because we can come back.

Thank you, Mr. Speaker, Sir.

**Sen. Wambua:** Mr. Speaker, Sir, I seek guidance from the Chair on a matter of procedure, whether it is in order for the Senate Majority Leader to just rise from his Chair and ask the Speaker to allow the House to move to a Motion. That is too casual. Can he move a Motion?

**Sen. Cherargei:** Mr. Speaker, Sir, mine is a comment. I think this issue of consensus building on the revenue formula is for the good of all of us. I think the request that has been made, in my opinion, is for you, under Standing Order No.1, where you can use discretion to give us an adjournment, a break or a time-out for a few minutes, so that we can now sit and agree, and maybe resolve this issue. This is because there could be a possibility of some new information that the House might get. I think under Standing Order No.1, you can exercise your discretion there.

I thank you.

**Sen. Wetangula:** Mr. Speaker, Sir, I want to encourage the Senate Majority Leader that in future we should have some reference to Standing Orders when we make any moves in the House. There is no provision in these Standing Orders for any Member to just make a request to the Speaker. You move in accordance with Standing Orders and the Senate Majority Leader should have moved under Standing Order No.105; that we do now adjourn whatever debate we have on the Floor for whatever consultations we want to have.

He has done the right thing wrongly and I want you to make sure that we have our records clean because these proceedings will be read in future by students and researchers; our children, grandchildren and everybody. Therefore, having clean records and proper legal frameworks is quite important in any parliament.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, I think you are making an important request, but like they are saying, please, do it in the right way.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, this is a House of rules and procedures. In fact, we cannot just stand up and say that we adjourn. Unfortunately, we have done

this before in this House; it is going to be a practice for us. The Senate Majority Leader should invoke Standing Order No.32 to ask for the House to be adjourned. The practice that we are now adopting, in future, cannot be a practice of the House. Therefore, do not allow something like this to happen. There must be a procedure for asking for the House to be adjourned.

I thank you.

### POINT OF ORDER

#### STATUS OF CASE FILED BY THE SENATE ON THE MATTER OF CONCURRENCE ON BILLS

**Sen. Cheruiyot:** Mr. Speaker, Sir, I have a different issue. Earlier on when Sen. Mutula Kilonzo Jnr. rose on a point of order concerning issues to do with the consensus that is being built around Bills in both Houses of Parliament, you gave an assurance that you shall be giving further Communication.

In your Communication, I want you to further assure Senators in this House on the status of the case that we filed in the High Court about a year ago. This is because I am privy to information that the Leadership is perhaps considering the option of withdrawing that case without reverting to us, Senators, because that was a resolution of the House. Therefore, it is extremely important when you are bringing that Communication, you make it clear that before any such decision can be taken, you must revert to this House, so that Senators give you the permission on the direction you take with regard to that case.

**The Speaker** (Hon. Lusaka): Why do we not allow the Senate Majority Leader, so that we---

**An hon. Senator:** On a point of order, Mr. Speaker, Sir! On that issue---

**The Speaker** (Hon. Lusaka): Which issue? Regarding that issue, I will issue a Communication.

Hon. Senators, you know we are facing a heavy duty ahead of us. Let us minimize these other things.

I will allow Sen. Murkomen.

**Sen. Murkomen:** Mr. Speaker, Sir, the issue that Sen. Cheruiyot has raised is urgent and pregnant. It is pregnant because information reaching me is that tomorrow there will be attempts by some quarters - and I do not know who they are - to withdraw the petition that was filed by this House during my tenure as the Senate Majority Leader, that is, Petition No.3. The withdrawal of the petition is going to be heard tomorrow and rumour has it that the Speaker, the Minority Leader and the new Majority Leader consented to withdraw that petition despite the fact that the whole of this House moved to court under very difficult circumstances.

Mr. Speaker, Sir, that is very grave. In fact, it might be graver than the issue of revenue allocation. Just in case there is anyone contemplating--- I do not believe that Sen. Orenge can do that. Just in case there is anyone who has been arm-twisted by the Executive to enter into a consent to withdraw that petition, a move which has already been opposed by the Council of Governors and the Katiba Institute, and I will oppose.

One; we will meet with you in court tomorrow.



Two, this House will take that to be a grave violation of the procedure of this House because the Senate Business Committee made a resolution and all of us went to the court. There is no resolution that the Speaker, Majority Leader or Minority Leader have to withdraw that case without reference back to us.

The struggle to make this House relevant and perform its responsibilities started with a court process in 2013. For some of us who still believe in the Senate, want to serve in this House and believe that the Senate must continue performing its responsibilities to protect devolution, it would be a grave mistake if there is any staff, lawyer or Senator who will betray the cause of ensuring that this Senate becomes strong. I will do everything humanly possible to oppose any process that is geared towards the withdrawal of that decision.

Mr. Speaker, Sir, you have said that you will make a Communication. As you make your Communication, please, appreciate the sentiments that come from the Members of this House who believe in posterity and the institution of the Senate.

**Sen. Olekina:** Mr. Speaker, Sir, I am wondering whether some of us are the only visitors in Jerusalem. We sit in this House. Senate pronounces itself through Motions. We sit here as 68 Senators, including the Speaker.

Anything that touches on devolution is a matter of life and death for us. So, I want to join my---

**The Speaker** (Hon. Lusaka): Is that a point of order or what?

**Sen. Olekina:** Mr. Speaker, Sir, I want to join my colleagues in saying that if there is any attempt to challenge the authority of the 68 Members who sit in this House, it must be brought here, so that we pass by a resolution of this House.

Mr. Speaker, Sir, I want to beseech you and the leadership that let us not try and play with the doctrine of separation of powers. Our generation will stand firm and defend it! We marched from here, all the way to the court.

**The Speaker** (Hon. Lusaka): What is your point of order?

**Sen. Olekina:** My point of order is that I am disturbed by the point of order raised by Sen. Cheruiyot in regards to court cases that have been filed by this House. Now we hear that, through the backdoor, they are being removed.

Mr. Speaker, Sir, I want to beseech you as I go and sit that, please, take these matters very seriously. As the future generation, we are here to defend devolution in this country.

**The Speaker** (Hon. Lusaka): Sen. Orengo, proceed.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I want to give some clarity to this issue because of the statements that are being made. At a particular time, just like Sen. Omogeni, Senior Counsel, when proceedings were in the Supreme Court, nobody even bothered about the outcome until he came here to tell us what the outcome was.

If you ask anybody what the outcome of that case was, I think it is only Sen. Mutula Kilonzo Jnr., who in certain conversations that we had with the Treasury when they were misquoting the judgment of the Supreme Court, who was able to point out to them that they were reading the wrong section of the decision of the Supreme Court.

Mr. Speaker, Sir, I just want to urge Members that with the kind of interest that we show on some of these matters--- When the matter comes in court, and there are many lawyers here, let us not allow Sen. Omogeni to be the only person who is appearing in

court. I have not been appearing, but it is Sen. Omogeni who is there religiously trying to determine what is happening in court.

I would like to invite Members to come to court tomorrow. I think it is an important day in court. As regards the question of withdrawal, in fact, if you look at the proposals, which came from the National Assembly, they wanted the Senate to withdraw the Petition that it had filed in the High Court.

Mr. Speaker, Sir, you are aware that there was resistance to a move towards the withdrawal of that Petition. That is the position. What is being discussed at the moment is a consent order in which the National Assembly, through their Speaker, has accepted that Article 110 (3) of the Constitution is mandatory.

He has gone further to say that we need to amend the Standing Orders of the Senate and the National Assembly. This is because according to the National Assembly, consideration of whether a matter concerns counties or not is a matter they take to a committee in the National Assembly without reference to the Speaker.

Mr. Speaker, Sir, according to the proposal, which if the parties accept is going to be filed in court - a consent order - I need not try to elaborate the difference between a court ruling and a consent order. A consent order is like a contract between one party and another. That is why in a consent order, the court does not actually write as a verdict. The parties sign the order before it is entered as an order of the court.

In that consent order, the Speaker of the National Assembly is admitting that Article 110 of the Constitution is obligatory. He was saying that because we waste a lot of money in the other House discussing a Bill, when they have discussed it, then it comes to you for concurrence---

Mr. Speaker, Sir, the decision is that before any Bill is read for the first time - before it actually reaches the House - this is because the House considers a Bill when it is read for the First Time. He is saying and is agreeing with us that, that concurrence should take place before the Bill is tabled.

You know how we have had that debate. There is a matrix that the legal department was told to prepare in which the progress of a Bill before it is tabled and it comes to you and goes to the Speaker of the National Assembly, they will want to see that all the stages have been passed through. That is including getting your concurrence before it is tabled.

Mr. Speaker, Sir, I wish I had that consent order with me. Sen. Omogeni, I want to thank you because in the initial consent order that came from the National Assembly, Sen. Omogeni was the first person to say that we cannot have that consent order.

The second one is on the requirement to amend Standing Orders. This is because Standing Orders of the National Assembly do not require that there should be concurrence. It requires that the matter is taken to the Committee first. Then, it is the Committee which decides what is a matter concerning counties.

Mr. Speaker, Sir, the other third issue, which I think is a development--- We have gotten this courtesy of the Speaker of the National Assembly. He is saying that there are a lot of Bills that are pending in the other House on a lame excuse that they are money Bills. He has looked at a lot of legislations in the United States, where money bills go to both Houses.

He is thinking that for whatever reason, or whatever it is worth, there are only two Bills that he thinks should not come to the Senate because they are specifically provided

for. Those are the appropriations Act---. However, he is saying all other Bills, including money Bills--- In fact, we are trying to get a framework of how to ensure then what is defined as a money Bill could be piloted through both Houses.

Mr. Speaker, Sir, what happens in the National Assembly is that at the end of the Bill they say, 'this is a money Bill.' On that basis alone, the Bill will not be discussed. We have agreed that we find a basis of ensuring that money Bills actually come to the Senate.

The third issue that I think is also critically important, which is coming up, is on the question of the definition of what a money Bill is. Right now, it is the National Assembly. In fact, if you read the judgment in the Supreme Court, the one that Sen. Omogeni was reading here, 'money Bill' is anything that the National Assembly thinks is a money Bill. However, it is a matter of law which should be defined.

Mr. Speaker, Sir, I would urge you that we look at the content of that consent order. The constitutionality of the Bills is a matter which now remains in contention between the two Houses and the Council of Governors (CoG). This is because that is the contention which some other parties have brought.

Without them signing consent, we will have to go into determination of whether the Bills that have been passed or enacted are constitutional Bills. I may be wrong on one or two issues, but I think this matter has seen some development. We are in a better place than we were previously.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Kang'ata, proceed.

**Sen. Kang'ata:** Thank you, Mr. Speaker, Sir. I will be urging fellow Senators to look at that issue from the prism that the issue concerning whether that suit is going to be compromised through a consent order, should not really be the prime point of discussion.

We should be discussing whether the content of that consent order reflects the wishes of the Senate. Therefore, I would be proposing that the Senate Minority Leader, the Senate Majority Leader or the House leadership give us a draft copy of the proposed consent order for consideration by Members of this House.

This is so that if we think there is a problem in some of the terms, we will raise those issues. However, I would agree that whether it is a consent order or a final judgment, the bottom-line is the same; it is a verdict of the court.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, proceed.

**Sen. Sakaja:** Thank you, Mr. speaker, Sir. While we appreciate what the Senate Majority Leader has said and the efforts of Sen. Omogeni, the question that we have - because in this process you were sent by the Senate - was when were you going to come back to us and explain what is going on? If it was just the decision of a Judge, that is one thing, but a consent where parties are entering into and you are negotiating on our behalf, ideally, there would have been a *Kamkunji*, where you come and update us on where the matter has reached and the reasons for the decision we want to make. If it is being done tomorrow, and we are hearing about it from the grapevine, the social media or whoever it is, that is a bit unfair on the Senators who sent you. Sen. Omogeni and Sen. Orengo, we appreciate what you are doing, but you need to come back to us.

Mr. Speaker, Sir, if you say that we agree, yet just a week or two weeks ago, the National Assembly declared The Pandemic and Disaster Response Bill, which we worked on by considering more than 170 submissions--- In fact, in that Committee, the Deputy

Director of the Parliamentary Budget Office (PBO) was sitting with us. He made us make sure it is not a Money Bill, and after all that work, Sen. Kasanga, who is now the Chair of the Committee on COVID-19 Situation Kenya, they just casually declared it a Money Bill.

Mr. Speaker, Sir, this process is being mishandled and I think you need to come back to us before going to court. We cannot just meet in court. You need to come back to us because until you do so, no one representing the Senate has the authority to enter into consent until you come back to those who sent you.

Finally, Mr. Speaker, Sir, on the other matter, I have seen Members being very hard on the Senate Majority Leader. I think the Senate Majority Leader was in order if he was rising on Standing Order No.32. The Standing Order No.32 (1) says-

“A Senator may, at any time, for reasons stated, seek to move “That the Senate do now adjourn.”

He just did not mention the Standing Order. He would have moved. There was no need to be too tough on him; he has had a few tough weeks. However, if you are to move under Standing Order No.105, then you have not called out the Order. You need to call out the order for us to go to the Revenue Sharing Formula. Once you have called out the Order, then he can move to adjourn. Let us listen to what---

**The Speaker** (Hon. Lusaka): Okay. Sen. Wamatangi, then Sen. Wetangula.

Just a minute, Sen. Wamatangi. Let him clear something.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. First, I want to confess that acting for the Senate - this is one of the most difficulty clients I have ever dealt with.

*(Laughter)*

This is because they give you instructions to act for them, but you will never get them to get further instructions. However, I want the country to know that I am doing this for the Senate *pro bono*, without being paid any fees.

Mr. Speaker, Sir, you will confirm to the House that I wanted us to move together. I had requested the Speaker to call for a *Kamkunji* yesterday, so that I report back to the House the progress that we had made in trying to have this matter settled out of court.

As Sen. Orenge has said, we have actually had a partial discussion. This is because we have not agreed on issues on Articles 109 and 114 of the Constitution on Money Bills. We have made some progress on Article 110. I can tell you that there is a very good offer just coming from the Speaker of the National Assembly, including a proposal that we explore amending the Standing Orders of the National Assembly and the Senate to allow for co-sponsorship of Bills, so that we do not have a situation where Bills, like the one that was sponsored by Sen. Kasanga--- The Mental Health Bill has very good provisions, but it was knocked down on account of it being a Money Bill.

I want to urge the House to trust the Senator for Nyamira, who is a Senior Counsel and a former Chair of the Law Society of Kenya (LSK) to offer able representation.

However, Mr. Speaker, Sir, you can give direction to the House as to when we will have a *Kamkunji*, so that we report to the House on the progress we are making. I

agree with Sen. Kang'ata, the Whip from the Majority side that we need to report back to our clients and then they give us authority to enter into consent. That, I fully agree.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. Wamatangi then Sen. Wetangula.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I also rise on a point of order, especially to ride on the Communication that you had made earlier and as raised by Sen. Cheruiyot, that you have promised to make a Communication.

As the Chairperson of the Committee on Roads and Transportation in the Senate, I would want in your Communication that you also communicate to this House and the Committee on Roads and Transportation. This is because, sometime ago, during the discussion and debate on The Roads Bill, 2015, which came to this House and was debated vigorously in this House--- Since the National Assembly disagreed with that Bill and the resolutions of the Senate as amended on that Bill, this House passed a resolution to form a Mediation Committee.

In that Mediation Committee, I sat with Sen. Wambua and a few other Senators - I might not remember all of them. The process of the discussions on the mediation collapsed. This is because when Senators sat with Members of the National Assembly, we were booed, heckled and called names, and finally, that process collapsed. Effectively, we reported to this House that mediation had collapsed.

However, subsequently, upon perusal, it came to my notice and attention, as the Chairperson of the Committee that a consent has been entered that we agreed. The question that I would want to be addressed effectively and clearly in your Communication is: In the absence of involvement of the Committee and the Members who had been selected in that panel of mediation, how was a consent entered in a process of mediation that collapsed? I would want to hear that, so that I can also communicate to the Members of my Committee and this House how that consent was entered.

**The Speaker** (Hon. Lusaka): Sen. Wetangula, kindly, proceed.

**Sen. Wetangula:** First, I want to thank the Senator for Kericho County for raising this matter and, equally, the Senator for Siaya for offering an explanation. However, with hindsight, and those of us who have been here from the last Senate have had a lot of frustrations and fights to find the footing and relevance of this House within the constitutional order of this country. We have gone to court in the last session and made some milestones in the Supreme Court advisory.

I want to urge the leadership - because they lead the House and the entire House is the client of Sen. Omogeni and the other lawyers that have gone to court - that given what we have gone through--- In fact, if there was any intention to file a consent tomorrow, it should be deferred, so that if any such consent is entered, it must bear in mind--- We need to see the draft amendments of the Standing Orders of the 'lower House' that have been an embedment to these processes, so that we satisfy ourselves that, in fact, that amendment is within the letter and spirit of the consent we are entering. If there is any change in our own Standing Orders, we need also to satisfy them in the same manner. Then, and only then, should we consent to anybody going to file a consent on our behalf.

Mr. speaker, Sir, you remember that we had a serious *Kamkunji*, where everybody spoke and everybody's opinion was taken on board before we walked all the way to Milimani Law Courts. I sympathized with some of our colleagues who had difficulties walking. However, we still reached there - like the distinguished Sen. Omanga.

(Laughter)

Mr. Speaker, Sir, I can say without any fear of contradiction that *Mama Miradi* had problems walking all the way. I urge Sen. Orengo and Sen. Poghisio to cause you to have a *Kamukunji*. Let us look at what we went to court for and what we are achieving in the process of the consent. Going to the future, this House should reclaim its position and Constitutional relevance in the dispensation of the new order in this country.

Like Sen. Orengo said, if you look at the Constitution on the issue of what a Money Bill is, it is fluid. It says that a Money Bill is a Money Bill. It does not say anything beyond that. It has now been left to the National Assembly to decide what is a Money Bill and what is not. We need to have defined parameters on what it is. The Supreme Court said they cannot envisage any legislation that does not touch on counties. They must all come here.

I urge that tomorrow's proceedings in court and the parties can consent to stay anything to a later date so that we have clarity of these issues.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, the position is that no consent has been filed. The case is starting tomorrow and the Bench directed that there will be no adjournment. I would want to confirm to the Senate that our lawyers in the Directorate of Legal Services have filed their submissions on every question. Nobody has gone to rest. Some of us who have been following this matter deserve a pat on their back because preparing submissions is not an easy thing. If I show you the authorities and submissions filed, you will realize it has not been easy. The Directorate of Legal Services of the Senate has done a lot of work.

Now that the consent has not been filed, let people come to court tomorrow. The judges said there will be no adjournment tomorrow; we must argue the case for two days. The CoG also has problems with certain Bills. The Katiba Institute has also raised some issues. Yes, there were discussions which did not amount to a consent being filed or a withdrawal. We are now put in a situation because of the directive of the court.

This is the COVID-19 time. It is a Bench of five judges who said there would be no adjournment tomorrow. Sen. Cheruiyot, I would want to see you in the court tomorrow whether virtually, but I think it is a physical hearing.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, proceed.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, for this opportunity. As the people's chairman and former Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we put a lot of effort into this to ensure it was a success.

I thank Senior Counsel Sen. Orengo and my successor, Senior Counsel Sen. Omogeni, and Sen. Mutula Kilonzo Jnr. It reached a time that only a few of us were in Milimani Courts. We did a lot which I am proud of. On a light note, even if I was dewhipped, let these people not dewhip the work I did as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. I hope Sen. Kang'ata is listening.

Petition 284/2019 was consolidated with Petition 353/2019. I can confirm what the Senate Minority Leader has said that we have two days. That is tomorrow and Thursday. The judges have directed that we will proceed without any adjournment.

In the consolidated Petition of 353/2019, the CoG is the fifth petitioner. That is the information I wanted to share with the House. I urge that we need to fast track and work together on this.

It is my prayer that this matter is heard and concluded because the Senate needs its space. We must move forward. The Senate leadership should not allow any other way to resolve the issue. If we do not allow the courts to pronounce themselves on this matter, after sometime, we will go back to the same issues.

The other day the National Assembly tried to lecture us on our role. We cannot allow that to happen. I encourage my colleagues that we be in court tomorrow either virtually or physically, to give moral support to the lead senior counsel. Others who are learning like some of us, should be there to take notes and carry files for the senior counsel.

As a former Chairperson of the Committee, I am proud that this matter should be dispensed with and make our space known. The way the former leadership led by Sen. Murkomen and Sen. (Prof.) Kindiki did in the advisory opinion on the issue of division of revenue, was commendable. We must agree to move forward so that the Senate can have its space and we no longer become the footnote.

Mr. Speaker, Sir, thank you for this opportunity.

**The Speaker** (Hon. Lusaka): Sen. Wako, you have the Floor.

**Sen. Wako:** Thank you, Mr. Speaker, Sir. I want to also speak on this. I have absolute confidence in the lawyers representing us; that is Senior Counsel Sen. Orenge and the current Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Omogeni. I am glad that they see that a client must be informed at every stage of the proceedings. They have agreed to inform us because we are the clients.

Mr. Speaker, Sir, I want also to mention two things. Whereas the National Assembly before considered all Bills not to touch on counties and said we can only consider the County Allocation of Revenue Bill, we debunked the excuse in the Supreme Court ruling. The excuse they are now using is that this Bill is a Money Bill. Over the weekend, we were considering a Bill on Alternative Dispute Resolution which they said is a Money Bill and, therefore, cannot come. When I inquired, it appeared that nearly all the Bills that have come up in recent times are not going to come here, not because of the reason they used to, but because it is certified as a Money Bill.

In this particular case, it is also an issue. Assuming the agreement you have reached on other issues, on the consent between the two Speakers on this issue of Money Bill, you would have preserved the position of this Senate in the legislative process.

Mr. Speaker, Sir, I heard a young Senator called Sen. Olekina saying, “we, the young ones and that we are here to preserve the future.” Let them also know that they are where they are now because we “old ones” were there at the very beginning. I can say without any fear of any contradiction that had we not taken appropriate action during the first term; they would not be here as a legislature. They would be legislating only on one item. However, because of the action, we took, they are where they are today. We went to the Supreme Court under my watch as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights at that time supported by the Chairperson of the Committee on Devolution and Intergovernmental Relations, Sen. Murkomen, and the Speaker.

Mr. Speaker, Sir, we went to the court and said that this is a matter of life and death for us. It is a matter that concerns our mandate as a legislature and, therefore, without considering such affiliations, we as Senators were all one. In fact, I remember saying at that time that, I hope the Senate would continue to have that spirit of being Senators when we are here, rather than acting according to party affiliations.

Young men know that we contributed and we continue to contribute. I can see that Sen. Orendo is contributing on this matter. I am also contributing to this matter. It is not just young people. Please, learn fast, because we are soon going away. Learn fast from us when we are still around.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I think we should first congratulate the legal team based in the Senate. We were given only two lawyers and those two lawyers have done a tremendous job, including Senior Counsel Sen. Omogeni, Sen. Orendo and, to a large extent our Clerk who has aided in some of these prayers.

Secondly, I am aware that some people wanted us to withdraw this case. I am aware because I saw a draft that some people had recanted their consent. The only consent that is acceptable to these very troublesome clients of Sen. Omogeni is the consent on the prayers in our Petition. If they allow the payers that we have sought in Articles 109, 110 and 114, we are happy to consent that the Petition be allowed as we have prayed.

Mr. Speaker, Sir, can you imagine the proposal being drafted by Sen. Sakaja and I on how you and the Speaker Hon. Muturi should sit is also a Money Bill? That is how sad this matter is. Somebody quoted advisory opinion No. 2. This is what it says in Paragraph 102:

“With a good Speaker, you will find anything about security and public administration that concerns counties.”

Therefore, I urge that Sen. Omogeni comes back to us after he has made his submissions, not before.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Mwaura for two minutes, then Sen. (Dr.) Ochillo-Ayacko.

**Sen. (Dr.) Mwaura:** Thank you, Mr. Speaker, Sir. We have been here before, but I think that our counterparts in the National Assembly can see that the courts will agree with us. I remember very well that when I was in the Procedure and House Rules Committee of the National Assembly, a suggestion was made to have co-sponsorship of Bills as Sen. Omogeni has said. However, because of the capricious nature of the debate between these two Houses, that was turned down.

It is, therefore, only in order if the prayers, in the consent of the National Assembly, are submitted in court for the court to rule on them. In that regard, in our submission, we should also make it very clear in terms of the courts properly and definitely defining what a Money Bill is, and what a Bill concerning the counties is in their own interpretation, because that is their prerogative within the law.

After that, using the court’s judgement, only then can we amend the Standing Orders. If we allow a gentleman’s agreement, it has been reneged before, including agreeing to give monies for oversight for this Senate, and we can go on and on.



Mr. Speaker, Sir, right now, by dint of insisting on our role, we are augmenting the relevance and the place of the Senate. Even when it is coming on the heels of the current Third Generation Formula as per Article 203 and 204 of the Constitution, I think it is important that we allow the courts to rule on this matter, and then we can now come back and argue on a gentleman's agreement. We cannot trust people who have reneged on what we have agreed before.

I support.

**The Speaker** (Hon. Lusaka): Finally, Sen. (Dr.) Ochillo-Ayacko. We have to make progress now.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to make a few remarks on this matter. I have not robed for a long time. It was regarding this matter that I decided to look for my robe and go to court under the leadership of the Senate Minority Leader and the Lead Counsel, Sen. Omogeni. I want to congratulate them for standing firm.

I want to state that my reading of the behavior of the National Assembly and its leadership is that it is too little too late. There is a remote appearance of goodwill on their part, but it is not backed with honesty and action. I say that because if you look at their submissions - I have looked at them - the submissions run contrary to an admission that they have been unfair to us.

Secondly, if you look at the recent behavior of the National Assembly leadership by declaring some of the Bills to be Money Bills, it appears that if we do not have the force of a full judgement of the court, the consent that we are looking for may smell rosy but may be full of thorns.

I agree with my colleagues who are of the view - I am of that view - that if there is any consent to be entered, let it be in the word and spirit of the prayers that we made in court. Anything that is less than that may be deceptive and intended to lull us to sleep. We know where we came from; a situation of desperation where Senators were marching on the streets. Senators are not supposed to march on the streets. We are supposed to legislate, negotiate and compromise here.

I conclude by thanking the team that started this matter in the last Senate, and the team I fall in that has continued with this matter. Let the consent reflect the prayers that we took to court.

Thank you.

**The Speaker** (Hon. Lusaka): The Senate Majority Leader.

**The Senate Majority Leader** (Sen. Poghisio): Thank you very much, Mr. Speaker, Sir. I do not know how we got there, but mine is just to support the idea that the leadership and the Speaker of this August House cannot betray their Members. The impression that some of us in leadership have quietly gone behind the backs of the membership, that has not happened. It cannot happen because these Houses are alert to what is happening.

Mr. Speaker, Sir, I want to use this opportunity to congratulate the legal team and the people who are handling this matter. Know that we will be there when we are needed to make sure that the consent order is in line with what the Members wanted.

I earlier on rose to ask for an adjournment. When I asked it in the manner that I did, you can tell that a number of our Members were provoked. I want to assure them that I am a seasoned legislator and I know exactly how to go about it. I like the advice

from the junior colleagues, including the Senator for Kitui. They can also begin to advise us on these matters.

Mr. Speaker, Sir, pursuant to Standing Order No.32, I beg to move---

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

**The Speaker** (Hon. Lusaka): What is your point of order? Just speak from there.

**Sen. Murkomen:** On the issue that has been canvassed widely, I thought that you were going to make a closing statement. You were to make a statement, but I do not know at which point, so that we close on that issue. I would like Sen Orengo and Sen. Omogeni to listen to me on this one, Sen. Orengo being our Senior Counsel.

The sentiments of the membership of this House is to the effect that any consent that will be sought by the National Assembly---

I am in order to say, summing up this process, that the House has concluded that the proceedings should progress tomorrow, like it should, on the highlighting of the submission. I think that was supposed to be done tomorrow. We will not be pursuing that consent that is being sought by the National Assembly, particularly because I should have disclosed further that I know the terms of the consent that has been proposed by the National Assembly. This House has made a resolution and Members have submitted that we cannot trust a situation where we are going to file this consent and then withdraw the main petition. Ultimately, when they will not follow what we had agreed on---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Murkomen?

**Sen. Murkomen:** I thought you were going to sum up that from the clients of Sen. Omogeni, that now he has full instructions that he should not pursue the route that the National Assembly was proposing.

**The Speaker** (Hon. Lusaka): I think they have heard. You remember that originally this was a point of order. Sen. Cheruiyot was asking me to include in my communication when I address the House next. They have heard what you have said and I will also put it in my Communication.

### **MOTION OF ADJOURNMENT UNDER STANDING ORDER NO. 32**

#### **REPORT ON NEGOTIATIONS ON THE THIRD GENERATION FORMULA FOR REVENUE SHARING**

**The Senate Majority Leader** (Sen. Poghio): Mr. Speaker Sir, pursuant to Standing Order 32, I beg to move that the Senate do now adjourn.

This is to allow for Members to retreat into a *Kamukunji* or an informal meeting to get a report on the basis of the negotiations that have been going on about the Third Generation formula.

As we left here last week, the Committee of the 12 Members at that point agreed and challenged the leadership to go and meet with the Executive and see if some extra monies could be given to add to what has been given, so that we can now formulate afresh how to divide this money among counties.

It is just for us to go and get that report because this happened and we have a report to give. I do not want to belabour the point. Allow us to move into a session where we can informally discuss this matter.

I beg to move and ask the Senate Minority Leader to second.  
**The Senate Minority Leader** (Sen. Orengo): Seconded.

*(Question proposed)*

*(Question put and agreed to)*

The House adjourned at 4.35p.m.