

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 21st June, 2022

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

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

PRAYER

The Speaker (Hon. Lusaka): The Senate Majority Leader, you may proceed.

STATEMENT

BUSINESS OF THE SENATE IN THE TERM OF THE 12TH PARLIAMENT

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker Sir, in a normal sitting, this Statement is made to appraise the House on the business for the coming week.

However, as you are all aware, this is the last ordinary sitting day of the Senate in the term of the 12th Parliament. As such therefore, it goes without saying that there will be no sittings next week, until the convening of the new House after the General Elections that are scheduled for 9th August, 2022.

At the start of the 12th Parliament in August, 2017, we set out on an ambitious legislative agenda, with primary focus on improving the lives of Kenyans, strengthening the devolved governance structure and ensuring that devolution works. Well, here we are at the last sitting of the Senate, and it is only fair that we undertake an assessment of the status of legislative business.

The Senate was able to introduce a total of 75 Bills. Of these Bills, 17 were passed and assented to. We are anticipating that the Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020) and the County Allocation of Revenue Bill (Senate Bills No. 1 of 2022) which have been submitted to His Excellency the President will soon be assented into law. That will bring the total number of Bills that have been assented to 20.

Twenty-six Bills were considered and referred to the National Assembly. These Bills are still under consideration by the National Assembly and yet to be referred back to the Senate.

With respect to Bills that are under consideration by the Senate, there are 23 Bills pending conclusion, seven of which are at the Second Reading stage while 15 are at the

Committee of the Whole stage. Of these Bills, five have been scheduled for Division at the Committee of the Whole Stage.

I urge all Hon. Senators to take personal responsibility and ensure that you are in the Chamber this afternoon, to undertake these important Divisions alongside Motions listed at Order Nos. 18 and 19. That will be including this morning.

Finally, on Bills, there are 20 Bills, which are undergoing concurrence process pursuant to Article 110 (3) of the Constitution. Looking at where we are today, it is unlikely that these Bills will be considered by the Senate in the life of the 12th Parliament.

Mr. Speaker, Sir, Article 119 of the Constitution gives the right to every citizen to Petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. The Senate has received 145 Petitions, out of which 114 of them have been reported on so far. This represents a 78 per cent completion. This indicates that there are 31 Petitions that are yet to be finalized by the respective Standing Committees.

Statements have been another avenue that the Senate has capitalized on to address concerns by citizens. There were 229 Statements made pursuant to Standing Order No.47(1) of which 67 were referred to respective Standing Committees for further consideration.

A total of 53 were concluded and where necessary, reports thereon tabled. With respect to Statements under Standing Order No.48 (1), 573 were sought, out of which 448 were concluded and reported on. This accounts for 78 per cent of the total Statements filed.

We hope that when the time comes to assess the Third Senate, it will be written that we held true to the aspirations of Kenyans, upheld the Constitution and constitutionalism, protected devolution and ensured that it thrives. Above all, that we made a positive impact in the lives of Kenyans. As an institution of governance, that is what was required of us.

Mr. Speaker, Sir, looking towards the future, I would like to pose a challenge for the coming Senate. This challenge relates to a threat that we have faced from the time we began our legislative agenda; that of fighting for our legislative and oversight mandate under Article 96 of the Constitution.

As a result of this threat, the Senate, by resolution, instituted legal proceedings to challenge the laws that had been enacted un procedurally in the 12th Parliament.

This threat is still alive. While the Senate is hoping for a favourable outcome in the Supreme Court, the next Senate will need to jealously guard its legislative authority, to ensure that the mandate of the Senate is not eroded.

I, therefore, urge the next Senate Leadership to separate the politics of the day from their constitutional and cardinal mandate of protecting devolution. There are a number of good legislative proposals, which strengthen devolution and the place of the Senate, but will unfortunately lapse at the close of this Senate.

The next Senate Leadership may isolate these Bills and consider republishing them as a matter of urgency so as to have them passed in the first few months. In so doing, the next Senate will go a long way in entrenching constitutionalism, the rule of law and protecting the integrity of the legislative process.

Mr. Speaker, Sir, before I conclude the Statement, I would like to acknowledge, with much appreciation, the support that I, in my capacity as the Senate Majority Leader, have received from all Senators, and particularly you.

I also acknowledge the Members of the Senate Majority and Minority Leadership, most of whom I have had the privilege to serve with in the Senate Business Committee (SBC). I would like to also acknowledge Members of other committees who I have also had the privilege of serving with.

Mr. Speaker, Sir, I may want to single out the Senate Minority Leader, Sen. Orengo. We have worked together in this Senate to bring legislations to fruition. I thank him and his team for giving me the support that was befitting.

It has also been a bipartisan effort in the SBC and we have worked closely. Therefore, I would like to single out you, Mr. Speaker, Sir, the Clerk and all those who have presided over the SBC and made it a success.

Mr. Speaker, Sir, you will have an opportunity to speak to the subject of *sine die* recess. I know you will address more on how we have related and our successes as a Senate.

I would also like to thank my predecessors. I specifically single out the Senator for Elgeyo-Marakwet, who was the Senate Majority Leader before me, for the work that he has done and continues to do. I wish all of us well wherever we will be.

Finally, I wish all hon. Senators well in their future endeavours, whether we meet again in this House or otherwise. I pray that those vying for various leadership positions will continue to be defenders of the Constitution, devolution and the rule of law.

I thank you, Mr. Speaker, Sir, and hereby lay the Statement on the Table of the Senate.

(Sen. Poghio laid the document on the Table)

The Speaker (Hon. Lusaka): Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, it is not normal for reactions to be made to Statements made by the Senate Majority Leader concerning the business of the House for the coming week, but this is a unique moment in the life of this Senate. Most likely the afternoon sitting will be the last one for this Senate.

Mr. Speaker, Sir, I wish to join him in thanking you, particularly in holding the fort. You have been guided by the principle of trying to keep the House together and many times, seeking bipartisan solutions to problems that may confront the House.

Generally, I appreciate the House in the sense that most of the issues that have come before us have not been decided on the basis of majority or minority sides. We have had people supporting or opposing certain positions from both sides of the House.

I am talking about issues like the discussions on the revenue sharing formula. The House was not divided on the basis of parties or majority and minority because both sides of the House supported different positions. Members supported what they thought was for the best interest of their counties and the country in general.

I also thank the Senate Majority Leader. Sen. Poghio is a gentleman because he is so easy to work with. I think with the long history he has had in Parliament, you would tend to hear people talking about Sen. Poghio being the Speaker that both the Senate and the National Assembly have never had. I wish him well because he will hopefully continue to serve in the Senate.

I also appreciate the previous leadership of the House. Sen. Murkomen has been mentioned by the Senate Majority Leader. I must also mention the fact that I have enjoyed debating with Sen. Murkomen. He has clarity of thought and I hope he will continue giving service to the nation. I will miss debating with him in the House.

That also goes to Sen. (Prof.) Kindiki who was there before him and on my side Sen. Wetangula. I think he is one of the most eloquent and skilled legislators that we had in the House. I thank the House and its leadership in general for the work that we have done.

Mr. Speaker, Sir, I would like to point out that we should always support the Judiciary because it is important. We never know what is going to confront this nation.

There was a time your days were numbered if you were arrested for any offence because you would be taken for trial. Hon. Philomena Chelagat was tried and convicted on trumped up charges within a month. In this day and time, whatever the case or complaint was, Philomena Chelagat would never have been tried and convicted nor would great legislators like George Anyona, who served long prison terms on matters that were fabricated.

People like Kenneth Matiba and my party leader, Rt. Hon. Raila Odinga, would not have served many years in detention if at that time we had an independent Judiciary based on the Constitution that we have today. I hope that we will continue defending the Judiciary in the future.

There should be no claw back on the Judiciary. There are ways of dealing with problems within the Judiciary, be it corruption. There should never be a situation where one would want to control the Judiciary. I hope that the next Parliament will stand firm in defending an independent Judiciary.

Mr. Speaker, Sir, as we know, the Senate would not be doing the work we are doing at the moment without the Advisory Opinion that was made by the Supreme Court. No business was coming to the House until the Supreme Court made that decision.

I hope that the National Assembly in the future will learn how to work with the Senate as an entity so that this sibling rivalry that has characterised this particular Parliament and to some extent, the previous Parliament, will not continue.

I note that most of the laws that have been rendered unconstitutional by the courts are Bills that have gone through the National Assembly without coming to the Senate. The Senate in my view, has been a little bit more careful in trying to look into the kind of legislation that comes before it.

The many Statutes or Provisions that have been rendered unconstitutional is because most of the time, the Senate was not allowed to have a second look at them. By sheer neglect of not complying with Article 110(3) of the Constitution.

I hope that in future, the National Assembly will work in tandem with the Senate together as Parliament and do oversight and legislation as one entity as opposed to continued sibling rivalry.

Mr. Speaker, Sir, I am aware that you are making an important plea to the Speaker of the National Assembly on certain legislation that was passed without the Senate's input.

I also hope that in the future, before the Executive assents to any Bill, that it will determine and look at the provisions of the constitutions properly and not just assent to Bills where there has been no concurrence and participation by the Senate.

Some of these things look alright when the going is good but they catch up with you one day. This is because unfortunately, the conduct of public bodies, public officers and State officers do not die while in the office. Ten years down the line, a lot of these things can be brought up again and questioned.

We hope that we will have an Executive that applies the law in conformity with the Constitution. Otherwise, we have done a good job and the country is somewhat better because of the positions we have taken particularly in relation to devolution.

The Speaker (Hon. Lusaka): Proceed, Sen. Murkomen.

Sen. Murkomen: Thank you, Mr. Speaker Sir. Just like the Senate Minority Leader has said, it is unusual to react to a Statement by the Senate Majority Leader on the Business of the House. The uniqueness is that it is the last Statement of the Senate Majority Leader. Therefore, it gives us an opportunity to say something. I thank you for giving me this opportunity.

Mr. Speaker Sir, time flies. It was just the other day when we came to this Chamber. I remember this term of the Senate to be one of the most unique one. I arrived here as a Senate Majority Leader of the Senate.

My successor, Sen. Poghio has read about the successes and challenges we have gone through. That responsibility was bestowed on me for slightly more than half of the term. He however, completed the remaining of the term.

Let me start by congratulating Sen. Poghio for the work he did from the time he was made the Senate Majority Leader. I also congratulate Sen. Orengo for working together with Sen. Poghio and the rest of the Senate Business Committee (SBC) chaired by yourself to steer this House to ensure that business of this House continued in an orderly manner.

Secondly, this term was one of the most consequential in many ways. We had the greatest opportunity like Sen. Orengo has said, to debate on a matter that for the past two occasions, we danced around. However, in this term, we managed to have a robust and far-reaching discussion of the County Allocation Revenue Allocation Formula.

We will be remembered for the effort we put to ensure that we maintained the principle of equity and to ensure that those who have greater population get the resources they deserve without disfranchising those who have greater land mass and lesser population. Therefore, if I was to be asked the highlight of this Senate, I would say it is the effort and hard work that Senators demonstrated.

That is tremendous progress that we made in this term. I want to recognize the Senators who sacrificed beyond the call of duty and suffered as a result. Members like Sen. (Dr.) Lang'at of Bomet must be remembered that he was arrested for the sake of that formula to succeed. The same applies for Sen. (Dr.) Lelegwe and Sen. Malala. That was something.

Mr. Speaker Sir I congratulate you too. I do not want to say that is one of your highlights of your firm stand but it is one of the two things that I will remember you for. One, is the decision that you made that time, when it was apparent that if we had proceeded, we would have done an injustice to the Senate and to our colleagues. You also deserve to be congratulated for standing firm and contributing to the success of that formula.

Senators who thought their counties were initially purported to benefit from this formula, for example, Sen. Cheruiyot, Sen. Malala, Sen. Sakaja, Sen. (Dr.) Lang'at and I,

ended up standing firm and everyone benefitted at the end. I want to congratulate you for that.

Secondly, this Senate will be remembered for defending its mandate. If there is a time like Sen. Orenge has said we remained bi-partisan, and extremely committed to our cause, is when our mandate was threatened.

Part of the things that accelerated my removal was to bring a Motion to this House to seek an approval of the Chamber to go to court to defend its mandate. I am glad that you signed the affidavit for that Petition to succeed. I am happy that we succeeded in the High Court.

Sen. Orenge has said something very profound. I wish the future Presidents will not just sign laws for the sake of it. I hope that they will exercise their mandate with certain level of responsibility, caution and interest of the public and maintain the authority of the two Houses.

Sadly, even though you and your brother in the National Assembly came from the same party or technically sponsored by the same party, it is very sad that in the two terms where one party has controlled both Chambers, we have not been able to find unity in terms of decision making and application of the Constitution in so far as movement of Bills is concerned.

Mr. Speaker, Sir, I hope this one is on record, not just for---

It has been our privilege to ensure we defend our mandate. As Sen. Orenge said, that is where the respect of the Constitution and our institutions comes in. We must continue respecting our courts even when the decision is not favourable to us.

It is unfortunate that the Court of Appeal decision went the way it went. Since we are in the Supreme Court, I believe this matter will be settled, once and for all. That will ensure the two Houses and the Senate itself will function the way it was intended by the framers of our Constitution and by the people of Kenya when they promulgated this Constitution on the 27th August, 2010.

Mr. Speaker, Sir, lastly, I thank my colleagues in the Majority Side who really supported me in my tenure as the Senate Majority Leader. It was not an easy time. There were things that we did not agree with the Executive. I am very proud of my record of standing up to the President and the Executive when the mandate of this House was threatened.

Mr. Speaker, Sir, you were there in some of the meetings even with my colleagues in leadership. That is something I am always proud of. I believe that I have the benefit of time and history. In the fullness of time, history will prove me right that it was important to stand for the things I stood for. Whether it was the mandate of this House or related to political management of the Majority Side.

I will miss Sen. Orenge. It is now very clear that he will not be in this House in the next term. It was my greatest pleasure to debate with him and first of all to be in this Chamber with him. For the umpteenth time, I want to say this; that it is people like Sen. Orenge, hon. Paul Muite and other lawyers who were in Parliament who helped me make up my mind that I was going to study law. In many ways, Sen. Orenge has been my great inspiration.

The time I came into this Chamber in 2013, I was overwhelmed that I was sitting here with Sen. Orenge, Sen. Wetangula, among other lawyers that I looked up to when I was studying law and many other legislators such as Sen. Wako among others.

It is now very clear that Sen, Orengo has chosen a different path. He is vying to be the Governor of Siaya County. I do not think we have another candidate there so, if I endorse Sen. Orengo I will not be in trouble from my side

(Laughter)

I do not even know whether my vote will even matter in Siaya. I believe if Sen. Orengo goes with the values and principles he has expounded here, the beliefs, records of integrity, hard work and belief in institutions including this House I believe he is going to do a good job for the people of Siaya County.

I would have really loved to see him back here but I will be seeing him in the County on Public Accounts and Investment Committee (CPAIC) when he comes here for questioning. I believe he will not be adversely mentioned in any audit report in the next five years.

Mr. Speaker, Sir, the same goes for you. You have done your best. You had situations that many Kenyans expect me to comment on including the ruling related to my removal. That must have been difficult for you but I have understood. I personally understood the circumstances under which you were operating.

We will miss your services in this Chamber. You have been an extremely enthusiastic servant of this House. Even when we have disagreed with you on your decisions you have taken your time out of here to make personal explanations to individuals including myself. That shows you are a leader with a conscience.

Mr. Speaker, Sir, I have no doubt in my mind that as you go back to Bungoma County to be the Governor that you will be elected with over 70 per cent of the votes. We will expect that you will appear when we call you here in CPAIC. That is not on the only way we will be interacting. We will also interact in many other forums that are intergovernmental in nature.

I hope and believe that we should not do the kind of impeachments that we did this term. Those of you who are going to be governors should go home knowing that those of us who will remain here, God willing, must exercise a higher level of caution when dealing with impeachments touching on governors.

Our lowest moment was the removal of former governor Mike Mbuvi Sonko and former governor Ferdinand Waititu that was deplorable. We messed up the lives of two gentlemen. Let me just say this in one minute so that I sit. I feel very sad that governor Mike Mbuvi Sonko is being taken for a ride and is not being given a chance to run office.

Mr. Speaker, Sir, him being barred from running for office should go down in history as one of the most ironic moments. You have colleagues including those in National Assembly who are facing charges of corruption and some have been sentenced to over 70 years. After appealing, the Constitution says they have a constitutional right of presumption of innocence. If I am not wrong, that is Article 50 of the Constitution.

Mr. Speaker, Sir, they are running for office and are on the ballot. Governor Mike Mbuvi Sonko and Ferdinand Waititu were brought to this House and impeached without any standard being observed. The Standard of proof in so far as impeachment is concerned is the conscience of every Senator who votes. So, governor Mike Mbuvi Sonko was impeached by 24 or 25 Senators against 22 or 23.

Then he has received his punishment for being removed from office in the term that he was elected by the people of Nairobi City County. You then go ahead and bar him from running from office. I have a question to ask jurists who are here and who are watching my presentation.

The Constitution says that when you are convicted for more than six months you are barred from being a Member of Parliament or holding public office. Once you have served your sentence even if it was manslaughter for five to ten years, theft or corruption, once you have served, you have atoned for your sins and have been redeemed.

Meaning after that conviction of five years or seven years now you can run for office. The question I want to ask Sen. Orengo and lawyers who are here such as Sen. Madzayo among other is - if a person has been impeached, for how long are they going to be barred from running for office?

Mr. Speaker, Sir, someone is sentenced for five years and after serving the five years he has the right to go back and run for office. That someone is impeached and indefinitely told he cannot run for office. Remember in the first instance there was a Speaker of County Assembly of Kirinyaga County who was almost impeached by the County Assembly for chewing gum in the Chambers.

The reasons for impeachment and the standard of proof for impeachment is so low that it depends on the politics of the day and the feelings of the Senators at that time. Sometimes that impeachment is procured by bribery by your political opponents.

Having been elected by a million people, after you have served that punishment by being barred from completing your term, you are told you cannot run for same or different office. We are punishing people out of mob justice. It is an illegality that we must not allow it to succeed.

The Speaker (Hon. Lusaka): What is your point of order Sen. Orengo? Is it a point of information?

Sen. Murkomen: Mr. Speaker, Sir, I am willing to be informed. I am always willing to be informed by Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I just want to inform the Senator from Elgeyo Marakwet County that he is making very fundamental statements, but he should bear in mind that generally, impeachments are a political process.

Even in the United States of America, in relation to President Trump, it did not really matter what he had done as long as he had the right numbers in the Senate.

However, I think to inform him, the answer lies in the Constitution. If you read the Constitution, eligibility and all, with the Bill of Rights and the principles of double jeopardy, I think the answer is there. This is just because a lot of times when it comes to politics, we tend to make convenient judgements but I think truly the Constitution addresses this point very clearly.

The Speaker (Hon. Lusaka): Sen. Murkomen, please keep it brief because we have the Motion of Adjournment, *sine die*, in the afternoon.

Sen. Murkomen: Thank you, Mr. Speaker Sir. Sen. Orengo has said something very weighty without saying it directly in the sense that, he agrees with me without agreeing very loudly. Let us give room to the courts. The High Court is yet pronounce itself on that very important matter being barred from office.

The Court of Appeal and the Supreme Court will also have its time. However, Sen. Orenge, you will also agree with me that I disagree a little bit with the Chief Justice when she went to a radio show and pronounced herself on this issue when we know that this matter might come before her sometime later. I think she should have exercised some level of restraint.

Mr Speaker Sir, when we come back, hopefully, those of us who are going to be back here, Sen. Omogeni is lifting his hand that he is one of them. Since we have a competitor there, I am not going to say anything. The point I am saying is that when we come back, we must put in place a legislation that explains that issue.

Divorcing Chapter 6 from the requirement of presumption of innocence, constitutional right on the presumption of innocence and the exhaustion of process of appeal, is violation of the Constitution itself. The Constitution says you must have purposive interpretation of the Constitution and holistic interpretation, not just cherry-picking some sections of the law.

Therefore, I feel very sad that a process of impeachment that went through this House is going to be used to bar people from running for office and I think that is something that we must address. The courts are now seized of some of those of those issues including the one of the County Executive Committee (CEC) Member of Kiambu County who is our Senate Candidate Karungu wa Thangwa. I hope that this matter will be settled by the courts of Law.

Other than that, I would like to say that since we have the Motion of Adjournment in the afternoon, I believe that history will judge us positively for the things that we did and I believe that during the first session of the Senate in the 13th Parliament, yourself, Sen. Orenge, among others who will have exited this House to serve in other capacities, will be invited during our first retreat to make sure that we re-look together on the issues that we dealt with that time even as the new Senate will begin to plan for the future. I hope that our working relationship will be improved.

I thank you.

The Speaker (Hon. Lusaka): I want to ask those who will speak after this to keep it brief because we have a Motion of Adjournment and we will have another opportunity to speak.

Sen. Madzayo, please proceed.

Sen. Madzayo: Asante Bw. Spika. Kwanza, nataka nikushukuru kwamba ulikua Spika wangu. Umekua Spika wangu kwa miaka mitano tukiwa katika hili Bunge la Seneti. Umekuwa mshupavu na umeweza kuangalia majadiliano ya pande zote mbili.

Bw. Spika, ninataka kuchukua nafasi hii niwashukuru pia Maseneta wenzangu kwa sababu katika muhula huu, tulikua na vita nyingi ambazo zilijaribu kutuweka sisi katika mtihani mkubwa. Nikikumbuka kulikua na ugavi wa pesa zinazokwenda katika serikali zetu za ugatuzi.

Kulikuwa na sintofahamu nyingi sana mpaka wakati huo tulikua tunafikiria hili Bunge linaweza likapasuka katikati. Siasa ilikua imetanda sana ikawa imefika kiwango ambacho ilikua ni kama watu walikua wanashurutishwa kufanya kitu fulani.

Bw. Spika, lakini ulionyesha umaarufu wako na ukaangalia vile majadiliano yalilikua yanaendelea. Pia nataka kuwashukuru wale Maseneta ambao wanatoka katika maeneo yale ambayo yalikua yanapata pesa lakini wakaungana na wale wengine ambao

walikua wanapoteza pesa. Nataka kuwashukuru sana kwa sababu ni kwa sababu ya juhudi hizo iliwezesha sisi ambao tulikua tunaweza kupoteza pesa kupata mwelekeo---

The Speaker (Hon. Lusaka): There is a point of intervention by Sen. Kinyua.

Sen. Kinyua: Bw. Spika, nina hofu kidogo kwa sababu kisheria na kulingana na sheria zetu za Seneti, Taarifa kama hii ya kiongozi wa walio wengi sidhani tunapaswa kuwa tukijadili. Sijui kama tunafuata sheria ya kihalali ama tayari tunaanza kulegeza.

The Speaker: It is an exceptional day for closing so I gave some leverage. However, I said let them keep them brief because in the afternoon we will have more time when we adjourn. So, please keep them short so that we are able to do the other business on the Order Paper.

Sen. Madzayo: Asante Bw. Spika. Kwa hivyo, nataka nichukue nafasi hii niwashukuru Maseneta wote, wale waliokuwa wanapinga na wale waliokua wakikubaliana na mambo ya ugavi lakini hatimae tulikua kitu kimoja na tukapitisha na kukawa na afueni sio kwa sisi peke yake ndani ya Bunge la Senate bali Kenya mzima. Kwa sababu tulikua tumeweka mzigo sana wa kusimamisha ugavi wa pesa ambao ulikua unianza kuadhiri wananchi katika serikali zote 47 za ugatuzi.

Bw. Spika, pia vile vile, nakumbuka mwanzo tulipoanza hili Bunge, kulikua na sintofahamu nyingi mpaka upande ule wa wanaongoza walio wengi waliweza kupitisha Miswaada ambayo tulikua tunaona ya kwamba haziko sawa lakini zikapitishwa. Kiongozi wa Walio Wachache Katika Seneti, ndugu yetu Sen. Orenge alitupatia mwelekeo na akasema ya kwamba hufika wakati fulani, Serilkai ikarejelea na ikala watoto wake wenyewe.

Ilibainika wazi kama vile alivosema akitabiri, ilikuja ikatimia mpaka sasa naona dada yangu Sen. Farhiya akawa Naibu wa Kiranja kwa sababu kulikuwa na wengine ambao walikua viranja.

Kwa hivyo, tunasema tu ya kwamba, ikiwa upande wowote umeingia kwenye mamlaka, sio kwamba ianze kudharau upande ule ingine kwa sababu tunaelewa hata mkiwa hamko kwa upande ule wa walio wengi saa zingine mambo hubadilika kisiasa.

Nafikiria hilo ndio funzo kubwa sana nimeweza kupata nikiwa katika hili Bunge la Senate. Mliona vile vifaranga vilivyoliwa na vile ambavyo havikuliwa na wale amabo walikuja wakachukua mpaka sasa tunaona ndugu yangu Sen. Pogishio amekua Kiongozi wa Walio wengi.

Nataka kumpatia kongole Sen. Pogishio kwa sababu ya utendakazi wake. Ni mtu mabaya ni mkarimu, ana mwelekeo na mimi napendelea vile anavyo fanya kazi. Unajua kama kitu kinaharibika, yeye huwa anaangalia kama ambaye hatasema lakini mwisho akisema tunapata mwelekeo.

Nataka kumshukru yeye na vile vile kiongozi wa walio wachache ama wanaotaka upande huo ambao mimi niko, Sen. Orenge, kwa sababu baadhi ya yale mambo ya masikizano kati ya hao tumeweza kupata mwelekeo. Kwa hayo, nataka kuwapa kongole zaidi.

Bw. Spika, la mwisho, najua uko na mzigo mkubwa sana. Unaenda Kaunti ya Bungoma ambako kuliwaka moto katika muhula wa miaka mitano iliyopita. Ninakutakia kila la kheri. Wakati huu unasikizana na yule mkubwa wa kile Chama chako, ndugu yetu, Wakili Sen. Wetangula. Wakati ule, ulikuwa husikizani naye na alifanya vile alivyofanya. Ingawa alikutoa kule, ulikuja hapa na ukawa mkubwa wake.

Kwa hivyo, ulimwengu uko namna hiyo. Leo uko mbele, kesho uko nyuma. Huko ulikokuwa, ulikuwa mbele na tulipokutoa huko ukaja hapa, ukawa mbele vile vile. Mungu ako na wewe. Tunakutakia kila la kheri unaporudi kwako huko Kaunti Bungoma, ili uweze---

The Speaker (Hon. Lusaka): There is another point of intervention. Sen. Poghisio, please, proceed.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I am only doing what I think a good timekeeper should do. There is a danger that we are going to be doing *Sine Die* speeches through this Statement and repeat them in the afternoon. Debating a Statement that was based only on the programme, we are entering into an enclave of irrelevance. I request your indulgence.

The Speaker (Hon. Lusaka): Sen. Madzayo, like I said, *jaribu umalizie kwa sababu tutakuwa na muda kuanzia Saa Nane na Nusu tukifunga Bunge.*

Sen. Madzayo: Ndiyo, Bw. Spika. Asitumie *double standards* wakati mwingine.

La mwisho ni kuhusiana na swala la magavana kusimamishwa kazi. Tuko na mihula na kila muhula ni miaka mitano. Nimeona ni ukweli kabisa ya kwamba sheria inaangaliwa pande mbili. Ni kama panga ambayo inakata pande huu na ule. Sisi kama Bunge la Seneti tumekuwa tukifanya kazi yetu vizuri. Hata hivyo, inaonekana tunakuwa na sheria mbili magavana wanapoletwa hapa.

Bw. Spika, iwapo mtu ameletwa mbele ya Seneti na anatakiwa kuachishwa kazi; na imesalia miaka mitatu, minne au hata mwaka mmoja, kuna umuhimu wa kutafakari ya kwamba hatuwezi kumuadhibu mara mbili. Ukiachishwa kazi na uondoke ofisini, kwangu mimi, hiyo ni adhabu ya kutosha. Baadaye huo muhula wa miaka mitano ukiisha, ichukuliwe kama Seneti imemaliza kumuachisha kazi. Hiyo ni adhabu tayari.

Iwapo ataendelea kufanya kazi, ikifika wakati wa uchaguzi mwingine, apewe nafasi ya kujitetea na kujifufua kimaisha. Isiwe kwamba mtu aharibiwe maisha ati alikuwa mwanasiasa na sasa sio mwanasiasa kabisa katika maisha yake. Ni jambo la kusikitisha.

Sasa hivi, tunaona ndugu yetu, Sonko, akiwa katika matatizo kama hayo. Singependelea sisi Maseneta tuchukue mwelekeo huo. Baada ya kumuadhibu kisha miaka mitano kuisha, basi tuchukulie kwamba ametumikia adhabu ya muhula wake. Wakati mwingine ukifika, apewe nafasi asimame.

The Speaker (Hon. Lusaka): Sen. Were, following your request, I will give you three minutes, so that we go to the next Orders. The rest will have an opportunity in the afternoon, including Senior Counsel, Sen. Omogeni.

Sen. Were: Mr. Speaker, Sir, thank you for your indulgence. Indeed, it is a trying moment for the Senate because we are the only ones still sitting. We are in the campaign period and we have several activities down in the counties. Trying to balance our campaign plans and coming to the House is a challenge.

I thank the House and the Members of the Senate for providing a conducive environment for us to work, especially for us, Nominated Senators. We thought that were coming to this House to be seen and not to be heard. However, over the time, the business of this House has mostly been handled by women Senators, majority of whom are Nominated.

We thank our political parties that nominated us to this House. We hope and pray that we did them proud. I thank the staff of the Senate who are very benevolent in their

work and attitude towards us. They made some of us who had never stepped in this House look like we knew what we were doing in this House. They provided guidance every step of the way.

Mr. Speaker, Sir, I join my colleagues in the issue of impeachment. What we have seen happening to Gov. Waititu and Gov. Sonko should not happen again. Let us take impeachment proceedings brought to this House with the seriousness that it deserves. Even if it comes with the politics that usually accompany these impeachments, let us remember that these are lives of people, and going forward, our actions will create complications for them. It seems quite unfair.

I know that these issues are in court and so, we may not speak too much on them. Some of us are going elsewhere, while others will come back here. For those coming back here, I pray that the impeachment Motions brought to this House against governors, President and Deputy President, will be handled professionally and with a humane heart. This is the final House for those impeachments.

Thank you and I wish all my colleagues who are proceeding on to campaign for various seats well. I pray that those who will come back here continue to do what they are meant to do, and serve their people.

The Speaker (Hon. Lusaka): Next Order.

BILL

Second Reading

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.37 OF 2021)

The Speaker (Hon. Lusaka): Senate Majority Leader, please, proceed.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I beg to move that The Election Campaign Financing (Amendment) Bill (National Assembly Bill No.37 of 2021) be now read a Second Time.

Mr. Speaker, Sir, just to mention a little bit of its journey, this Bill was published on 12th August, 2021, passed by the National Assembly and referred to the Senate on 13th April, 2022.

The Bill seeks to amend The Election Campaign Financing Act of 2013 in order to align it with the Elections Act of 2011. It also seeks to enable its implementation, as the current law does not take cognisance of current socioeconomic and political structures, which has hindered its full implementation.

Mr. Speaker, Sir, campaign finance issues have a significant impact on the quality of elections. Notably, without adequate financing, candidates and parties have little chance of campaigning effectively or conveying their messages to the voters.

At the same time, state authorities and citizens have a legitimate interest in ensuring that the campaign finance system is equitable, transparent and limits the potential for corruption. For this reason, the importance of such a Bill cannot be gainsaid.

Mr. Speaker, Sir, specifically, what is at stake in this Bill is that Clause 2 of the Bill proposes to amend Section 2 of the Act, by deleting the definition of expenditure---

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

Sen. Olekina: Mr. Speaker, Sir, I hate to interrupt the Senate Majority Leader, but I am trying to be a little bit relevant here in the sense that I personally do have a similar Bill, which is in the Committee of the Whole.

The Bill that is coming from the National Assembly is the Majority Leader's Bill. I wonder, if we start the process now on this Bill, yet my Bill is in the Committee of the Whole, waiting to be passed, will it not be easy if we pick what is here and include it in my Bill, which is still the same? My Bill was introduced much earlier than this Bill from the National Assembly. It has been in the pipeline and it is a Senate Bill.

I, therefore, object this Bill and request that the Senate Majority Leader stands its down at this stage and allow us to look at our Bill; the Bill for this House, because we put in a lot of time on it. I think it will be much more practical because mine is in a far much ahead process

I would like to request the Senate Leader of Majority to stand down this Bill and allow us to proceed with the other Bill. Otherwise, we will be doing "pinky - ponky" here and not really moving.

The Speaker (Hon. Lusaka): There is another intervention from Sen. Shiyonga.

Sen. Shiyonga: On a point of order, Mr. Speaker, Sir. On the same note, I do not think we were very fair when we are doing what the Senate Majority Leader is doing.

As Sen. Olekina has said, we normally go with bureaucracy and precedence here. However, we sometimes find ourselves in situations where Bills are thrown out or not considered in this House, when the Senate Majority Leader has a Bill that needs to take priority over another that is sponsored by a Member.

Let all the Bills be considered. If there is need to merge the Bills, let them be merged, but giving priority to some Bills and leaving others has left me on the platform. I have really felt bad that my Bill was here before last year, yet it has not been considered. When Bills from the National Assembly come here, you see people, in the form of Senate Business Committee, decide on what to pick and what to leave.

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

Sen. Shiyonga: Mr. Speaker, Sir, my Bill was on KEMSA---

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

Sen. Shiyonga: My point of Order is that we collapse that thing even if it is a Bill sponsored by the Senate Majority Leader and find a way forward.

Thank you.

The Speaker (Hon. Lusaka): The Senate Majority Leader, there is another intervention.

Sen. Omogeni, you have the Floor.

Sen. Omogeni: Mr. Speaker, Sir, last week, on Thursday, you set a precedent by extending the life of Parliament by one more Sitting, which is today. The reason we adjourned is because we had business proceedings all the way to about 9.30 p.m.

The reason we adjourned to today is that we wanted ample time to have a Motion for Adjournment moved for us to get an opportunity to make our remarks. That was the main reason we adjourned to today. However, looking at the Order Paper, it has been packed with a lot of Business; sending an indication that you want to take us through the same drill that we went through last week on Thursday.

We all watched on Television when the National Assembly did their Adjournment; it was very orderly. They had very lean business that proceeded between

2.30 p.m. and 3.30 p.m. At 3.30 p.m., the House adjourned and moved the Motion for Adjournment. Members of the National Assembly had adequate time to make their remarks on the Floor.

Mr. Speaker, Sir, if you take the Order Paper as it appears today and take us through this Business this morning and in the afternoon, we will be taken through the same scenario we were in last week on Thursday. I do not know what wisdom is guiding the Senate Majority Leader to pack the Order Paper with all these Bills, when the House agreed that we just come here and look at the debt ceiling, and move the Adjournment Motion.

Mr. Speaker, Sir, I would also like you to make a ruling on the Bill that has just been moved by the Senate Majority Leader. I was serving as the Chairperson of the Law Society of Kenya when the Kreigler Committee that was looking into the cause of the 2007 electoral violence went around the country and prepared a report. I sat in that Committee. The Kreigler Committee recommended that we should not entertain amendments to election laws later than six months to an election.

The amendments that we have here dealing with the election campaign financing and election amendment Bill are dealing with registration of candidates for positions of governor, Senate and all the other nomination have already been finalized. What is really the wisdom of us to come here to debate Elections Amendment laws 47 days to the elections? What is the wisdom?

I want you to rule whether even if this Bill is moved through Second Reading, the Committee of Justice and Legal Affairs and Human Rights will have time to retreat, carry out public participation and present a report to the Floor. It is not possible.

I want you to rule on that, so that we do not spend a lot of time on this matter in vain. I would like us to concentrate on the Business that made us adjourn on Thursday; the Motion for Adjournment.

The Speaker (Hon. Lusaka): There is another intervention by Sen. Madzayo.

Sen. Madzayo: Bw. Spika, Bunge la Senate lina Mswada kama hiyo hiyo ambayo ilitayarishwa na Sen. Olekina na ajenda ni sawa na ile ilioko katika Mswada uliotoka katika Bunge la Kitaifa. Je, tutazingatia Mswada ambao umeletwa na Sen. Olekina hapa Seneti au tuangazie ile ambayo inaletwa hapa na Kiongozi wa Waliowengi?

*(The Senate Majority Leader (Sen. Poghiso)
consulted the Chair)*

Bw. Spika, ninataka nikiongea unisikilize maanake ninaona Kiongozi wa Waliowengi anaingilia kati. Naomba Kiongozi wa Waliowengi akae chini kidogo kama mtu mwingine anaongea, kama ilivyo sheria ya Bunge.

The Speaker (Hon. Lusaka): The Senate Majority Leader, take your seat.

Sen. Madzayo: Bw. Spika, sio heshima hata kidogo. Kama mmoja wetu anaongea lazima wengine wote wakae.

Bw. Spika, nilikuwa ninasema ya kwamba hakuna faida yoyote itakayoongezeka katika yale mageuzi ambayo anataka sisi tujadiliane hapa leo.

Wiki iliyopita, tulihairisha tukiwa na nia moja ya kuja hapa leo; kuja kuzungumzia yale yote tuliyoyafanya katika muhula huu wa miaka mitano ndani ya

Senenti. Kwa hivyo, huu Mswada unaoletwa hivi sasa ukae kwanza. Usiruhusu na hivyo ndivyo ninavyokuomba ukate hii kesi.

Asante.

The Speaker (Hon. Lusaka): The Senate Majority Leader, you still have to wait.

There is another intervention by Sen. (Dr.) Mwaura.

Sen. (Dr.) Mwaura: Bw. Spika, tumetoka kuwa na hoja ambayo Kiongozi wa Waliowengi ameorodhesha ile miswada ambayo tayari tumeweza kupasisha. Sasa hivi, kuna miswada tofauti ambayo ipo kwenye ratiba yetu sasa hivi ya Shughuli za Bunge na uratibu huo ndio mara nyingi utatumiwa kupasisha sheria ambazi sio nzuri kwa demokrasia na nchi.

Ninaunga mkono kwamba tumeshapatiwa wasia na Tumehuru inayosimamia Uchaguzi ya kwamba miezi sita kabla ya uchaguzi hatuwezi kubadilisha kanuni za mchezo wa uchaguzi. Hatuwezi kubadilisha kanuni sasa hivi. Tayari watu wameshaorodheshwa, hata leo Saa Sita, majina ya wagombea viti itachapishwa katika Jarida la Serikali.

Itakuwaje sasa hivi tunaanza kuzungumza kuwa kuna sheria ya vile ambavyo tutatumia fedha za kampeini na pia kuna miswada miwili?

Kuna Mswada kuhusu walemavu ambao umepita kiwango cha pili na sasa tena kuna mwingine kutoka Bunge la Taifa. Naomba tuomalizie kwa sababu leo ni kama siku ya kufunga shule - tunamaliza muhula wa Bunge - ili tusonge mbele.

Tayari, ripoti imeshachapishwa kuhusu mambo mengine kama Kiongozi wa Waliowengi alivyosema. Kwa hivyo, inabidi tusonge mbele kwa kuwa wengine watakuja kuendelea kutoka pale tutaachia.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, proceed.

Sen. (Dr.) Zani: Mr. Speaker, Sir, it is important to put issues into context. What we need to do is try and move these Bills to the point of voting before the Senate goes on recess *sine die*, but we only have today. That will happen if we have the numbers. If we do not, then it will not happen.

We have heard from the National Assembly that an initiative is being put into place to ensure that most of the legislations do not start from the beginning come the next Parliament. We cannot foretell what the future holds, but if that is true, it means that if we push these Bills to the maximum point, then it will be easier to have them in place later on.

(Sen. (Dr.) Mwaura spoke off record)

Mr. Speaker, Sir, I have my right to speak. I can hear Sen. (Dr.) Mwaura saying “no,” yet I have my opinion.

At the end of the day, the only issue is numbers. What we are doing holds merit, but we should have done it earlier.

Sen. Omogeni pointed out that we cannot make laws 60 days before elections, and that is right. However, some of the laws that we make are for posterity. It is just that we do not know what the future has in store for us. It is true that we are supposed to go on recess today *Sine Die* – we will talk about that – but we also have an Order Paper in front of us. For me, it is the technicality of not having the numbers. If we get the numbers, then it will be good.

When you look at all these Bills on the Order Paper, they are Bills that Members have spent a lot of time in constructing. For example, we have the Lifestyle Audit Bill by Sen. Farhiya, which is just waiting to be voted on. Let us take into consideration the efforts that Members have made.

We have about 16 Bills that Members have put enormous efforts to. They have worked in committees and at individual levels and have presented them in various committees and sessions.

Mr. Speaker, Sir, I agree with what one Senator said. At one point or another, we hope that these Bills will come into fruition. Most of these Bills are for and pro-devolution, especially the ones the Senate has come up with. Most of the issues in these Bills need to be addressed by the counties.

I hope that the team that will be here will push, so that especially those Bills that have progressed to the National Assembly do not die. It would have been a nice and tidy finish if we voted for the Bills in the Senate. If we are unable to vote, we pray that they will not fall completely when we go on recess *Sine Die*, but they will progress if the two Speakers will agree, as I heard the Speaker of the National Assembly, Hon. Muturi, suggest.

Let me now talk about the situation we are in now. When Senators who are here come back to Senate, they should push for these Bills. We have the Social and Humanity Bill that was introduced in the Eleventh Parliament. Sen. Halake tried to push it, but it did not see the light of day. Sometimes it is impossible to see the Bills through.

Mr. Speaker, Sir, let us balance all these issues even as we discuss the importance of *Sine Die* recess. That is true because you said that we should meet and do that. However, if we can kill two birds with one stone, that will be the best way to go, but it will be based on the technicality of numbers. With the morning and the afternoon sessions, we can do quite a lot.

I thank you.

The Speaker (Hon. Lusaka): Let me give guidance on this. I agree with the contributions that have been made. We did not adjourn *Sine Die* last Thursday because we wanted to give Members ample time to say bye, especially those of us who will leave the Senate and go to other stations. It is important that we have time for that.

Therefore, I rule that we conclude everything else by 3.00 p.m., so that from that time onwards, Members will have an opportunity to make their contributions before we adjourn *Sine Die*. It is so directed.

Senate Majority Leader, you may proceed.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, the Order Paper is a product of the SBC and not by the Senate Majority Leader. That should be understood.

This Bill is here courtesy of Sen. Olekina. I do not expect Sen. Olekina to come back here and say that we should---

Sen. Olekina: On a point of order!

The Speaker (Hon. Lusaka): What is your point of order because we have to move?

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, it better be a point of order because sometimes I know---

Sen. Olekina: It is not that sometimes you know.

Mr. Speaker, Sir, you gave a ruling on this matter. Therefore, it is hypocritical for the Senate Majority Leader to reinvent the wheel. I objected to this Bill on the basis that it had already progressed. My argument was enhanced further by the argument of Sen. Omogeni and other Senators. Bringing the matter again after you have given directions, is taking us back.

I have no problem if your direction is that we continue and finish the business. I sit on the SBC and we agreed to have these here, but that does not mean that my mind is static. The more I thought about it, the more I felt it was worthless for it to continue being on the Order Paper because we have another Bill.

However, Mr. Speaker, Sir, since you gave the direction that we should move forward, why should the Senate Majority Leader point a finger and say that I should not raise these concerns? My mind is not static. The more I think about it, the more I think it is irrelevant for it to continue being there.

Mr. Speaker, Sir, you should repeat your directive, so that we do not go back and forth.

The Speaker (Hon. Lusaka): Sen. Olekina, my directive was clear. Proceed, Senate Majority Leader.

Sen. Olekina: Maybe it was not clear to the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghiso): Mr. Speaker, Sir, who is now going back? It is not me because you have allowed me to speak.

Let me use this opportunity to inform Members that the reason we are using this morning session is to enable us have the Motion to go on recess *Sine Die* in the afternoon. We will use that time in the afternoon.

Mr. Speaker, Sir, I want to continue from where I had reached. I was explaining what is in the Bill. Clause 2 proposes to amend Section 2 of the Act by deleting the definition of “expenditure committee,” which has been defined.

In the old Act, “expenditure committee” means a committee established by a candidate, a political party, or referendum committee, to regulate spending by a candidate, a political party or referendum committee during an election or referendum campaign period, as the case may be.

Clause 3 of the Bill proposes to repeal Section 7 of the Act, which provides for the establishment of a party expenditure committee and its functions.

Clause 4 of the Bill proposes to repeal Section 8 of the Act, which provides for the establishment of an independent candidate, expenditure committee and its functions.

Clause 5 of the Bill proposes to repeal Section 9 of the Act, which provides for the establishment of a referendum committee, expenditure committee and its functions.

Clause 6 of the Bill proposes to repeal Section 10 of the Act, which provides for submission of expenditure reports to a political party and the Independent Electoral and Boundaries Commission (IEBC) by a candidate.

Mr. Speaker, Sir, this seeks to make amendments to make sure that we smoothen the path for financing elections.

Clause 7 of the Bill proposes to amend section 16 of the Act, which provides for the disclosure of funds by deleting the requirement to issue receipts for any contribution exceeding Kshs20,000, keeping of records of *harambees* and disclosure of funds.

Clause 8 of the Bill proposes repealing Section 17 of the Act, which provides for surplus campaign funds. Section 17 requires a candidate, political party or referendum

committee to notify the Independent Electoral Boundary Commission (IEBC) of any surplus funds within three months after an election or referendum. It also specifies where such surplus will be channeled to.

In the case of a political party campaign finance committee and the party candidate, to the political party and in the case of an independent candidate or a referendum committee, to a charitable organization.

Clause 9 of the Bill proposes to repeal Section 21 of the Act, which provides for dispute resolution. The Section provides that any person may launch a complaint with IEBC alleging a violation of the Act. The IEBC may on its own investigate the violation of the Act.

Clause 10 of the Bill proposes to repeal Section 25 of the Act, which provides for the registration and dissolution of expenditure committees. The Section provides that IEBC shall prescribe the procedures for registration and the solution of expenditure committees.

Clause 12 of the Bill proposes to repeal Section 27 of the Act, which provides for an audit of accounts relating to campaign expenses. Such accounts may be audited by the Auditor-General on request by the IEBC.

Clause 13 of the Bill proposes to repeal Section 28 of the Act, which provides for claims and objections to any other related to campaign financing expenditures submitted by a candidate political party or referendum committee.

Clause 14 of the Bill proposes to amend Section 29 of the Act to empower IEBC to make regulations of auditing of accounts relating to campaign financing and the procedures for making claims, objecting to any matter relating to campaign finance expenditures.

Mr. Speaker, Sir, as we had agreed in the SBC, we are trying to bring both Bills to the level of Division or Third Reading, then, we can now bring them together to the final division.

It is important for us to support this Bill as we go into campaigning and remove those unnecessary conditions for a candidate that make them difficult. Some of these things may not even be possible. However, for the future, we are not legislating for ourselves; we are legislating also for the next House and posterity.

With those few remarks, I beg to move and request Sen. Farhiya to second.

The Speaker (Hon. Lusaka): Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. Regardless of what time we bring a Bill, our Bills have to go back to National Assembly before. Since this one has already gone through the National Assembly and it is in the final stages, if we want it to go through, we need to support it.

I beg to second.

(Sen. (Dr.) Mwaura stood in his place)

The Speaker (Hon. Lusaka): Order, Sen. (Dr.) Mwaura. Take your seat, or do you want to freeze?

(Question proposed)

The names have been here. I do not know whether Senators want to contribute. Sen. Charagei, do you want to contribute?

Sen. Cherargei: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Okay, proceed.

Sen. Cherargei: There is a problem with that microphone at the Dispatch Box.

Mr. Speaker, Sir, I rise to oppose The Election Campaign Finance (Amendment) Bill, (National Assembly Bills No.37 of 2021).

(Loud consultations)

Mr. Speaker, Sir, I need your protection from the Senators who are consulting.

I rise to oppose it because of the fact that under the Kriegler Report, after 2007/2008, we were advised that some of the election laws and replacement of commissioners in IEBC should be done six months before the general election.

The fact that this amendment comes at this time is bad timing. It has come on the day the Senate is supposed adjourn *Sine Die*. Some of us are keen. Sometimes, this opportunity can be used to pass laws that contravene, or in a way, do not augur well with the country.

We had an opportunity to do the Election Campaign Finance (Amendment) Bill, before. The Bill by Sen. Olekina is in the Committee of the Whole, and it does not make sense at all. This is the wrong timing. The IEBC is readily preparing itself for the general election, possibly on 9th August, 2022. Therefore, it is not in good faith that we are discussing this Bill at this stage.

Look at the time that we will need to allocate to ensure that this Bill goes through our colleagues, Senators, because most of them are either in the villages or in towns campaigning.

Secondly, I want to make an observation that Sen. Shiyonga said about us. I hope that this will not be the tradition in the next Senate for us who will remain here. We normally give priority to the Bills from the National Assembly, yet whenever our Bills go there, they stall, are alleged as money Bills, or they plagiarize our Bills. They ‘steal our Bills’. That is why they reproduce them.

I hope that the next Speaker and the Senate will ensure these things do not happen.

Finally, I have seen the amendment to the principal Act that deletes Section 16. It states that-

“(1) A candidate, political party and a referendum committee shall disclose the amount and source of contribution received for a campaign for a nomination, election or referendum as the case may be.

(2) A candidate or a political party referendum committee that fails to disclose funds or donations as required under this Act commits an offense”

I hope that the promoters of the Building Bridges Initiative (BBI) are listening to this. This is because up-to-date, no one has told us how much funding was used for the BBI charade that we saw across the country.

It is alleged that more than Kshs10 billion was used for BBI, which ended up being declared null and void and unconstitutional by the Supreme Court of Kenya and all courts across the country. Therefore, if this Bill was to pass in the next House, it is important that in the future, we shall not be treated to a circus, where a few people use State resources to push for a referendum.

We are seeing some people use Government resources and vehicles to campaign, which is illegal. This law will allow proper accountability mechanisms. Therefore, when people fundraise or donate to a campaign, they must disclose who they are.

Sometimes, the people who fund some campaigns of our colleagues at the county and national level want to run the Government and promote State capture and push for business interests. Therefore, the disclosure of sources and contributions of donations is very important, so that our people know that, for example, Sen. Ngugi received donations. We need to know: is it from the State coffers, who gave it, from which source and what was the purpose? Therefore, we will be complying with leadership and integrity.

I have heard people complaining that some individuals who are running for the highest offices and county offices are misusing the resources of the State. I hope that when this Bill comes into law in the next Parliament, it will cure this. As a matter of moral authority, even without passing this law and in the spirit of leadership and integrity, we should protect public resources that have been assigned to us.

Mr. Speaker, Sir, I do not know whether this is in law, but I saw an article in the newspaper that presidential candidates are being given special utility vehicles, for example, SUVs. I do not know whether in future we need to capture this in the law so that presidential candidates are provided with security services round the clock

For instance, they are given SUVs and funding. However, we must be told how they get that access to such State facilities and resources to use for campaigns. We do not want to blur the line between the campaign for individuals and where State resources and facilities are being used.

I think the enactment of Clause 16 is very important. However, I wish it would have come earlier when the BBI promoters were moving round the country using State resources where it was alleged that they spent more than Kshs10 billion campaigning for it.

Clause 14 is amending Section 29 of the Principal Act that prescribes the manner of audit of accounts. It is interesting in Kenya because when you attend a fundraiser you take tea with your supporters in the village. All of us are actively campaigning. However, I do not know how the Auditor-General will come and audit this with the issue of 'spraying' the ground *ama Kuchunga* ground. I do not know how that audit will be done by the Auditor-General because whenever one campaigns this aspect must be practical.

Whenever you go to a fundraising as a candidate and you host people in your home for consultative meeting, they end up taking *chai and mandazis*. You also hire tents and public address systems. We need to be certain how those issues are audited. Does it mean that whenever you want to give food, handouts, stipend or to provide transport, you must provide receipts to the Auditor-General? I think that is the elephant in the room because you have to disclose the source of your funding. The question here is how do you spend it and how much do you give to your supporters? How do you audit it?

We used to love our former party so much before it died a death that we cannot explain on the Floor of the House. I know my brother Sen. Ngugi Isaac is alleging that it is alive, but some of us cremated that party long time ago. For example, the Orange Democratic Movement (ODM) and Jubilee have been funded for the last five or ten years through the Political Parties Fund. Who accounts for that funding?

For instance, how do we audit Jubilee party, which is collapsing to make sure that the money does not end up being used for the campaign the way we are seeing today? The law should have included all this. This Bill should collapse the way it is today. We need to fine tune so that if a party is funded, we know where they put those funds.

In any case, does the law allow us to use those funds to campaign? Are those funds audited? I think that is where we must agree on the placement.

The clause further prescribe the procedure for claims objecting to any matter related to campaign finance expenditure submitted by a candidate, political party or referendum committee. Therefore, even during the BBI, the Committee that was concerned and the promoters should have given the Auditor-General the receipts and the expenses to show where they got the funds from, how it was used and whether it was audited.

Mr. Speaker, Sir, as I conclude and reject this Bill, I call upon Independent Electoral and Boundaries Commission (IEBC) to continue being vigilant. They must ensure people who hold offices and those who have access to State resources, including the security agencies, do not end up using them unduly and unfairly to campaign for some people.

We saw the other day in Jacaranda grounds when the Kenya Kwanza were holding their rally, the police out of complacency ensured that the violence thrived. We must agree---

The Speaker (Hon. Lusaka): Sen. Cherargei, you know you are talking about very many things. So, you begin to lose us.

Sen. Cherargei: Mr. Speaker, Sir, I was just concluding.

The Speaker (Hon. Lusaka): No, but you are concluding on a wrong note.

Sen. Cherargei: Since you had said there was leverage today, I was just urging IEBC--- I do not know whether it was applying to specific Members or all of us?

The Speaker (Hon. Lusaka): No, leverage does not mean we suspend the Standing Orders. You need to be relevant. You are bringing issues of Jacaranda.

Sen. Cherargei: I was just concluding, Mr. Speaker, Sir---

The Speaker (Hon. Lusaka): Okay, conclude.

Sen. Cherargei: Mr. Speaker, Sir, we are in the campaign period. Therefore, these election laws in a way should assist in the smooth running of the election. I am urging the IEBC to be more vigilant, especially during this electioneering period.

Mr. Speaker, Sir, I think this Election Campaign Bill should collapse today as it is. Let us wait for the next Parliament to fine-tune some of those issues. I can see Sen. Omogeni smiling because some of his party ODM members and leaders were allegedly involved in such situations.

Mr. Speaker, Sir, I oppose this Bill. I call upon the National Assembly to---

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

The Speaker (Hon. Lusaka): There is a point of order. Proceed, Sen. Omogeni.

Sen. Omogeni: Mr. Speaker, Sir, Sen. Cherargei is a lawyer. Sen. Faki tells me he is a junior lawyer admitted one year ago. However, there are some dropping of names that happens on the Floor that can send a wrong message, especially when my name is being cited by Sen. Cherargei.

Mr. Speaker, Sir, you heard him cite the name Sen. Omogeni and some ODM leaders in the mix when he mentions something about Jacaranda. If you read the

HANSARD, you cannot pick what he is saying. I do not know what Sen. Cherargei took this morning. However, if he wants to make a point about Sen. Omogeni and any leader in ODM, can he be specific so that I can respond to him?

Otherwise, he seems to be really mixed up this morning. I do not know what he took.

The Speaker (Hon. Lusaka): Let us now listen to Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, I was trying to follow Sen. Cherargei and I was getting high. I was wondering whether he smoked some marijuana in the morning or what. He was not making any sense and he was completely incoherent. I did not know what he was talking about. He says Sen. Omogeni, Jacaranda and everything. Seriously, can we just remain relevant?

Mr. Speaker, Sir, I think this leeway you are giving us sometimes is messing up everything. I do not have a problem legalising marijuana I think it is a good thing. However, appearing that you are smoking it, maybe we should give you a bottle of Glenfiddish it may clear your head.

The Speaker (Hon. Lusaka): Sen. Cherargei, I want to agree with what the Members are saying. Be clear in what you want to say and please conclude so that we make progress.

Sen. Cherargei: Mr. Speaker, Sir, it is dangerous that you are likely agreeing with them that I am smoking marijuana. I do not know whether you are agreeing on that part because I do not smoke anything. The only smoke I smoked is when I was cooking in the village kitchen.

I said "allegedly." I think Members should listen keenly and carefully.

Finally, I do not want to drag this issue because we have a heavy agenda ahead of us. I oppose this amendment. It is wrong in timing and not made in good faith. Let us collapse this Bill until the next Session of Parliament then we can have an opportunity of going through it.

I know the Senate Majority Leader, God willing, will be around so he can remain as an institutional memory and representative of West Pokot County to ensure this issue is put to conclusion in the next Session of Parliament.

The Speaker (Hon. Lusaka): Okay. Proceed, Sen. Omogeni

Sen. Omogeni: Mr. Speaker, Sir, I sympathize with the position that the Senate Majority Leader is in this morning. Ordinarily, this is something that we should applaud and say that it is a good Bill and we support it. However, the only problem is the timing at which this Bill is coming before us.

Going through the Election Campaign Financing Bill, there is nothing much one can say about it because it is amending principally Section 16 and Section 29 of the Act. As I said, the problem is the timing. We are in the middle of a fairly heated campaign period between two very strong contestants for the presidency. We do not want to send the wrong signals to the public that we are trying to bring laws to try to change the rules of the game midway. That is the major problem.

Mr. Speaker, Sir, I did say earlier that the Kriegler Commission that was here in 2007 when I was serving as the President of the Law Society of Kenya (LSK), if you read through the report, it did warn us that we should be very cautious and even reluctant to amend any election laws six months to the elections. The reason was that any time you

try to amend any sections of the elections laws; your opponents think you are being mischievous. They read mischief even if there is nothing.

Speaking from this side of Azimio la Umoja; at a time when the whole country is almost making a conclusion that Hon. Raila Amollo Odinga will be our next president, why do you want to amend these laws to give credit to our opponents who may say that we want to change the election laws to frustrate them? There is really no need to do that.

Secondly, I hope the next leadership will treat Senators differently. This is a Bill that came from the National Assembly. I do not know why we want to be treated like people who are here to sanitize, push forward and process anything that comes from the National Assembly. Any time we send a Bill from the Senate to the National Assembly, they take time to go through it, they do not rush it. It is sent to the relevant Committee and a report is tabled on the Floor before that Bill is considered.

We want to process this particular Bill on the Floor of the House even before the relevant Committee has taken views from the public, and complied with the constitutional imperatives of public participation and presented a report on the Floor for consideration. That opens up these amendments to challenge from our courts of law. We know what the courts have said over and over again, that you cannot ignore the concept of public participation in legislation.

I would have wished that those who will be lucky to come back to this House will have more caucuses from either the majority side or minority side. Some of the things we are saying on the Floor would have been dealt with at a caucus level. If we had a caucus of the majority side and a caucus of the minority side, some of these issues could have been discussed and a way forward agreed on. The risk we are in is that if we proceed with this Bill this morning, the only option we have is to tick the box and state that a Bill came from National Assembly came before us and we voted on it yet we have not had in-depth consideration of the Bill.

We have not had public participation on it. We have not also received and considered public views. That is not the way we should conduct our business. We should send a very strong signal to the National Assembly that we are not paper pushers here. Any Bill that comes from the National Assembly must also get the input of Senators. We must also go through it and improve it where we can. In fact, there are some clauses that we can reject as a Senate.

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

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

Mr. Temporary Speaker, Sir, I would plead with the Senate Majority Leader to consider dropping this amendment for now. The proposals are good, but this can be done in the next term. You do not want to introduce obligations for candidates, 46 days to the elections. You are trying to place obligations on candidates to disclose how they raised money for nominations and yet nominations have already been done. What is the purpose of bringing a law when the purpose it is intended to serve is already done?

I do not think there is any party that is undertaking nominations. The law will not even allow you to do it. That is done. It is also trying to address referendum. That can also wait. We are not going to have any referendum before we go to the elections. I agree

that this country needs a law for referendum, but that can be done by the next Parliament. The 13th Parliament can address some of these issues. So that we do not create any impression to the public that we are trying to change the rules of the game midway. I propose that this amendment be dropped so that the rules of the game remain as they are. Anything that needs to be changed can be addressed in the next Parliament.

I thank you.

Sen. (Dr.) Mwaure: Thank you, Mr. Temporary Speaker, Sir. From the onset, I rise to oppose this Bill for the following reasons:

First, in 2013 soon after the 11th Parliament was constituted, this same Bill was moved by Hon. Priscilla Nyokabi in the National Assembly. I was privileged to be part of the proceedings and the aim was to immediately have this Bill in place in readiness for the 2017 General Elections. Senators, you know that this Bill is a constitutional Bill. It is one of the Bills that should have been put in place in good time for enactment so that then it facilitates the democratic project and that people would have a fair level playing ground with regards to how we finance our elections.

Having said that, there were some very progressive amendments that were proposed in it that are now the subject of deletion as elucidated by the Senate Majority Leader. For me, that is retrogressive. It is actually stunting our progression because there is a provision, for example, that any monies that are surplus can be taken back to the party to help the special interest groups to participate more effectively in politics.

Interestingly, this Bill is supposed to ensure that we have a ceiling of the amount of money each aspirant and/or candidate, and particularly candidate in that regard would use it any given election. That is very progressive because when you do not cap how much people are supposed to spend, then it appears that any seat is available to the highest bidder. Indeed, that has been the history of our country.

There is a direct covariance between the amount of money a candidate spends and the likelihood or probability in the chance to win a given seat. It may be advantageous to an incumbent because of the fact that you have public money or the gravitas to do so. However, it does not necessarily espouse good leadership because then those who have good ideas may not necessarily see the light of day if they do not have the opportunity to run effectively because of the high cost of campaigning.

In 2017 when I was running to be the Member of Parliament for Ruiru Constituency, I spent over Kshs30 million in the campaigns.

One of my competitors ostensibly spent about Kshs50 million and another one Kshs80 million, totaling around Kshs160 million. That Constituency has 160,000 voters. It translates to about Kshs1,000 per voter.

The cost of doing election under the IEBC is about Kshs2,500 per voter. Therefore, elections campaign financing is a twin-track approach. It is the amount of money that the State spends in terms of ensuring the IEBC conducts its affairs. However, the amount of money that any candidate spends with regard to their own campaigning.

Mr. Temporary Speaker, Sir, this is a very weighty matter. It is an important cog in our democracy. It needs to be very well thought out. I see the amendments so proposed by the National Assembly as only trying to clear some bottlenecks that will become extremely difficult to implement.

In 2017, for example, the IEBC hurriedly asked Members of Parliament (MPs), aspirants and everybody who was running for office, to provide for accounts and their

finance committee. There was a jam at the Anniversary Towers as people tried to fulfill this requirement. I was part of it.

We had to sit in the National Assembly and suspend the law so as not to apply in the 2022 General Elections. I am not very certain that Parliament has got power to suspend a law. That is a lacuna in law, but I stand guided. This is my 10th year in Parliament, but I have not seen any provisions in the Standing Order, yet that is what sufficed.

Here we are, 47 days to the general elections and we are being asked to amend the Election Campaign Financing Bill. At the same time, our colleague, Sen. Olekina, has several amendments. At this point, we cannot even tell whether the amendments of the National Assembly and those that Sen. Olekina is proposing, are speaking to the same issue, sections and what have you. It is not apparent.

Mr. Temporary Speaker, Sir, it is a legislative procedure that when we do a Second Reading of any Bill, there should be a report of the relevant Committee. However, the Justice, Legal Affairs and Human Right Committee has not interrogated this Bill.

There was an assertion by my good colleague, Sen. (Dr.) Zani, my fellow Ford Foundation International Fellowships Programme (FFIFP) fellow, that we should push the Bill only to the extent that we start from where we left. I think she is confusing. When a term of Parliament expires, so do the Bills. So, it does not matter how much you push. As long as it does not go to the Third Reading, then it does not see the light of the day. I have just come from a meeting the Personal Assistant (PA) of the President here and asked him what---

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

The Temporary Speaker (Sen. Kinyua): What is it, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, is it in order for Sen. (Dr.) Mwaura to misconstrue my words, whereas I was very clear that the Speaker of the National Assembly has made this as a proposal?

It is clear to all Senators that our Bills die at the end of the Session. Given that many of the Bills had not been finished, there was a proposal that maybe it is possible to proceed with them. I presented very accurately and I hope he heard me very accurately.

Sen. (Dr.) Mwaura: Thank you, Mr. Temporary Speaker, Sir. Those are new Standing Orders from the National Assembly. They will be passed and apply in the next House. As it were, they do not have the same concurrence with the Senate. I do not think we can say that based on the proposal of the Standing Orders of another House, we should anticipate that Bills will not die at the end of the term of the Parliament.

In fact, I agree with that proposal. It is a novelty. On one hand, that proposal that Bills should not die with the term of Parliament, will see many of the Bills not die. However, I hope it will not be an excuse for people to become like a dicycle. That you know that either way, even if you stay in Parliament for 10 years, a Bill will have to pass in some way.

I am one of those who have proposed the highest number of Bills. Nine Bills, but most of them have not seen the light of day. It would be very advantageous if those Bills were to see the next Parliament. Without belabouring the point, it does not help that when we are just about to have a Motion of Adjournment *Sine Die*, that we should be discussing a Bill that would ideally be applicable maybe in this general election.

This is a Bill that many civil societies have been pushing to improve on how we get our leaders. That, the best leader in this country should not be the wealthiest. That the most competitive aspirant or candidate in any position, should be the one who can bribe voters; do some razzmatazz here and there; and crowd out those people with good ideas of good pedigree who can move the country forward. If that were to be the case in a country like the United States of America (USA), Barrack Obama would not have become president.

Mr. Temporary Speaker, Sir, looking at what the Senate Majority Leader is proposing, on one hand, I bemoan the fact that this Bill has been mutilated by the amendments. At the same time, time is of essence. I believe it should be interrogated by the next House, so that we ensure that we do not pass laws and then start asking where we were when it was passed.

The fact that this is coming the last day of the Senate, it is suspect and sinister. I do not think it is of good intention. That also applies to all election related laws that are populating the Order Paper. We cannot move ahead and pass amendments without the advice of our Committee. What wisdom will we be using?

We will just be relying on saying amend, delete and repeal. In the end, we will have a shell of a Bill. It will then become another onerous task of trying to populate the same Bill with amendments for it to serve the purpose which it was intentionally serving.

We need to ponder over whether it is possible to introduce a very progressive Bill, then it is mutilated? After that, you spend many years trying to amend the same, thereby clogging the legislative process. This also denies other more important Bills the opportunity to be debated and concluded? That is the case.

The Constitution of Kenya, 1963 was a very progressive one. Even the current Constitution is extremely progressive. However, in terms of the practice and statutory provisions, I think there is a claw back. I strongly see this amendment from the National Assembly as a claw back to the progress and the principles that we intended in having our Elections and Campaign in Financing Act.

Just to remind Kenyans and for the record, that the aim of having this Bill is to curb the spending on elections. Last year, the IEBC had proposed ceilings that you spend certain amount of money to run for governor and Senator. There was a furor in the National Assembly. Those regulations were thrown out of the window. So, on what basis then are we having this Bill amended?

I passionately want to urge this House, that this Bill should be shelved. Let us not just do an academic exercise, expecting that a new Standing Order procedure originating from the National Assembly will save these Bills. We all feel the pain that most of our good and novel ideas have not seen the light of day. However, let us hope that there are many Kenyans who will, under wisdom and institutional memory of this House, ensure that such is properly debated at the beginning of the 13th Parliament for the benefit and common good of Kenyans.

That way, we will have a Bill that ensures the best leaders will not be precluded from running for office simply because they are not millionaires. We do not want to make Parliament a preserve of the few rich. Parliament should represent the mosaic of the people and should, at the greatest extent possible, ensure that the will of the people prevail.

Mr. Temporary Speaker, Sir, with those many remarks, I strongly oppose. This Bill should even be removed from the Order Paper.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. (Dr.) Mwaura.

Sen. Shiyonga, proceed.

Sen. Shiyonga: Mr. Temporary Speaker, Sir, this being the last day in the Senate, I am delighted for the opportunity to contribute to this important Bill. However, I oppose it because it has amendments that were supposed to have been adopted long time ago before we started campaigning. Bringing it when the Senate is just about to adjourn *sine die* gives us no chance of debating and passing it.

The essence of this Bill is introduce capping on the spending. It is trying to fix how much an individual can spend during the campaign period. The National Assembly Committee on Justice, Legal Affairs and Human Rights and the IEBC Chairperson, Mr. Chebukati, had a meeting Mombasa. However, the Committee on Justice Legal Affairs and Human Rights of the Senate was not represented; they were ignored. We have always said that any Bill that emanates from the National Assembly, it must have contributions from Senate. The concurrence of both Houses is cardinal. This is because a majority of Kenyans trust the Senate.

If we pass this Bill, we will just be rubber-stamping business on a Bill that has been processed by the National Assembly. We are told of proposals to delete add or substitute some sections. Sen. Olekina says the same Bill originated from here and urged us to consider the Bill that he sponsored. Why are we considering a Bill from the National Assembly in the Senate while allowing our own Bills to die?

I have just complained of Bills that are here that we were supposed to have considered. We also want to be counted as individuals who contributed to Bills that go to the National Assembly, passed and come back here, are passed and assented to by the President. If a Bill emanating from the National Assembly is being prioritized by the Senate Majority Leader to be discussed when we are just about to adjourn *sine die*, I do not think we are doing justice to the Senate.

Mr. Chebukati should also know that Senators have a Committee equivalent to the ones he took to Mombasa to discuss this Bill. Let him not ignore the Senate Committee on Justice, Legal Affairs and Human Rights. Let him not ignore the Senate. Both Houses have Committees on Justice Legal Affairs and Human Rights. When we are discussing we need to collapse all the thoughts and contributions into amendments that can help Kenyans.

Laws dealing with human rights and financing are crucial. We have billionaires in Kenya who are strategically ready to finance an individual to get some benefits. You can be a good leader without having to spend a lot of money in electioneering period. You only need to be in the right state of mind so that you lead Kenyans in the right direction. That is why I am here today defending the rights of Kenyans. We are wondering how some people have become billionaires all of sudden. Some start foundations in guise of assisting the poor, but they end up minting a lot of money they are now using to fund their campaigns. Nobody knows the sources of that money.

Why do we want to encourage the rich to be in Parliament to continue extortion Kenyans? I conclude by saying that all candidates need to be treated equally and with all due respect. All the amendments in this Bill are coming at the wrong time. They are the right amendments to the Bill, but this is not the right time.

We should not ignore the Senate because some of the amendments touch on the county governments. They have ignored county governments. They want us to discuss, amend and vote on the Bill yet they have ignored the counties. We are not going to go by what the National Assembly is directing us to do. I do not think we are going in the right way.

This Bill should die where it is.

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

The Temporary Speaker (Sen. Kinyua): What is it, Sen. Cherargei?

Sen. Cherargei: Mr. Temporary Speaker, Sir, is it in order for Sen. Shiyonga, the next Women Representative for Kakamega County, to say that the National Assembly is directing us? It is not good for that to go in the HANSARD.

The Temporary Speaker (Sen. Kinyua): Sen. Shiyonga, is that what you said?

Sen. Shiyonga: Mr. Speaker, he heard it wrong.

The Temporary Speaker: What did you say?

Sen. Shiyonga: Mr. Speaker, Sir, I said let them not start directing us by bringing amendments for us to rubber-stamp them. Not directing. Being the last day, I think he heard everything wrong. He should start by listening. I know he is going to be in the next Senate, he should start by listening. If Sen. Cherargei starts misleading the House by saying the National Assembly is directing the Senate, he will mislead everyone. After all, the National Assembly cannot direct the Senate. It cannot and it will never. We all contribute---

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

The Temporary Speaker (Sen. Kinyua): What is it, Sen. Cherargei?

Sen. Cherargei: Mr. Temporary Speaker, Sir. Is it in order for Sen. Shiyonga to allege that I am not listening to her submissions? How sure is she that I am not listening yet I am seated directly opposite her? She alleged that even the Committee on Justice, Legal affairs and Human Rights of this House should not be ignored.

I have been following and listening keenly. Is it in order to cast aspersions that am not a good listener? She should withdraw and apologise.

The Temporary Speaker (Sen. Kinyua): Sen. Shiyonga.

Sen. Shiyonga: Mr. Temporary Speaker, Sir, it is good that Sen. Cherargei has heard what I said.

I should conclude so that I give my colleagues time to speak. Mr. "Mung Beans Bill" here wants to contribute. It is very important---

(Laughter)

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

The Temporary Speaker (Sen. Kinyua): What is it, Sen. Wambua?

Sen. Wambua: Mr. Temporary Speaker Sir, have you heard how Sen. Shiyonga has referred to the Senator for Kitui County, as "Mr. Mung beans Bill". The people of Kitui County elected one Sen. Enoch Kiio Wambua, to represent them in this Senate. The only thing the Senator has in connection with the Mung Beans Bill is that he pushed diligently for the Bill, through this Senate, which has stuck in the National Assembly who have gone on *sine die* recess yet they expect us to pass their Bill today. Is she in order to refer to me as Mr. Mung Beans Bill?

The Temporary Speaker (Sen. Kinyua): Sen. Shiyonga, can you withdraw that statement and refer to the Senator for Kitui County properly?

Sen. Shiyonga: Mr. Temporary Speaker, Sir, I withdraw and apologise. It is just that I liked the Bill that he brought. The Mang'u Bill---

The Temporary Speaker (Sen. Kinyua): Sen. Shiyonga, are you talking about mangoes?

Sen. Shiyonga: Mr. Temporary Speaker, Sir, some Senators here went to primary schools while others went to academies. I have said the Mang'u Bill.

An hon. Senator: Mang'u?

(Laughter)

An hon. Senator: Mung Bill.

Sen. Shiyonga: Mang'u Bill?

(Laughter)

Sen. Shiyonga: What did he say?

An hon. Senator: Mung Beans.

Sen. Shiyonga: Mr. Temporary Speaker, Sir, I just liked it because---

The Temporary Speaker (Sen. Kinyua): What is it Sen. Wambua? Do you want to inform her?

Sen. Wambua: I have a point of information.

The Temporary Speaker (Sen. Kinyua): Okay, go ahead.

Sen. Wambua: Mr. Temporary Speaker, Sir, perhaps she was not referring to me because the Bill she is talking about is alien. I have no idea what she is talking about.

If she is referring to the *Ndengu* Bill, then it is called Mung Beans Bill and not Mang'u Beans. We do not have any anything called Mang'u Beans.

(Laughter)

The Temporary Speaker (Sen. Kinyua): Sen. Shiyonga, please, summarise.

Sen. Shiyonga: Thank you, Mr. Temporary Speaker, Sir, and Sen. Wambua. I liked the Bill and that is why I kept on referring to him.

As I conclude, I oppose the Bill. This is because it is past time. The National Assembly should not sit on our Bills but they want their Bills to come here so that we pass them when we are here to protect the counties and this Bill touches on the counties.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Shiyonga. Sen. Olekina, you may have the Floor.

Sen. Olekina: Mr. Temporary Speaker, Sir, from the outset, I rise to oppose this Bill for various reasons. Earlier on, when the Senate Majority Leader was moving the Bill, I rose on a point of order and objected to us discussing this Bill.

I have had time to reflect even if I sit in the SBC. I have looked at the content of the Bill which has been brought by the National Assembly. It is almost similar to the content of my Bill.

In moving the Bill, the argument advanced by the Senate Majority Leader was that if I want, I should make changes to this Bill because it has already been considered by the National Assembly. I think the net effect will still be the same.

My Bill, which is much thought through and extensive in terms of ensuring a fiducial responsibility on the part of candidates and political parties, will still have the same consequences. This is because once we look at it here, pass it and it goes to the Committee of the Whole, it will go to the National Assembly. If I make any amendments to the National Assembly Bill, it will still go back to the National Assembly which has now been suspended indefinitely.

There are various reasons as to why this Bill should not be considered at this time. Some of them have already been mentioned by my colleagues. I reiterate them.

First is the advice by the Kriegler Report in terms of dealing with election laws six months into an election and the danger involved in them. There is a lot of suspect. People read a lot of mischief in terms of the things we are doing.

Mr. Temporary Speaker, Sir, even if I was to be convinced that nothing will change, some of the amendments being proposed to that Bill might call for an amendment to the Bill after it has been passed, to suspend its implementation during this financial year.

Mr. Temporary Speaker, Sir, I do not see when we can set up campaign committees. In my Bill, I had dealt thoroughly with the issues of campaign committees. In fact, I should not be discussing my Bill when making reference to this Bill. However, when you even look at the weights of the Bills being brought, some of the amendments being proposed by the National Assembly are deletions yet a lot of money was spent for them to be considered. They were also taken through public participation.

The Senate Majority Leader (Sen. Poghismo): On a point of information, Mr. Temporary Speaker, Sir.

Sen. Olekina: First of all, do I want to be informed?

The Temporary Speaker (Sen. Kinyua): What is it, the Senate Majority Leader?

The Senate Majority Leader (Sen. Poghismo): Mr. Temporary Speaker, Sir, he has no choice. I inform him all the time.

(Laughter)

Sen. Olekina: You are my senior.

The Senate Majority Leader (Sen. Poghismo): Mr. Temporary Speaker, Sir, it is my pleasure to inform, Sen. Olekina, that his Bill is on its way coming. It is the next one and he can prosecute it there.

Mr. Temporary Speaker, Sir, I however, want to assure him that his Bill is safe. It is the next one coming and we will prosecute it to the end. There is no threat on his Bill. It will come before the House.

I do not understand the things that he is raising. He should just relax and wait for Order No.10. We are coming to it. That would be the best time for explanations.

Mr. Temporary Speaker, Sir, I just want to inform him that there is no threat to his Bill.

The Temporary Speaker (Sen. Kinyua): Proceed, Sen. Olekina.

Sen. Olekina: Mr. Temporary Speaker, Sir, I, definitely, would gain by listening to the wisdom of my senior, the Senate Majority Leader. However, the argument that I was trying to advance here is that, I do not see the need of us considering this Bill. I know that my Bill is safe because it has already passed the Second Stage. In fact, it is just waiting for us to vote in the Committee of the Whole.

If the Senate Majority Leader really wanted this Bill from the National Assembly to pass, he would have, first of all, looked at my Bill and see whether there was this business of cut and paste or plagiarism. This is because my Bill was moved in this House, almost a year ago, before the National Assembly Bill was moved.

My point is, this is the question that we must ask ourselves. Discussing this Bill puts us in a position of asking several questions instead of answers. What is the net effect?

Mr. Temporary Speaker, Sir, if I was to make amendments to the Senate Majority Leader's Bill, it would still be sent to the National Assembly for concurrence or mediation.

Now, if we just focus on a Bill that is sponsored by yours truly, a Senator from this House, it would go to the National Assembly and then they would bring it back here if they have amendments. We would either agree with it but if not, it will go back and forth into mediation.

Therefore, should we continue encouraging this behaviour of cut and paste or plagiarism?

Mr. Temporary Speaker, Sir, we have really put in a lot of time, sweat and hard work on Bills in this House.

(Sen. Poghio spoke off the record)

Mr. Temporary Speaker, Sir, can you protect me from the Senate Majority Leader? He has to speak through the Speaker.

(Sen. Poghio spoke off the record)

Sen. Olekina: No, I am not delaying my own Bill. My Bill is in the Second Reading. My concern is ---

The Temporary Speaker (Sen. Kinyua): The Senate Majority Leader, please, address the Senator for Narok through the Chair.

Sen. Olekina: Thank you very much, Mr. Temporary Speaker, Sir. I did not know that the Senate Majority Leader also needs to be informed. You know, I ---

The Temporary Speaker (Sen. Kinyua): What is it, the Senate Majority Leader?

(Laughter)

The Senate Majority Leader (Sen. Poghio): Mr. Temporary Speaker, Sir, I was advising Sen. Olekina to put on his shawl better. He should not be removing and putting it back.

I thank you.

The Temporary Speaker (Sen. Kinyua): Proceed, Sen. Olekina.

Sen. Olekina: Mr. Temporary Speaker, the Senate Majority Leader just wants to be a little mischievous.

I have no problem. Majority Leader, I neither believe nor subscribe to the school of thought where, instead of looking at the content of a Bill, you now go, copy paste and then because you can always bulldoze things or because the business brought by the Government normally takes precedence, we just agree to it.

I am asking relevant questions. The questions I am asking is: What is the net effect? If the Majority Leader really believes that the Bill sponsored by the National Assembly can become law, why does he not amend mine, then we send it there? The net effect is still the same. Should we encourage this behaviour of cut and paste? Why should we spend so much time, do a lot of research to come up with Bills that just end up dying in the pipeline?

The second issue, which is equally important for us to consider here, is the issue of public participation. Every Bill once introduced in this House must be committed to a relevant Committee. This Bill has not been committed to the relevant Committee. We heard the Member of the Justice, Legal and Human Rights Committee (JLAC) saying that they did not see it. If there is no mischief towards this Bill, let us shelve this it.

The National Assembly has already gone *sine die*. So, there is no way they can consider our amendments. So, in the interest of time because my colleagues also want to contribute to this, this Bill will not help this Country. It will require further amendments to Elections Laws in terms of its implementation.

We are already progressing very well towards election date of 9th August. What we need to be focussing on now is not even this Bill but to vote for the Bill which is already on the Committee of the Whole. We push it there.

On top of that, this afternoon, we now move into the other pertinent issues that brought us here such as the debt ceiling. We need to know whether we are creating a chaos heaven in terms of the debt or whether we are building a country that can help us.

I oppose.

The Temporary Speaker (Sen. Kinyua): Senator Enoch Wambua, you may proceed.

Sen. Wambua: Mr. Temporary Speaker Sir. For purposes of clarity, I also stand to object this Bill. With that, the Majority Leader maybe may want to ask himself several questions. How is it that he has introduced a Bill on the Floor of the House and every Senator that has spoken to this Bill has opposed it?

I want to say two or three things about this Bill in the interest of time. One, this is very curious. That we have two Bills on the Election Campaign Financing (Amendment) Bill (National Assembly Bills no. 37 of 2021) and The Elections Campaign Financing (Amendment) Bill (Senate Bills no.51 of 2021) speaking almost about the same issues, in the same Order Paper and following each other.

Really, I am not here to cast aspersions on the Senate Business Committee (SBC) or the Majority Leadership, but there must be a better way of processing Bills and the business of this House.

Mr. Temporary Speaker, Sir, maybe in the coming Senate and listening to the ground, I have faith and confidence that the Senate Majority Leader will be back here. I am not very sure what role he will be playing in next House but because I also have faith and confidence that I will also be here, perhaps, we need to have a conversation about

establishing party caucuses when it comes to processing of Bills. This will ensure that even as we prioritise what Bill to debate then it is clear across the divide where we want to go and how we want to get there.

Mr. Temporary Speaker, Sir, my colleagues have said and I want to add my voice to it, that this House, the Senate of the Republic of Kenya cannot and will not be used as a rubberstamp to just pass Bills and tick boxes, especially Bills that are emanating from the National Assembly.

Right now, the National Assembly has now adjourned indefinitely. I can tell you for free that when the National Assembly was adjourning, the least of their worries was the Bills from this House pending before them. For them, that is not something they even sit down to think about. They will process our Bills when they feel like doing so and will not process our Bills if they do not feel like.

Mr. Temporary Speaker, Sir, although the end game for these two Bills is basically the same, I would rather we spend the last day of the Senate debating and processing our own Bill on the matter of Election Campaign Financing (Amendment) Bill (Senate Bills no. 51 of 2021) and let this Bill from the National Assembly just die a natural death. That really should be the direction we should be taking.

There are a few things that this Bill is talking about that would have been relevant. I am very sure the Bill by Sen. Olekina who I am also told is likely to be coming back to the Senate if what I am hearing from the ground is anything to go by; there is this move to criminalise non-disclosure of the source of finances for campaigns. That is an important one. There are crooks in town who are getting finances from very suspect sources and during campaigns money launderers have a field day. This Bill is important to ensure that we are using clean money to do our campaigns. There is also reference to the referendum law.

One of the things that we have to do as a matter of urgency when we come back after the 9th August elections is to deal with legislation on referendum. I say that because I have an interest in it as the Senator of Kitui County. You will remember our own Committee on Justice and Legal Affairs has caused serious delays on my legislative proposal to create Mwingi County from Kitui County.

It will be important that we have proper legislation guiding referendum so that when we process that Bill because we will, then there is no hiccup as what process we will be able to use to realise the dream of the people of Kitui County to have a second county called Mwingi.

Mr. Temporary Speaker, Sir, with those many remarks, I oppose this Bill.
I thank you.

ADJOURNMENT

The Temporary Speaker (Sen. Kinyua): Hon. Senators, there being no other business, the Senate, therefore, stands adjourned until Tuesday, 21st June, 2022, at 2.30 p.m.

The Senate rose at 12.30 p.m.