

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 21st February, 2023***The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.**[The Deputy Speaker (Sen. Kathuri) in the Chair]***PRAYER****DETERMINATION OF QUORUM AT
COMMENCEMENT OF SITTING**

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I want the Clerk to ascertain whether we have quorum.

(The Clerk-at-the-Table ascertained that there was quorum)

Let us proceed.

The Senate Minority Leader (Sen. Madzayo): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Yes, what is out of order?

The Senate Minority Leader (Sen. Madzayo): Mr. Deputy Speaker, Sir, last week, we communicated to your Office with regard to changes made in the Leadership of the Minority side. From last week up to today, this Communication has been lying in your Office.

The Deputy Speaker (Sen. Kathuri): You are out of order, Senate Minority Leader.

The Senate Minority Leader (Sen. Madzayo): Can you give me a chance and listen?

The Deputy Speaker (Sen. Kathuri): We are on Order No.2, Communication from the Chair. So, what is out of order? Is it that I stood to give communication?

The Senate Minority Leader (Sen. Madzayo): Yes, that is what I want to---

The Deputy Speaker (Sen. Kathuri): What do you expect me to do when we get to Order No.2? Is it to sit or stand, so that I can give any communication?

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

The Senate Minority Leader (Sen. Madzayo): Mr. Deputy Speaker, Sir, do you hear these kinds of manners?

The Deputy Speaker (Sen. Kathuri): Senate Minority Leader, can you, please, have your seat? I am on Order No.2. You should expect any Communication from the Chair. You did not follow the sequence.

The Senate Minority Leader (Sen. Madzayo): Mr. Deputy Speaker, Sir, that is fine. Maybe I did not hear you properly. However, Sen. (Dr.) Khalwale should behave himself.

(Loud consultations)

COMMUNICATIONS FROM THE CHAIR

DEFERMENT OF COMMUNICATION TO THE HOUSE ON CHANGES IN LEADERSHIP IN THE MINORITY COALITION

The Deputy Speaker (Sen. Kathuri): Can the Senators kindly have their seats?

Hon. Senators, as you may recall, at the Sitting of the Senate held on Wednesday, 15th February, 2023, the Senate Minority Leader rose on a point of order seeking the directions of the Chair regarding a proposed change in the leadership of the Minority Party.

The Senate Minority Leader asserted that he had communicated changes in the leadership of the Minority side the previous day and was concerned that the changes had not been effected and communicated to the Senate.

The Senate Minority Leader, more or less, demanded that the changes be communicated at that Sitting, alleging that failure to do so portrayed badly on the part of the Speakership.

I will request Senators at the bar to come in and take their seats. This is a long Communication.

(Several Senators walked into the Chamber)

Hon. Senators, as you will recall, I undertook to issue a Communication on this matter. This morning, at a meeting of the Senate Business Committee, I indicated to the Committee that the Communication was ready and was to be communicated today. However, this afternoon at 1.15p.m. the Speaker of the Senate was served with an order from the Political Parties Disputes Tribunal (PPDT) in Political Parties Disputes Tribunal Number PPDTC/E003/2023; Fatuma Adan Dullo and Jubilee Party of Kenya vs Azimio la Umoja One Kenya Coalition Party, in which the Speaker of the Senate is enjoined as the 3rd Interested Party.

The Tribunal issued, amongst others, the following order:

“That pending inter-parties hearing and determination of the application, interim orders of injunction are hereby issued restraining the Respondent and Interested Parties, either by themselves, their servants, agents and/or any other persons acting on their behest from implementing the communication and resolution by the Respondent’s Parliamentary Group meeting held on 14th February, 2023 purporting to remove the 1st Applicant and other members of Jubilee Party from the position of Senate Minority Whip and Parliamentary Committees and its attendant privileges respectively.”

The matter is scheduled for mention before the Tribunal on 28th February, 2023 at 2.30 p.m., to confirm compliance and for further directions.

Hon. Senators, as you are all aware, Article 3 (1) of the Constitution places an obligation on every person to respect, uphold and defend the Constitution. Additionally, Article 10 of the Constitution includes, as one of the national values and principles of governance, the rule of law. Article 159 (1) of the Constitution further provides that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the Constitution.

Hon. Senators, respect of the rule of law and judicial authority are fundamental tenets of our democratic system of governance, which we are all, without exception, obligated to uphold.

Accordingly, in the circumstances, I hereby defer the delivery of the Communication on this matter pending the outcome of the proceedings that are before the Political Parties Disputes Tribunal or the vacation of the orders in Political Parties Disputes Tribunal Number PPDTC/E003/2023; Fatuma Adan Dullo & Jubilee Party of Kenya vs Azimio la Umoja One Kenya Coalition Party.

I thank you.

Proceed, Minority Leader Sen. Madzayo.

The Senate Minority Leader (Sen. Madzayo): Mr. Deputy Speaker, Sir, we asked for the communication with regards to the Minority side on the leadership changes. I am glad about what you have read. However, that Tribunal order has not been served upon myself, my brother, Sen. Olekina Ledama, or any side of the Minority. That is point number one.

Number two, you may ignore the Standing Orders, but you cannot ignore precedent. I lay down the precedent in a formal way. There was Sen. Murkomen, who is now the Cabinet Secretary for Roads, Transport and Public Works. Using the same provision, he was removed and in his place Sen. Samuel Poghisio took over the leadership. That was done by the Majority side.

In the last Parliament, Sen. “Kihika Kimani”, who was the Senate Majority Whip, was also removed in the same way, yet she was the first woman Whip in the Senate.

(Loud consultations)

The Deputy Speaker (Sen. Kathuri): Hon. Senators, the Minority Leader will be heard in absolute silence.

(Laughter)

The Senate Minority Leader (Sen. Madzayo): Sen. Susan Kihika Kimani was removed from being a Whip, and in her place, Sen. Kang’ata took over.

The same provision was used to remove Sen. Kang’ata, and we put Sen. Wamatangi. That was done by the Majority side. None of us commented on this side because that was a party issue.

Mr. Deputy Speaker, Sir, we find it strange that the same House is not using the same precedent now. Secondly, I have not seen the order myself. However, I can tell you one thing. I address you on this issue. The dispute here is between Sen. Dullo and her party; it is not between Sen. Dullo and the House. That is point number one.

Hear me properly. While I agree that the PPDT is the right avenue to go, it has absolutely no power to serve and stop the proceedings or procedures of Parliament.

(Applause)

That jurisdiction to serve Parliament has not been seen. This is the first time we are accepting this kind of an order in this House. As the Minority side, we want the communication we gave you last week, which you have stayed with for too long. I have never seen communications coming to the House having taken so long like this particular one. You are now denying the Minority side an opportunity to have their leaders.

Finally, looking at that order itself. It has all the parties, as she wanted to have them. However, it has not included the Deputy Whip. If you were to say that order is correct, then the position of the Deputy Whip is not mentioned anywhere in that order. Go ahead and communicate that the order of the Deputy Minority Whip is not covered.

Mr Deputy Speaker Sir, there are three arms of Government; the Executive, the Judiciary and the Legislature. There is also separation of powers, which speaks about the Executive, the Judiciary and the Legislature. The Political Parties Dispute Tribunal (PPDT) does not fall anywhere close to the Government. It is a Tribunal and cannot issue an order against Parliament.

(Applause)

Mr. Deputy Speaker, Sir, as it stands right now, your hands are tied. We go by precedent in the Senate and Parliament. Your brother, who is now the Attorney-General, hon. Muturi, was served with an order from the Judiciary not a tribunal. He said that he will not implement it, even though it was coming from the Judiciary. He said that the Government has separation of powers. That is one of the issues.

Finally, Mr. Deputy Speaker Sir, you have not made your Communication. You have gone ahead to communicate something else. You have pronounced yourself on the court order and not the Communication that came to you before. You have delayed it, and now, you have read to the House something that has come from PPDT.

Which Communication should you have communicated first? Should you have communicated the Communication that came from the Minority side or something that does not even affect you as the Speaker of the Senate? That is one of the issues.

I now want you to address the issue of the Senate Deputy Minority Whip, Sen. Sifuna, who is not party to all these. Confirm him as my deputy, so that this side does not stay without leadership.

I thank you.

(Applause)

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

The Deputy Speaker (Sen. Kathuri): Kindly, I am following a list here. You have already placed your card. Just have your cool and wait. I will give you that opportunity.

Senate Majority Leader, Sen. Cheruiyot, you have the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, we have gone full circle. This is a very interesting debate. If I were to be honest, and I want to be as candid as I can be, I am a bit confused on this topic.

I have defended both sides of this debate. I have been on the side of ‘Parliament cannot be injuncted’. I used to shout so loudly when seated where Sen. Kinyua is for many years because that was the vogue word. That is the thing that I heard when I first came to this House, being said during the impeachment of Deputy Governor Kiala.

We said that Parliament cannot be injuncted. Therefore, we enjoyed many times. Every time there were court orders that were brought before the Speakers, we took a very firm position until one bright sunny morning when the retired President Uhuru Kenyatta decided to remove our colleagues; Sen. Kihika and Sen. Murkomen. We rushed to court, secured the orders, brought them before the Speaker and then, we were quickly reminded that Parliament cannot be injuncted.

Here we are; a practice that we had established so strongly and used to be defenders of. Despite having a valid court order presented to the Senate Speaker, Hon. Lusaka, in minutes, received a phone call. I have never seen my good friend, the Speaker, shake as he did that morning. He quickly dashed to the House and communicated the changes. That gave me a different view to this conversation about ‘the House cannot -----

(Sen. Madzayo spoke off record)

(Loud consultations)

Why not keep your calm, my good friend, so that we do not ---

The Deputy Speaker (Sen. Kathuri): Sen. Madzayo, I request you to refrain from that cross-exchange.

The Senate Majority Leader (Sen. Cheruiyot): In fact, I intend to be very brief.

The Deputy Speaker (Sen. Kathuri): I am happy. Today, I want us to debate like hon. Senators. Hammer your points properly and sit down; another Senator will come and take over.

The Senate Majority Leader (Sen. Cheruiyot): Thank you. That is what I intend to do. I am sure he will have his opportunity to say what he thinks about this particular topic.

(Sen. Sifuna spoke off record)

If you can restrain, Sen. Sifuna because he stands straight and---

The Deputy Speaker (Sen. Kathuri): Senate Majority Leader, proceed and conclude.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, today we are here. There is a court order, but there is something different.

I have taken time to look at the court order. Unlike in all the previous court orders that were addressed to the Senate, this one specifically mentions you as the Speaker. That leaves me in a very interesting place.

It is not in my place to advise you. It is you to make your decision because you are the Speaker. However, I am not sure whether you want to proceed and defy a court order that is directly mentioning you as the Speaker and not the institution of the Senate, as has been the case previously.

The order that we were carrying then was to the Senate, but not directly to the Speaker. That was the leeway that the then Speaker used and said that, in any case, it was not him that has been mentioned.

Finally, I know my colleagues want us to debate this matter, and they are saying we should not involve yourselves. However, I agree with the Senate Minority Leader that there is precedent.

Hardly two months ago, the National Assembly was vetting Principal Secretaries. The Law Society of Kenya (LSK) moved to court on certain issues that they found to be wanting. What did your good brother in the National Assembly do? He lived up to the spirit of the Constitution, as was his interpretation, and waited.

The National Assembly was enjoined for about one month. In fact, the Government stayed for close to two months without Principal Secretaries because of a court order. The process was ongoing, but the Speaker said that, first, he is a law-respecting Kenyan. Two, he swore by the Constitution and, three, as somebody who campaigned and actively promised Kenyan, because there is a history in our country, when court orders were being ignored--- It was one of our campaign promises that, at least, for those on this side that we shall always respect court orders.

Mr. Deputy Speaker, Sir, you are being invited to tread on very dangerous ground, which is to defy a court order that is directly addressed to you. I leave it to your wisdom, but at least on this particular matter, I urge you take precedent from what your senior brother, the Speaker of the National Assembly, did when he was presented with a court order against the vetting of Principal Secretaries. He waited until that decision was vacated by the courts and the exercise was concluded.

In any case, I have seen that the order is for only three or four days. How long is that? Some of the points that my god friend, the Senate Minority Leader is urging can be made before that court. They have an opportunity to go and tell the court all those nice things that he is saying.

Indeed, he is right. I agree with him. You are not party to this dispute. These are divorce proceedings in the *Azimio* Coalition. You are neither one of the dowry negotiators who featured during the time that they were getting together, neither should you feature in their divorce. Unfortunately, your hands are tied. Therefore, make your decision, but be wise on how you go about it.

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, you have the Floor.

Sen. Omogeni: Thank you, Mr. Deputy Speaker, Sir. I was trying to rise on a point of order.

The Deputy Speaker (Sen. Kathuri): The Senate Majority Leader was also on a point of order. We are now prosecuting points of order.

Sen. Omogeni: Mr. Deputy Speaker, Sir, the point I wanted to raise is that as a House we are making reference to a court order, which the Minority side has not seen. However, it seems that the Majority side has a court order and know how it is worded. For purposes of fairness in the debate of this matter, if the court order was supplied to the Majority side, fairness demands that we should also be given a copy.

Sen. (Dr.) Khalwale, the issue I am raising touches on both sides; we need to see a court order. We have all lived in this country and there are some grounds which are too dangerous to take this country to. For example, the Deputy Speaker might be thinking

that the ruling he is reading today applies to the Minority side, but I am looking at the bigger picture.

We have sat here as Senators performing a critical duty of impeaching governors and have been served with court orders before. Speakers who have sat on your seat have ruled consistently that if we open it up to Kenyans to start serving your office with court orders, which you receive and come and make Communication, that is the day we will start killing this House.

Mr. Deputy Speaker, Sir, your office does not serve the interest of just one day. Your office should serve posterity. If you read our Standing Orders - and I am saying this with a very heavy heart because we are elected leaders from 47 counties with special interest Senators here - changing leadership is a very small matter.

I came here to debate a serious issue that transpired yesterday before County Public Accounts Committee (CPAC), where Kenya Revenue Authority (KRA) is levying distress on my County of Nyamira, for non-payment of PAYE for salaries for the month of December and January, yet my county has never received disbursement. Now, here, we are talking about useless court orders from a tribunal. Are we serious as Senators?

At one time, it took a day for the Minority side to remove Sen. Wetangula as their leader, and there was not so much hullabaloo.

If you read the HANSARD, when the Governor of Wajir was being impeached, we were served with a court order, not from a tribunal but the High Court of the Republic of Kenya. Since we respect the sovereignty of this House, we rejected that order. Where do you want to take us now? If we start setting a precedent that we will be receiving orders from a tribunal and you communicate from your chair, not even a County Assembly can do what we are doing.

Hon. Senators: Shame! Shame!

Sen. Omogeni: Mr. Deputy Speaker, Sir, let us be serious. If you look at the freedom of Parliament from history, there are days you could not stop hon. Shikuku, in the single party era, from speaking on the Floor because of the respect of the House. I have not seen the court order, but I am extremely saddened that the Senate of the Republic of Kenya can be enjoined by a tribunal, we receive an order and you make a Communication. What are we doing to this country?

If you read Standing Order No.103 - and I am happy that I am in this House with my colleague, Senior Counsel Sen. (Prof.) Tom Ojienda - it prescribes that even when there are proceedings that can be deemed to be *sub judice*, there is a way you bring those proceedings before the House. You are now talking about proceedings which have not been tabled in this House and we are debating a matter we do not know. I have not seen these proceedings and do not know who has filed them against who, but here we are debating. You should have procedurally asked the person who is affected by those orders, in line with Standing Order No.103, to bring the pleadings and table them before the House, then we debate to determine whether what we are about to debate is *Sub Judice*.

I respect the courts. I have been a lawyer for Sen. Cherarkey. When he was being shunned by everybody from the Majority side, I was the only one representing him in court at 4.00 p.m. I defended Sen. (Dr.) Lelegwe here, and I am a respected man in his county. I am standing here in defence of this House and the rule of law. I would say the same even if it was happening on the other side because I know the critical role that this

House plays. If tomorrow the Governor for Nyamira is summoned and he serves us with an injunction, then what will be my work as the Senator for Nyamira?

Mr. Deputy Speaker, I plead with you to reconsider what you are about to do for the sake of this country and House. Sen. Cheruiyot, I am pleading with you; do not look at these small fights here. Look at the interest of this House. Let us not kill this House.

I have said that we have precedent. Sen. Kang'ata was a Majority Whip. You sat and passed resolutions. The former Speaker was not even a lawyer; I am happy the substantive Speaker is a lawyer. Members of the Law Society of Kenya (LSK) are looking at him.

I once served as the chair of the LSK when the late Chief Justice of this Republic, Justice Gicheru, swore in the late President Kibaki at night. We told them that those things would come back to haunt him. When Kenyans enacted the Constitution 2010, a proviso was put in that Constitution barring the Chief Justice from doing the same. You must protect your office and the reputation of the office of the Speaker for posterity.

If there is any court order or pleadings, bring them to the House. Table them here, we debate and make a decision. We are a senior House, the 'Upper House.'

Senators, I rest my case.

The Deputy Speaker (Sen. Kathuri): Thank you.

Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my system never works, but my seat never moves.

(Laughter)

Thank you for this chance. I rise to agree with the Senate Minority Leader and the remarks by Sen. Omogeni. I am reflecting on the remarks by the Senate Leader of Majority.

Hon. Senators, Ladies and gentlemen, we have to be extremely careful. The doctrine of separation of powers in India has been followed by the Separation of Powers Act of India. Since this area is not clear, we have led the country to where we are now. We were not elected to come here and waste taxpayers' money discussing little things as to who sits in which Committee and representing which side of the House; we were elected to come here to do oversight, discuss the budget and represent our people.

I appeal to the chief administrator of justice in this country, hon. Lady Justice Martha Koome to make sure that such kinds of issues are discharged expeditiously.

Mr. Deputy Speaker, Sir, you are not to blame. There are court orders against you. What kind of a Speaker would you be if you were to defy courts? You cannot be known for that.

Sen. Omogeni knows that tribunals have the same powers as those of courts. If the Deputy Speaker defies the Tribunal, then he has no respect for the Lower, High, Appeal and the Supreme Courts. Let us be angry, but allow the Deputy Speaker to do what he is doing. He has been served. He should observe the rule of the law.

I need the Senate Minority Leader to give me attention. Sen. Omogeni, if you have to quote the precedents of this House, do us a favour. You have quoted precedents of Sen. Murkomen, Sen. Susan Kihika and Sen. (Dr.) Irungu Kang'ata. If you must quote, do not quote precedents that were occasioned by the infamous "handshake" Government.

The precedent you can quote, Senate Minority Leader, is the one that took place in the “lower” House, where the same courts, the way they have done, stopped the vetting of Principal Secretaries. The President and the hon. Speaker stopped, a ruling was made and the matter was unlocked.

Mr. Deputy Speaker, Sir, we invite you to use the precedent by Sen. Wetangula, the current Hon. Speaker of the National Assembly. Please, allow this matter to go the due process and then come back to us to give a ruling. We are with you and you are for us; we are for you; for the country.

Let there be no games played here. Let these things end quickly through the due process being respected instead of coming here, taking us round, walking out of the House; going to Kakamega over the weekend and singing to women. Let us finish it here.

(Several Senators stood on points of order)

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, do not be intimidated by me or the Senate Minority Leader. Walk the narrow path of the rule of law. There is a court order against you ruling on this thing. Wait. When it is discharged, do your work.

Mr. Deputy Speaker, Sir, do not listen to the point of order from the Senate Minority Leader.

The Deputy Speaker (Hon. Kathuri): Sen. Sifuna. Hon. Senators, if you have placed your card for intervention, kindly hold on. I am picking from what I am seeing.

Sen. Sifuna: Thank you, Mr. Deputy Speaker, Sir. Last week, I was getting hot and bothered about this matter. Now that I know exactly what is going on, I am just laughing. I have discovered that they are just basic political games. I would use the word ‘cheap,’ but people will jump out of their seats.

When I was elected, I came to this House thinking that I would be legislating, oversighting and representing my people of Nairobi. Last week, someone added that I have also come here as a student to learn. Therefore, I will also take this opportunity to teach the law that I know.

The Deputy Speaker (Hon. Kathuri): Hon. Sifuna, I reminded you in the morning that you are the Senator of my children. Teach them also how to represent. My children were born in Nairobi.

Sen. Sifuna: Mr. Deputy Speaker, Sir, I hope that your children are watching. I will be saying a few things, and I hope that I can inspire them to be future senators of Nairobi.

First, I am happy that we have come to this juncture. I was imploring you last week to get this matter out of your office, so that we can pursue the dispute between us and one of our Members in the proper forum.

I agree with Sen. Dullo on the action that she has taken. The proper forum for resolution of disputes between political parties and their members, or political parties and political parties within a coalition, is the Political Parties Disputes Tribunal (PPDT).

The Minority Side has been vindicated because we were telling the House last week that the Speaker has no role whatsoever in the disputes in the Minority Party. The Standing Orders require the Speaker to make a communication to the House upon receipt of this decision that has been made by the Minority Party, so that everyone is aware.

Secondly, jurisdiction is everything in law. Every single court and tribunal in this Republic has to derive jurisdiction from a specific provision; either of the Constitution or of an Act of Parliament. If the law does not give you jurisdiction, you cannot assume that jurisdiction by yourself.

The jurisdiction of the PPDT under Section 40 of the Political Parties Act is limited to the matters that I have alluded to; disputes among members of a party and a party, or a political party against another political party. That jurisdiction does not extend to a jurisdiction over disputes in this House. The Tribunal has no jurisdiction over the Senate.

Mr. Deputy Speaker, Sir, if you want to know that the people who went to the Tribunal in this particular matter are aware of that fact, the Speaker of the House is not a respondent in that matter. They are named as an interested party.

Thirdly, because of my nature as a fortuitous person, I have obtained a copy of that court order. A plain reading of the order has limited the matters before that Tribunal to the question of the seat of the Whip of the Minority Side. The question of the seat of the Deputy Whip is not a matter before the Tribunal and is not covered by that court order that you referred to.

The question should be if whether we can debate the legality of the order and whether the Tribunal can injunct Parliament. The court order has expressed itself to a specific matter. What difficulty did your office have in communicating matters not affected by that court order?

The Minority Side knowing how the court system works and how long justice takes in this country, are being told to wait until these matters are resolved at whatever stage. We know the decision will come from the PPDT and maybe Sen. Dullo might go to the High Court or the Court of Appeal as is her right; and these matters take time. We are being told that the Minority Side will stay without a Whip until that matter is resolved. It cannot be true.

In my submissions, I ask that you separate matters that are covered by these proceedings and the court order that was served upon you. If there are matters that are not covered by that dispute, make pronouncements on the leadership of the Deputy Minority Whip seat.

Lastly, we heard you being told that you should be afraid of some undisclosed consequences if you were to defy a court order. As a lawyer who did not waste time or sleep in class, I can assure you that the office is distinct from you. The office of the Speaker is an office with perpetuity.

It does not say on this order that if the Senator of Meru, hon. Kathuri Murungi, disobeys this court order, he will go to jail. There is nothing like that. I can assure you that because we have a battery of lawyers here. If there is any consequence that will come by virtue of you standing up for the dignity of this House, free legal services will ensue from the Minority side.

(Applause)

Mr. Deputy Speaker, Sir, I further point out that every time we argue with our colleagues in the National Assembly on which House is the Upper or the Lower one, we impeach our own arguments by making ourselves subservient to the National Assembly

every single opportunity we get. If precedent is set in this House, why are we being referred to the National Assembly?

The Senate is not a student of the National Assembly. We do not need to learn anything from them. We are okay and equipped with all the knowledge that we need as a House. Our precedent is that of the Senate. We do not need to be referred to any other House.

I join my colleagues who are insisting that we should be discussing serious issues. Every day I open my newspaper my heart breaks. The other day, we were told that we have 4,000 unemployed doctors in this country. Again, we were told that the same doctors that the Government has been unable to find work for are being imprisoned here by the Ministry of Health (MoH); saying that they cannot seek opportunities outside the country.

What sort of relationship are we in with our nation? The country refuses to provide an opportunity for you and then denies you an opportunity to look for jobs elsewhere. Those are the matters I was elected to discuss here.

Mr. Deputy Speaker, Sir, as I conclude, we in the Minority Side have no problem prosecuting this matter before the Political Parties Disputes Tribunal (PPDT). It is something over which we have experts. Sen. Osotsi wrote the book on how to deal with political parties at PPDT.

(Laughter)

We are well equipped on our side. We have no issues whatsoever. In fact, it is like trying to drown a fish. You have now put us in water. The PPDT is where we thrive. You cannot drown a fish in a pond. That is where we live. I am happy that the matter is before PPDT.

However, before we conclude that case, do not allow this House--- In our Constitution, this House has the powers of a High Court. In terms of the Judiciary, you are at the same level as a High Court. How can a Magistrate's Court issue an order directing the High Court on what to do? These are the questions to ponder.

Mr. Deputy Speaker, Sir, for that reason, let us not destroy this House. Give this House the dignity it has been given by those who came before us. Ensure that we are respected by all organs of Government and do the right thing. It does not matter how long it takes. You cannot impose leadership on the Minority Side.

The Deputy Speaker (Sen. Kathuri): Thank you.

Sen. Cheptumo, proceed.

Sen. Cheptumo: Thank you, Mr. Deputy Speaker, Sir. I am happy that our debate today is very sober. This is good because Kenyans are watching us.

I listened to your Communication carefully. It gave me the impression that you were ready to issue it before the House, but you were stopped by the court order.

Listening to the submissions by colleagues, I would like to refer this House to Article 2 of the Constitution. This Constitution is the supreme law of the Republic and binds all persons and State organs at both levels of Government.

Parliament, in my submission, is one of the State organs. Therefore, it is bound by this Constitution. I refer Members to Article 159(1) of the Constitution on judicial authority. It says:

“Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.”

Article 159(2) says:

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;”

Mr. Deputy Speaker, Sir, in 2010 when the new Constitution was inaugurated, I was serving as the Assistant Minister for Justice and Constitutional Affairs. I wish to submit that the framers of the Constitution intended to give authority to the High Court and the tribunals. The PPDT is an organ that has the power to issue orders, which, under Article 2 of the Constitution, should bind this House.

The Members from the other side say that this ought not to have happened. However, the decision they have made as a coalition is affecting the political rights of a Member of this House. That is why that Member has gone to court to secure that right, especially if it is infringing in a manner that she feels is unconstitutional.

There is the balance between what we want to achieve as political parties and political rights of an individual. I submit that you are within the constitutional principle.

Members have spoken about what happened in the “Lower House”, when the Permanent Secretaries (PSs) could not be vetted. I want to add another situation that arose. Until last week, the Chief Administrative Secretaries (CASs) recruitment process was also stopped. That is another case I can talk about. Of course, that was against the Executive. This Constitution cannot be applied selectively, but fairly and constitutionally, if it is protecting the interests of a Member.

I listened to Sen. Omogeni during his submissions and he pleaded with you not to demean the status of the House. There is nothing worse than for the Speaker of this House to disobey court orders, from an institution that has the power to issue a court order that can stop us.

It is important that we allow this process to proceed, so that they go back and handle their matters. As Sen. (Dr.) Khalwale said, we have only two or three days, and we will be back. I want to be part and parcel of a House that is obeying court orders, fulfilling the spirit of Article 2 of our Constitution. Nobody, from the other or this side, should ever make you feel that you did the wrong thing today in issuing the Communication that you prepared.

Mr. Deputy Speaker, we have been arguing about Standing Order No.23. However, it does not give a specific timeframe within which you are supposed to communicate a decision after receiving a letter from the other side. From the position of the Standing Orders and the perspective of the Constitution, you are within the law. I submit that your Communication should be respected by all of us and by this House.

The Deputy Speaker (Sen. Kathuri): Thank you.

Sen. Olekina, proceed.

Sen. Olekina: Mr. Deputy Speaker, Sir, I want us to be very sober today and prosecute this matter in a process that would set a precedent and being futuristic.

I want to pick it up from where my colleague, the Senator for Baringo County, left. I want to borrow from what is commonly referred to as the doctrine of pleasure. This doctrine is derived from the English Common Law. It states that civil servants serve under the pleasure of the crown.

A Whip is defined as a person who enforces the parties' policies. A Whip is not there under their own volition for them to be able to determine how party policy should be adhered to. When a Whip does not rally fellow legislators to vote on matters according to the party policy, that Whip may lose that position. In fact, in other jurisdictions they are even expelled from political parties.

(Applause)

Mr. Deputy Speaker, Sir, I believe that this is what informed the drafters of our Standing Orders when they drafted Standing Order No.23. The Chair's hands are completely tied because a Speaker is not a prefect of political parties.

(Applause)

The Standing Order is very clear because it is written in simple English language. It states that upon a decision being made by the Minority Party under the Standing Order, the decision of the Party shall be communicated to the Speaker in writing together with the minutes of the meeting at which the decision was made.

Hypothetically, if this Senate is to entertain injunctions by a tribunal and the tribunal does not set the agenda or the policy of a political party, what exactly are we saying? Are we saying that tribunals are going to define what the Azimio la Umoja One Kenya Coalition Policy, Procedures and Constitution shall be? Then, what form of Government or country are we going to be living in?

Mr. Deputy Speaker, Sir, I want to refer back to the doctrine of pleasure. As a Whip, I serve under the pleasure of my party. This cannot be applied with the same logic as to the doctrine of pleasure when it comes to the civil servants in this country post the 2010 Constitution.

In fact, any moment leadership is changed, just so that you know you serve under the pleasure of your political party. When the leadership is changed, you lose everything. You lose your staff and they go home. Additionally, you lose all the privileges because you have gone against your party policies.

Mr. Deputy Speaker, Sir, loyalty to parties is not something which I should be lecturing this House on. This House already has precedents. Any time a Member disobeys his party policy, he is removed from that position.

What we should be doing is debating on very important issues. Today, Kenyans were demonstrating outside this House because of how difficult it is to live in this country. Mr. Eric Omondi was tear-gassed outside here. Kenyans are demonstrating everywhere saying "it is becoming unbearable to live in this country."

(Applause)

We are paid by taxpayers. I do not want to weigh into the debate of who is a shareholder of this country and who is not.

(Applause)

The truth of the matter is that there are very important things that are now being set in abeyance until we can resolve this matter of leadership.

Mr. Deputy Speaker, Sir, I would like to beseech you not to allow party politics to determine the agenda of this House. As I said, party policy must be respected. I speak with a lot of authority and out of experience because this thing has happened to me.

In the last Parliament, I was elected by my colleagues as the Chair of CPAIC. However, my party decided that I was not the right person to serve as Chair of CPAIC, that is when I started researching on the doctrine of pleasure. I went to court and got orders. However, Parliament made it difficult for me because it did not want to come in anywhere.

Mr. Deputy Speaker, Sir, when I say Parliament, I mean the Secretariat in Parliament. I was trying to convene meetings, but I could not do so because my party said that I was not going to serve as the Chair of that Committee.

Mr. Deputy Speaker, Sir, when that was happening, I was humbly requested to check from the dictionary the definition of 'loyalty.' When I did, I went back and pleaded with my party leader to forgive me for having crossed the line.

(Laughter)

As I stand here and speak with authority on that subject, the Chair should not be invited to prefect political parties. This is because when we go for Parliamentary Group (PG) meetings we do not discuss anything to do with the Senate and laws. The first thing which is always precedent is how we will work and stay together as brothers and sisters. Do we still believe or subscribe to the same school of thought?

I want to remind you that a Whip is an enforcer of political party policies and procedures. A Whip loses the position when they disobey or act against the political party. As I said, a Whip serves under the pleasure of a political party.

Finally, I have heard my good brother Sen. Cheptumo alluding to natural justice. He was talking about the rights of that politician. I want to submit to him that when it comes to political parties he has no right. The right is defined by your Constitution which you signed. It is not even the Kenyan Constitution. It is the Constitution of that political party. Loyalty to the party is the number one principle when it comes to the doctrine of pleasure. I can tell you, you will learn.

Mr. Deputy Speaker, Sir, I beseech you to please, follow the Standing Orders so that we can now discuss matters which are important to this nation. Under Standing Order No. 23, your hands are completely tied. I am sure the Secretariat can advise as much. Therefore, issue the Communication and leave the matters of political parties to be dealt with by politicians outside this House.

I thank you.

(Applause)

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I want to give another round of few minutes to two more speakers from each side. They will each have three minutes. We are almost in the second hour.

Proceed, Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Deputy Speaker, Sir. I have been listening keenly. As a House, it looks like we are going to a full circle. This is because some of us were subjected to similar issues during the previous session. Nonetheless, I want to make a few points.

One, the wordings of Article 3 of the Constitution states, “defence of this Constitution.” You have an obligation, as the Speaker and a House, to defend the Constitution.

Every matter that comes to the House is considered on a case by case. Standing Order No.1 sets the precedence and traditions of Parliament. Therefore, you must consider Article 10 on national values and principles of good governance. The rule of law forms the biggest basis of value.

Today, the Minority side is trying to lecture us about disobeying the rule of law. It has accused the Majority side and Government of disobeying the law.

Mr. Deputy Speaker, Sir, I remember when our brothers were de-whipped. Personally, I was removed during a press conference. So, mine was worse. At least, for others, the Communication came to the Floor of the House.

I am surprised at my senior brother, Sen. Madzayo. There was no ruling that came from that Chair. The then Speaker, Hon. Lusaka, just noted the changes. He did not even give a ruling.

I remember the former Senator of Elgeyo-Marakwet County, who is currently a Cabinet Secretary (CS), requested for the ruling, up to the last, when we were leaving the House before going for the general elections.

This habit of disobeying court orders was a symptom and behaviour of the “handshake” Government, where the Minority side thrived. They did not obey any court orders. In as much as we appreciate the distinction of separation of powers, another arm of Government should not disobey court orders.

(Amber light was switched on)

The tribunals are under Article 159 and 169. I have tremendous respect for my learned seniors, Sen. Sifuna and Sen. Omogeni. However, intellectual dishonesty should not take us to make comments that are convenient because of political expediency.

Sections 40 and 41 of the Political Parties Dispute Tribunal (PPDT) provides how disputes can be resolved within three months. Sen. Sifuna has said that it is their field, where they thrive.

Mr. Deputy Speaker, Sir, we are not saying that you should prefect or manage the affairs of political parties. However, you have an obligation to protect the law. If this divorce of Azimio One Kenya Alliance is going to be messy with a lot of causalities, whichever directions it takes, you should not be part of it. Protect and follow the law for the benefit of all.

(The red timer went on)

Mr. Deputy Speaker, Sir, I agree and support your decision. Let the Minority side be patient. Patience does not hurt anybody. When changes come, you will communicate as per the law, so that we do not run this House, the way all of us want.

Mr. Speaker, Sir---

(Sen. Cherarkey microphone was switched off)

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Cherarkey. Proceed, Sen. M. Kajwang’. Use your three minutes carefully.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, this is not a legal matter. It is a political matter, clothed as a legal matter. We are behaving, not unlike many county assemblies, which in the last 10 years have built a strong precedence in removal of Speakers, Deputy Speakers and Leaders of the Houses.

Mr. Deputy Speaker, Sir, I have seen this in Homa Bay County Assembly. In the last term, they changed the Speaker four times, Leaders of Majority and Minority almost five times. Every time, they hid under legal terms like that which was used in your Communication.

Mr. Deputy Speaker, Sir, if you carefully read Standing Order No.23, which I have read up to the end, we are engaged in what Shakespeare would call, “too much ado about nothing.”

Once you receive communication of changes from the Minority, the Standing Orders do not require you to do anything. All you are required to do, is to receive. I have read Standing Order No.23.

I have heard the Chairperson of Committee on Justice, Legal Affairs and Human Rights Committee say there is an element of communication. It is not there. There is no communication. Probably, communication could be for peculiar reasons.

We acknowledge that the current Whip has her staff, current benefits and an office. Therefore, there has to be order in the manner which transition happens.

I believe the Minority side must respect and observe that order because the people working for the current Whip can easily work for the next Whip. The office and benefits the current Whip is enjoying must be dealt with in a manner that does not leave her feeling like she is being crucified by this House.

Mr. Deputy Speaker, Sir, we have a *de facto* and *de jure* Whip on this side. You can be legal, but illegitimate.

That is why the Senate Majority Leader got it wrong, on our weekend rallies. We are saying yes, Hon. William Ruto is the legitimate President, but he is illegitimate in our eyes. The matter of legitimacy was dealt with at the Supreme Court. The matter of illegitimacy is upon us. You can have a legal, but illegitimate child.

(Amber light was switched on)

Even on our side, there is nothing that stops Sen. Olekina, from assuming the duties of a Whip. All we need is a Communication from the Speaker or the Clerk, to ensure that there is a proper and orderly handover. I urge the new office bearers, to treat staff that they will find in those offices well.

Finally, we are watering down this Senate. This is our Second Session and we have not processed any single private Members Bill. My Bill is on the Order Paper. Release us, so that we can start discussing issues.

Mr. Deputy Speaker, Sir, if you observed, the President went for the induction of the National Assembly. He sent hon. Gachagua to the induction of the Senate. That tells you, where the Government of today, puts the Senate in the pecking order. The President took time to be with governors in Naivasha, but sent “Riggy-G” to be with Senators.

(The red timer went on)

That is the position we are putting ourselves in. Very soon, we shall be considered alongside county assemblies, if we continue squabbling instead of ---

(Sen. Kajwang's microphone was switched off)

The Deputy Speaker (Sen. Kathuri): Okay. Proceed, Sen. Mungatana.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, I thank you for giving me an opportunity to share my thoughts on this matter.

I am very worried, that we as a Senate, seem to be ploughing back our powers, surrendering them to the Judiciary. In the history of development of Parliaments, we have fought a long way and history can bear us.

The king in France used to say, "*l'Etat c'est moi*". I am the state. He used to be the personification of Parliament, Judiciary and Executive.

When the philosophers came and provided for separation of power, the parliamentarians continued to struggle to get their space. I want us, as a House, to stand very firmly and protect our space, not just as a Senate, but also on behalf of the other side.

I am reading Article 117 of the Constitution. It gives us an expanded power of debate within this House. This House has unfettered power to provide its proceedings with complete freedom. Total freedom of interference from the Judiciary and Executive. We must fight for that space.

Mr. Deputy Speaker, Sir, I invite you to look at Section 12 of the National Assembly (Powers and Privileges) Act which interprets Article 117 by further providing that no proceedings from the courts can stop what is happening in this House. We must fight for our space.

(Applause)

If we surrender this space to the courts they will take it because that is how power is. If we surrender it to the Executive, the Executive will take it because that is how power is. Power does not provide for a vacuum.

Let us take our power and not accept injunctions. I am wondering what will happen to us if all court orders came here and stopped debate. We would not be doing anything. Let us make our stand clear. Let us pronounce ourselves and say that the Senate will not be hindered by the Judiciary.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. Ogola.

Sen. Ogola: Mr. Deputy Speaker, I rise to add my voice to the discourse that has been going on here for the last four sittings. I shall start with the courts orders that the Majority side are asking you to respect; a court order which, to me, you have been waiting for. Reference has been made to the political right of a Member and that that right must be---

The Deputy Speaker (Sen. Kathuri): I beg your pardon, Sen. Ogola what did you say?

Sen. Ogola: I said that I am adding my voice to a discourse that has been before his House for the last four sittings; a discourse that was initiated by the Minority side, but largely now of interest to the Majority side.

(Laughter)

As we discuss this issue, I want to remind this House of very serious issues that Kenyans have interest on that we should be discussing. There is the hot issue of the plight

of Early Childhood Development Education (ECDE) teachers in this country. This House should be taking this whole afternoon and all this time we have been using to discuss the political issue to solve the challenge of the ECDE teachers that have a struggle with our governors and the Salaries and Remuneration Commission (SRC).

Kenyans are struggling with a number of issues. Counties have not received their money. I was in some conversation where some of the counties got their last disbursement in October. That should be an important issue that should be discussed by the Senate. I need to mention the issue of drought. Forests are burning. Of concern is the grade six pupils in secondary school and while grade eight is in primary school yet there are no teachers to teach.

As we struggle with the issues of political parties and trying to get a Member to have their political right in the way they want, I remind you that the same Member is recorded here having said that the Minority side should take their leadership.

Mr. temporary Speaker, sir, ---

(Microphone was switched off)

The Deputy Speaker (Sen. Kathuri): Thank you. Your time is up.
Proceed, Sen. Kinyua.

Sen. Kinyua: Asante, Bw. Naibu Spika. Kwanza nataka kumweleza Kiongozi wa Walio Wachache kwamba “mhini na mhiniwa njia yao ni moja”. Nimeketi na kusikiza kwa makini na jambo linalonavutia pande zote mbili ni amri ya mahakama. Mahakama ikitoa amri yake, ni vizuri sisi sote tuiheshimu na kuifuata. Tukiwa watu wasiofuata na kuheshimu amri ya korti ambayo imetolewa vizuri---

Bw. Naibu Spika ulichofanya kizuri ni kutosema chochote. Ulitoa amri ya korti. Seneta wa Kaunti ya Nairobi amesema na kutaja Seneta wa Kaunti ya Nyamira kuwa wao ni watu waliobobea katika mambo ya kufuatilia mahakama. Ni lipi linaolowasumbua kwa sababu kulingana na ujumbe uliotoka katika mahakama umesema kuwa tarehe 28, Machi watu watakusanyika pale na uamuzi dhabiti utatolewa.

Hawa wote ni mawakili waliosema; Sen. Omogeni, Senior Counsel na Kiongozi wa Walio Wachahce wapo pale vile vile. Ni lipi hili ambalo ni zito zaidi linalofanya waende mahakamani na kutoa ushahidi badala ya kuja hapa na kuongea. Kulingana na kanuni zetu za Seneti Spika hana macho wala masikio.

Bw. Naibu Spika umeleta ujumbe kutoka kortini na hawa ndugu zangu ambao ni mawakili - naona Seneta wa kutoka Kaunti ya Makueni akitingiza kipaza sauti chake - wanapaswa kwenda mahali panapofaa. Wanafaa waende mahakamani na wayatete mambo wanayosema. Ujumbe huo utaletewa kama ulivyoletwa hapa na utausoma. Ikiwa huo ujumbe utasema vile wanavyotaka kuwa kiranja wanayetaka aweze kuwepo, wewe hauna budi kufanya hivyo.

Ni Jambo la kuudhi sana katika nchi hii ikiwa tutakuwa hatufuati amri za mahakama. Nimeketi katika Bunge hili kutoka muhula uliopita na nikasikia Sen. Orenge akisema mahakama ndio suluhisho ukiwa umetendewa jambo. Ikiwa Bw. Naibu Spika hafuati maagizo ya korti zetu zinasema sisi hatuna budi---

Sheria tunazotengeneza hapa zinapaswa kupelekwa katika korti zetu ili uamuzi ufanywe. Itakuwa ni jambo la kuvunja moyo sana na lisilo manufaa ikiwa tutatunga sheria halafu korti ambazo tunataka kupatia mamlaka ya kufanya kazi zake tunakosa

kuzitambua wala kuziheshimu. Sisi kama wabunge tunafaa tuwe tunasema mambo na kuyaamini.

Nakusihi ikiwa korti limesema---

The Deputy Speaker (Sen. Kathuri): Samahani, kuna ombi limefika hapa la dharura kutoka Sen. Crystal Asige.

Sen. Crystal Asige: Thank you, Mr. Deputy Speaker, Sir. I am generally a very sensible-thinking human being. My life has taught me the things that are important and the ones that can fall to the side. I have not said a word in the last four sittings because I have not been given an opportunity to prosecute the issues that matter to the constituents that I am here to represent. Persons with Disabilities (PWD) are not getting their voices heard because we have been sat here for days over an issue that the Standing Orders say is quite a simple matter.

Mr. Deputy Speaker, Sir, you start every session with a prayer. I take that prayer very seriously as I am sure the rest of us do, to look at matters in front of us fairly because the Lord himself has been pleased to put us here to represent Kenyans. How I wish that you would have given the Communication as per the Standing Orders last week, as quickly as you have done today on the Political Parties Dispute Tribunal (PPDT).

The word ‘divorce’ has been used severally by the Majority side. This seems like an analogy that I and we all have heard many times which is that; there is a divorce dispute. A couple has decided that for whatever reasons they are going to move on, but the neighbour who was not really involved in the matter has unfortunately been thrown into the issue.

Now the neighbour is involved in all that is ensuing afterwards. It seems to me that it was a simple matter of Communication that has now turned into burning the entire House down for no---

The Deputy Speaker (Sen. Kathuri): Sen. Crystal Asige you have one more minute kindly wind up.

Sen. Crystal Asige: Thank you, Mr. Deputy Speaker, Sir. It was a simple Communication that has now burned the House down. We are the “upper” House while the National Assembly is the “lower” House. However, it seems that the National Assembly is the lower House with an upper hand because of issues such as this that we are prosecuting that have really no consequence to the average Kenyan.

I beg that you do not let this issue carry on any other further because there are matters that are of much importance to Kenyans.

(The Red light was turned on)

They do not understand what is going on in this House. Let me be honest. We all know that. I pray that you will make the Communication, especially as Sen. Sifuna has said on the position Deputy Minority Whip if that has not been put in the PPDT.

*(Sen. Crystal Asige’s Microphone
was switched off)*

The Deputy Speaker (Sen. Kathuri): So, Hon. Senators, we have ventilated enough on this matter for almost one-and-half hours.

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

The Deputy Speaker (Sen. Kathuri): I will give you one and a half minutes.

Sen. Maanzo: Mr. Deputy Speaker, Sir, the only matter which has not been addressed is *sub judice*. Once a matter is already live here, then immediately the courts respect that and they do not interfere with the matter. Once a matter is already live in court, then the Senate cannot deal with it.

These proceedings were prosecuted yesterday and it is a matter of public notoriety even to the Tribunal that the matters were already live in the Senate. So, we will deal with this matter in court on 28th February. It is a matter of preliminary objection there in court. I am sure that the suit will be disposed of the same day.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Thank you, Senator of Makueni. That will actually relieve this Chair from all this agony. If you are in my shoes, you must know what I am carrying on my shoulders.

I can see today Sen. Sifuna is really sympathetic to me.

(Laughter)

As I mentioned, my children's Senator? I think moving forward now you should be my good friend.

(Sen. Sifuna spoke off record)

Hon. Senators, I think this matter should rest so that we make some progress with the other business of the day. I thank you most sincerely. This is because today we have exhibited good conduct as Senators. The country is happy for both sides. We have argued enough. Both sides have made their points and this is what is called now debate. This is the House of debate.

Sen. (Dr.) Oburu: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Senior, what is it again?

Sen. (Dr.) Oburu: Thank you, Mr. Deputy Speaker, Sir

(Sen. Mumma spoke off record)

The Deputy Speaker (Sen. Kathuri): Sen. Catherine Mumma, are you trying to compete with the elder? That you are complaining that I have given him a minute?

(Laughter)

The gods of the elders will curse you. So, just keep quiet.

(Sen. Mumma spoke off record)

Sen. (Dr.) Oburu: Thank you, Mr. Deputy Speaker, Sir, I am sorry. I am coming at the tail end of the debate. However, you have been very patient with us today and I commend you for that.

What we are discussing here is not legal or even in our Standing Orders. This is because the Standing Orders are very clear that once the political party has communicated, then the matter goes to the Speaker and he communicates the same. That is all.

However, the issue we are discussing here is more political than legal or even according to our Standing Orders. The political party which is Jubilee has clearly declared that they are supporting the Kenya Kwanza. Why should they stick to the side?

We are not going to be whipped by Jubilee because they have already decided to join the Kenya Kwanza. The reason is that Kenya Kwanza is poaching our Members from this House from this side

(Loud consultations)

They should stop this bad habit of poaching from our side. These issues we are discussing forth are because of interference by the Majority side politically. We are ready to face you politically, but you should not continue to interfere with our Members. You have already poached them and we have given them to you. So, why are you still interfering with us?

(Laughter)

Sen. Onyonka: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Sen. Onyonka, who are you informing? Sen. Oburu Odinga?

Sen. Onyonka: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): There is, however, no one on the Floor.

Sen. Onyonka: Mr. Deputy Speaker, Sir, just give me a minute. It is so important. I have been waiting, sitting here for the last three hours.

(Loud consultations)

The Deputy Speaker (Sen. Kathuri): Sen. Onyonka, just a minute. I will give you a chance---

(Loud consultations)

Sen. Onyonka: Mr. Deputy Speaker, Sir, I know that I should not be on the Floor when you are there, but gentlemen, relax. Take it easy. You are now in power. Power is transitory. Relax.

The Deputy Speaker (Sen. Kathuri): Order, Sen. Onyonka! Hon. Senators, I am making my second Communication.

VISITING DELEGATION FROM MOODY AWORI
PRIMARY SCHOOL, BUSIA COUNTY

Hon. Senators, in the Speaker's Gallery this afternoon, we have ten teachers from Moody Awori Primary School in Busia County who are in the Senate on an educational tour. I request each member of the group to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

- (1) Nobert Barasa Aperi- Headteacher,
- (2) Eunice E. Bwire- Deputy Headteacher,
- (3) Tollin F. Awino- Teacher,
- (4) John O. Onditi- Teacher,
- (5) Bonventure Luyemba- Teacher,
- (6) Bonface Wanjala- teacher,
- (7) Mulekhanu Ann,
- (8) Jackline Ngila
- (9) Vincent Oyobo Ochanjo - welfare and
- (10) Juma A.O. Josphat- Examination Council.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, wish them a fruitful visit.

I thank you.

Next order.

*(The Senate Minority Leader (Sen. Madzayo)
stood in his place)*

Who has given you the opportunity now Sen. Minority Leader? How can you just stand up and start speaking even without a microphone? Have your seat and just communicate appropriately.

*(The Senate Minority Leader (Sen. Madzayo)
spoke off record)*

The Deputy Speaker (Sen. Kathuri): I think that we concluded that order, Minority Leader.

*(The Senate Minority Leader (Sen. Madzayo)
spoke off record)*

Last week, I said that you cannot compel the Speaker to make decisions on the Chair.

The Senate Minority Leader (Sen. Madzayo): Do not lose your cool.

The Deputy Speaker (Sen. Kathuri): No. today, I might lose on you again.

*(The Senate Minority Leader (Sen. Madzayo)
spoke off record)*

The Deputy Speaker (Sen. Kathuri): No. You know I have been so lenient the whole of the afternoon and now you are taking me back again to the same thing we have concluded.

*(The Senate Minority Leader (Sen. Madzayo)
spoke off record)*

So, who is the owner of the Court order?

I did not draft the Court order. The same Court can clear him. You argue those issues in Court.

*(The Senate Minority Leader (Sen. Madzayo)
spoke off record)*

So who is making that judgment? Those are the issues you should do on Monday the 28th.

The court order is very clear and I am happy that Sen. Maanzo is very well-equipped with this information. He said that there are things you will do during the mention on Monday.

Next order.

The Chairperson, Standing Committee on Education, do you have your Papers to lay?

(Sen. Sifuna spoke off record)

Go to the Chairperson and kindly consult.

PAPERS LAID

REPORT ON THE COUNTY VOCATIONAL EDUCATION AND TRAINING BILL 2022 (SENATE BILLS NO.3 OF 2022)

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, the 21st of February, 2023.

Mr. Speaker, Sir, this is the Report of the Standing Committee on Education on its consideration of the County Vocational, Educational and Training Bill, 2022. (Senate Bill No.3 of 2022)

Thank you, Mr. Speaker.

(Sen. (Dr.) Khalwale laid the Report on the Table)

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

The Deputy Speaker (Sen. Kathuri): What is it, Sen. Sifuna?

Sen. Sifuna: Mr. Deputy Speaker, Sir, we appreciate that the Chair has been very patient and allowed debate. The question we are asking is; what was the point of all those

submissions? We only wanted your guidance on the question about the matters not covered by this court case. When will that communication be made?

(An Hon. Senator consulted the Chair)

Please, Senator, allow me to address the Deputy Speaker.

The Deputy Speaker (Sen. Kathuri): I am able to multitask. Proceed.

Sen. Sifuna: Mr. Deputy Speaker, Sir, we just want guidance on when the communication that is not covered by the court order will be made. That is all. We will go to the courts for the rest of the matters before the court. We have no problem.

(The Clerk-at-the-Table consulted the Chair)

The Deputy Speaker (Sen. Kathuri): Proceed.

Sen. Sifuna: Mr. Deputy Speaker, Sir, should I proceed? I am asking, when will the pronouncement or the communication be made over the position that is not covered by the court case? The court order is before you and the case is specific to the question of the seat of the Minority Whip. It does not cover the seat of the Deputy Minority Whip. When can we have that communication?

The Deputy Speaker (Sen. Kathuri): Sen. Sifuna, the issue of “when” is what has caused this problem. If there is anything that has not been covered by the court order, I will look into the court order and then communicate.

However, for the when and how, leave it to my Office to communicate. You also know that I do not work in isolation. I work with a team of experts who run the House. We will go through the court order and advice.

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

The Deputy Speaker (Sen. Kathuri): Sen. Osotsi, I thought you should now be crafting a communication because you are an expert in this matter.

(Laughter)

Sen. Osotsi: Mr. Deputy Speaker, Sir, I have had the benefit to look at the detailed orders issued by the court. In your Communication, you have somehow alluded to that court order being part of the documents guiding your decision this afternoon.

However, one important issue is that the detailed order seems to suggest that this House reviews the decision it has made in regard to the Senate Business Committee (SBC). I do not know how that will be done because you already decided. We now have a properly constituted SBC.

Mr. Deputy Speaker, Sir, by admitting that court order to this House, what is the way forward? That is why Sen. Omogeni was requesting that that order be tabled before the House and we discuss it. This is because there are some fundamental issues in that order which are going to affect this House fundamentally.

The Deputy Speaker (Sen. Kathuri): Sen. Abdul Haji, proceed.

Sen. Abdul Haji: Thank you, Mr. Deputy Speaker, Sir. I have listened to the proceedings and the submissions by Members. I do not want to correct my elder who has spoken before me and stated that Jubilee Party has been poached and moved to Kenya

Kwanza side. As a ranking Member of Jubilee Party, I make it very clear that we have not left the Azimio One Kenya Coalition Party.

(Applause)

It is also very imperative that we make it very clear as Jubilee Party Members, that we are founding Members of Azimio One Kenya Coalition. We have invested heavily in it. If anybody on our side has a problem with Jubilee Party, it is not for us to leave Azimio One Kenya Coalition. There is no way they can remove “us” from “us”.

Mr. Deputy Speaker, Sir, the bone of contention between us and our colleagues, is an ideological difference. You have heard very clearly from the distinguished Senator for Homa Bay County, that they believe the President and the Kenya Kwanza Government is a legitimate Government, but in their eyes, they are illegitimate. In Jubilee Party, we are arguing that the Kenya Kwanza Government and the President of the Republic of Kenya are legitimate through and through. That is the difference.

(Applause)

Sen. (Dr.) Khalwale: Tell them.

Sen. Abdul Haji: Mr. Deputy Speaker, Sir, the Senate Minority Leader is misleading the House by saying that the dispute in the Minority side, is between Sen. Dullo – the Senator for Isiolo County – and the Minority side.

First, they came for the Parliamentary Service Commission (PSC) seat. Then, they came for Sen. (Prof) Kamar in SBC. Now, they are coming for Sen. Dullo. Who is next?

Hon. Members: You.

(Laughter)

Sen. Abdul Haji: Exactly. Should we just sit aside and watch them cannibalise Members of the Jubilee Party, one by one? They then come to this House and say that the Speaker cannot referee between political parties, which is fair. If the Speaker cannot do it, the courts can do it. That is why Sen. Dullo and Jubilee Party went to court to stop this injustice going on here. We have not left Azimio One Kenya Coalition, but we have a difference.

I stood here last week and said that we should sit down as Members of the Coalition and iron out our differences. However, the Members do not want to do so. What choice are we left with? They cannot have their cake and eat it too.

Mr. Deputy Speaker, Sir, that is why we will stand with Sen. Dullo. They took our House---

(Loud consultations)

The two of us will stand and fight our case. It does not matter.

(Applause)

The Deputy Speaker (Sen. Kathuri): Let us hear from this other side. Sen. Cherarkey, you may have the Floor.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, I rise under Standing Order No.190 on the Senate Business Committee and its role; No.17 on the Conduct of business during vacancy; No.18 on Presiding in the Senate; and No.19 on Presiding in Committees of the Whole.

Mr. Deputy Speaker, Sir, you have ruled that you shall communicate. I am surprised because my friends – including Sen. Osotsi and the Senate Minority Leader – are alleging that they have not seen a court order. However, if you were keen, Sen. Sifuna was waving a court order.

(Sen. Sifuna spoke off record)

You used it when you are presenting yourself---

Mr. Deputy Speaker, Sir, protect me so that I prosecute my point. This intellectual dishonesty is unfair. You have given a ruling; why are they challenging your authority and yet, they want to use your authority to prosecute their agenda? It is out of order.

Mr. Deputy Speaker, Sir, you do not sit alone in SBC. The membership of SBC includes the Speaker as the Chairperson, the Senate Majority Leader, the Senate Minority Leader, the Senate Majority Whip and the Senate Minority Whip. So, if there is any issue that needs to be tabled or prosecuted through the normal procedures, it should be through SBC where you preside over.

They should not make the country believe you make decisions or carry out business in this House as Sen. Kathuri; and not as the House of the Speaker which has SBC.

Mr. Deputy Speaker, Sir, the point is that Kenya Kwanza, the ruling coalition, needs to be honest with this country. If we are not respecting the rule of law, then why are we here? Sen. Abdul Haji and Sen. (Dr.) Oburu are welcome to Kenya Kwanza as a ruling coalition. If the Orange Democratic Movement (ODM) wants to defect to Government, there is no problem because that is the essence of political parties' democracy.

Mr. Deputy Speaker, Sir, I am still on a point of order. I do not know why Sen. Olekina is getting agitated yet I listened to him.

In conclusion, let no one intimidate or challenge your authority. You are the absolute authority. If you have made a ruling that we proceed with SBC, so be it. Anybody who behaves in an unruly manner should be thrown out according to Standing Order Nos.123 and 121 just like what was done to me.

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I believe this issue is well placed where it should be. I will give Sen. Onyonka one minute to speak before we conclude on this matter.

Sen. Onyonka: Thank you, Mr. Deputy Speaker, Sir. I am beginning to be very discouraged being in this House because I hardly get an opportunity to speak when I have to. My seniority should give me precedent.

(Applause)

Under the Powers and Privileges Act, if you sit and look at what that Act talks about, you as the Deputy Speaker of this House have no business discussing or deliberating the issues, which are taking place between Jubilee Party and the Azimio Coalition.

Mr. Deputy Speaker, Sir, I congratulate my brother Sen. Mungatana, EGH, who has been in this House for a very long time. What he has said today has made me have extreme amount of respect for him. Let us not sacrifice this House on the expediency of the political wars that are taking place in this country. Let us protect this House because this House is protected for me to come and discuss anything, particularly issues of national interest. I may not be able to speak them out there because somebody may sue me and say that I have destroyed their name and made allegations against them which are all false.

The privilege and protection that I have in this House allows me to discuss anybody and anything so long as it is within the law. These are the Standing Orders and the Constitution.

Mr. Deputy Speaker, Sir, I beg you to be greater than many of us and even yourself. Make a ruling that protects the Senate. Allow the two parties to go and fight out there, but allow this House to be independent and for it to do what it is legitimately meant to do.

The Deputy Speaker (Sen. Kathuri): Sen. Onyonka, I gave guidance on the way forward. I want us to make progress.

Kindly, next order.

Sen. Wamatinga, please proceed.

Sen. Wamatinga: Mr. Deputy Speaker, Sir, I rise to give---

(Sen. Olekina spoke off record)

I believe the taxpayers sent us here to talk about these things.

The Deputy Speaker (Sen. Kathuri): Sen. Olekina, you cannot hold the whole process. I have given you a lot of time to air your issues. I also gave guidance on the way forward on what we need to do. We cannot live on one Order from 2.00 p.m. There is nothing new you are quoting.

Sen. Wamatinga, just a minute.

(Sen. Olekina spoke off record)

Quote it. Which Standing Order?

(Sen. Olekina spoke off record)

On what? Please proceed.

Sen. Olekina: Mr. Deputy Speaker, Sir, I rise on Standing Order No. 2 on interpretation of the Standing Orders. Let us not act as if we just dropped out of school yesterday. We are guided by these Standing Orders. These Standing Orders define what a Whip is. What you are being invited to is by the Chair violating these Standing Orders. Standing Order on interpretation says-

“A party Whip” means a Senator designated by a parliamentary party as the party whip for the purposes of the transaction of business in the Senate and includes the Majority Whip and Minority party.’

In the interpretation, it further defines a parliamentary party. I shall read it-

“Parliamentary party” means a party or a coalition of parties consisting of not less than ten Senators.”

(Applause)

Mr. Deputy Speaker, Sir, seriously, if we cannot respect our Standing Orders, what exactly are we doing? What example are we showing to future leaders?

The Deputy Speaker (Sen. Kathuri): So, what is out of order?

Sen. Olekina: I do not want to say that the Chair is completely out of order. However, by violating these Standing Orders---

The Deputy Speaker (Sen. Kathuri): Who has violated the Standing Orders?

Sen. Olekina: Mr. Deputy Speaker, Sir, the Chair, unfortunately, with all due respect, is violating the Standing Orders.

The Deputy Speaker (Sen. Kathuri): Sen. Olekina, you are out of order!

Sen. Olekina: I have clearly indicated that the Chair is violating the Standing Orders.

The Deputy Speaker (Sen. Kathuri): Next Order.

Sen. Olekina: Mr. Deputy Speaker, Sir, with all due respect---

The Deputy Speaker (Sen. Kathuri): Sen. Wamatinga, please proceed.

(Loud consultations)

*(Hon. Senators from the Minority side
walked out in protest)*

NOTICE OF MOTION

ENHANCING HIGHWAY SAFETY AND CONVENIENCE

Sen. Wamatinga: Mr. Deputy Speaker, Sir, before I proceed, let me say that this Friday, I will be laying to rest one of my nephews whom I lost through a road accident at the age of 21. Therefore, I feel that this Motion is very important to us.

Mr. Deputy Speaker, Sir, I rise to give notice of the following Motion:

THAT, AWARE THAT 67 per cent of road crash fatalities and injuries in the country comprise of the economically productive age groups of between 15 and 64 years, and that the importance of good post-crash care reduces deaths and disability and the suffering for road crash survivors creates the urgent need for effective emergency medical care system, elements and processes on our highways;

FURTHER AWARE THAT lives and properties are lost or irreparably damaged daily on major highways in the country due to accidents, explosion of fuel tankers and the lack of accessible roadside amenities such as medical clinics, rescue centres, fire engines and

ambulances hamper efforts to mitigate the carnage caused by the accidents, rescue lives and put out fires;

COGNIZANT THAT setting up safe stopping points for road users at regular intervals with the necessary road-side amenities such as fuel stations, parking spaces, restaurants, telephone booths, minor repair shops, medical facilities and toilets enhances total travel experience and the lack of these points make it impractical for drivers to stop as often as they would wish to resulting into driving-related fatigue, a significant contributor to accidents on the highways;

FURTHER COGNIZANT THAT provision of amenities such as ambulances, fire trucks and satellite medical clinics to provide emergency services to road accident victims would save lives lost daily on major roads;

ACKNOWLEDGING THAT governments across the world such as France and Germany have taken on the task of setting up such amenities through incorporation of the basic provisions in their road transport infrastructure through different models of Public Private Partnership (PPP), lease, or ownership;

NOW THEREFORE the Senate resolves that: -

i) The Kenya National Highway Authority, in collaboration with the Council of Governors to come up with a policy framework on the incorporation of road reserves for road-side amenities in all highway designs;

ii) The Ministries of Health, Roads, Transport and Public Works in conjunction with the Council of Governors to undertake a survey to ascertain the specific amenities required but not available on the existing highways such as satellite medical clinics, fire trucks and ambulances and identify the most convenient locations to develop them; and

iii) The Ministry of Roads and Transport in conjunction with the Council of Governors to develop Public Private Partnership guideline on leasing of the road reserves to developers, financing the construction of the amenities and the packaging of incentives to attract investors.

The Deputy Speaker (Sen. Kathuri): Thank you.

Next Order.

STATEMENTS

The Deputy Speaker (Sen. Kathuri): We have several Statements. We will start with Sen. Wamatinga. That is if you still have some energy or you can wait for the next one.

FORM ONE INTAKE IN THE COUNTRY

Sen. Wamatinga: I thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Education regarding Form One intake in the country.

In the Statement, the Committee should-

(1) Outline the criteria for selection and procedure followed in enrolling students

into Form One in Kenya;

(2) State the factors that are taken into consideration when allocating a form one position to a student, giving reasons why students are seldom enrolled to the schools they select;

(3) Explain why these students, some of whom are 14 years old or younger, are made to travel long distances across several counties to join form one classes, yet there are equally good schools within their local counties;

(4) Provide details of what happens to form one positions when students fail to report to the schools they had been selected to join; and,

(5) Clarify whether there are any plans by the Ministry of Education to streamline the procedure in order to ensure a better process during future form one selections.

Mr. Deputy Speaker Sir, this is a very important affair. We would want the Committee on Education---

The Deputy Speaker (Sen. Kathuri): Do not add anything, Sen Wamatinga. That will be well handled by the Committee.

We have two more Statements.

(Loud consultations)

The Deputy Speaker (Sen. Kathuri): Let us have all the Statements read. Keep your comments. We have two Statements from the Senator for Kisumu County, Sen. (Prof.) Tom Ojienda SC.

DISASTER MANAGEMENT PREPAREDNESS IN KISUMU COUNTY

Sen. (Prof.) Tom Ojienda SC.: Thank you, Mr. Deputy Speaker, Sir. I have two Statements this afternoon. The first Statement is on disaster preparedness in Kisumu County.

Mr. Speaker Deputy Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security Defense and Foreign Relations regarding disaster management preparedness in Kisumu County.

In the Statement, the Committee should-

(1) Give details on the initiatives the County Government has taken to guarantee disaster management preparedness, prevention, mitigation, response and recovery in case of a disaster;

(2) State whether the county has a well-equipped firefighting brigade with an adequate and well trained staff complement capable of managing disasters in the county, noting that in the recent past, the county has been faced by fire disasters in trading centers such as Katito, Papa Onditi, among others, most of which receive no response on the county government.

(3) to indicate whether the County Government of Kisumu has conducted public trainings on fire safety and first aid and if there are public emergency lines that local can call in the event of a fire break.

(4) Lastly, list the number of fire related disasters in Kisumu County in the past 12 months stating the nature of the response by the county fire department and the amount of loss and damage impacted and the people that have suffered.

I thank you.

INVASION OF THE AHERO RICE FIELDS
BY QUELEA BIRDS

Sen. (Prof.) Tom Ojienda SC.: Mr. Deputy Speaker, Sir, my second Statement is on the invasion of the Ahero rice fields by quelea birds in Kisumu County.

I rise Pursuant to Standing Order No.53(1) to seek a Statement from the the Standing Committee on Agriculture, Livestock and Fisheries regarding the invasion of the Ahero rice fields by quelea birds in Kisumu County.

In the Statement, the Committee should-

(1) Apprise the Senate of measures put in place by both the national Government and the County Government of Kisumu to control the invasion of rise fields of Ahero Irrigation Scheme by thousands of quelea birds that destroy hundreds of acres of rice plantation each day;

(2) state the measures in place to compensate farmers in Ahero Irrigation Scheme whose rice plantations have been destroyed by quelea birds noting that rice farming is the only means of livelihood for residents of Ahero and Kano;

(3) state the efforts put in place, if any, to improve rise production in Kaponyo-Kanyagwal and Ahero Schemes, and;

(4) outline preventive measures and policies, if any, that the Ministry has put in place to contain quelea birds in order to ensure that rice farmers hard efforts are in future not ruined by birds.

I thank you.

The Deputy Speaker (Sen. Kathuri): I thank you.

Next is Sen. Wambua who is not around.

Sen. Chute, you have the Floor.

AFFORESTATION PROGRAMME IN ARID AND SEMI-ARID
LANDS (ASALS)

(Statement Deferred)

ACQUISITION AND DISTRIBUTION OF RELIEF SUPPLIES BY
THE COUNTY GOVERNMENT OF MARSABIT AND NEIGHBOURING COUNTIES

Sen. Chute: Thank you, Mr. Deputy Speaker, I rise Pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations on the acquisition and distribution of relief supplies by the County Government of Marsabit and neighbouring counties sourced by the Counties Development Fund.

In the Statement, the Committee should-

(1) Disclose the nature, type, quality, packaging and price of the relief supplies distributed to the residents of Marsabit, Mandera, Isiolo, Wajir, Samburu and Turkan counties that have been severely affected by the drought;

(2) provide a detailed list of beneficiaries and distribution channels used in supplying the relief supplies and water trucking per ward in all the affected counties;

(3) state whether the projects were tendered for providing details of won the awards;

(4) establish the total amount that has been utilized in the acquisition and distribution of relief supplies from the development fund in all the six counties and;

(5) outline if there are places in place by the above mentioned county governments to implement and shift to cash transfer programmes so as to have more communities benefit from similar projects.

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Chute. We have two other Statements from Sen. Murango.

OWNERSHIP STATUS AND REVIVAL OF MWEA COTTON GINNERY

Sen. (Dr.) Murango: Thank you, Mr. Deputy Speaker, Sir. I rise, pursuant to Standing Order No. 53 (1) to request for a Statement from the Standing Committee on Trade, Industrialization and Tourism on the ownership status and revival of Mwea Cotton Ginnery.

In the Statement, the Committee should-

(1) provide a status report on the ownership of the parcel of land occupied by Mwea Cotton Ginnery, detailing the acquisition process of the land, its acreage and the legal ownership;

(2) inform the Senate of the governance and administrative structures of Mwea Cotton Ginnery before its collapse; and;

(3) state measures if any, the Government has put in place to ensure that the Mwea Cotton Ginnery is revived to cater for the renewed interest in BT Cotton growing in Kirinyaga County, resulting from the need to diversify to more resilient crop varieties due to global warming.

Mr. Speaker, the second Statement is also on the same Standing Order No.53 (1)

REGISTRATION AND WELFARE OF PEOPLE LIVING WITH DISABILITY (PWD)

I rise, pursuant to Standing Order No. 53 (1), to seek a Statement from the Standing Committee on Labour and Social Welfare regarding registration and welfare of People Living with Disability (PWD).

In the Statement, the Committee should:

(1) State the number of persons registered with the National Council for Persons with Disability (NCPWD) as living with disability from the year 2022 to date;

(2) inform the Senate on the process of registration of Persons with Disability (PWDs), recommending ways to simplify the procedure and make registration services more accessible;

(3) outline the criteria used by the Government to distribute assistive devices to PWDs, stating why a high number of disabled persons still lack access to the necessary

assistive devices and further spell out measures, if any, put in place to ensure PWDs get assistive devices and attendant health services for their various forms of disability; and

(4) explain the cause for the increased number of people living with disability begging on the streets of the major towns and urban areas across the country, and the steps being taken by the Government, if any, to provide them with the necessary social assistance.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Thank you.

Sen. Githuku, proceed.

STATUS OF LAND DISCHARGE PROCESS IN LAMU COUNTY

Sen. Githuku: Thank you, Mr. Speaker, Sir, for giving me this opportunity to request for a Statement on the status of land discharge process in Lamu County.

I rise, pursuant to Standing Order 53 (1), to seek a Statement from the Standing Committee on Land, Environment and Natural Resources on the status of land discharge process in Lamu County.

In the Statement, the Committee should:

(1) provide a status report on the Settlement Fund Trustee mandated to settle residents on unalienated Government land or land purchased by Government from private owners, stating how many resettlements have been successfully completed in Lamu County since the relevant law was enacted and how many are pending;

(2) cause the publishing of parcels of land in Lamu County under the custody of the Settlement Fund Trustee, informing the Senate of accrued charges for each piece of land;

(3) state the timeframe upon which parcels of land charged by the Settlement Fund Trustees (SFT) should be transferred to residents of Lamu County after residents settle charges against their parcels of land;

(4) state reasons for the failure by the Government to facilitate the discharge process of the said parcels of land, noting that this has had a negative impact on the growth of the county as the owners are unable to subdivide or make transfers; and

(5) outline plans, if any, the Government has put in place, to ensure the discharge process is hastened and a waiver is offered on the accumulated land rates.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Sen. Tobiko, do you have a Statement?

Sen. Tobiko: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Proceed.

UNACCEPTABLE DISCIPLINARY MEASURES METED AGAINST CHILDREN BY UNCOUTH INDIVIDUALS

Sen. Tobiko: Mr. Deputy Speaker, Sir, I rise, pursuant to Standing Order 52(1) to make a Statement on an issue of general topical concern, namely: the unacceptable disciplinary measures meted against children by uncouth individuals.

Mr. Deputy Speaker, Sir, children are a blessing who bring so much joy to their parents. The community and, indeed, the nation as a whole also consider them an important asset. Further, Article 53(1)(d) of the Constitution expressly provides that –

Article 53(1)(d) of the Constitution states that –

“1. Every child has the right –

(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;”

The rights of children have also been protected and preserved by a number of legislations, including the Children’s Act (2022) and the Convention on the Rights of the Child (CRC). Moreover, both the Education Act and Children's Act have given clear guidelines on how to correct pupils when they go wrong in the course of attending school.

While I agree that it is important to mould and correct children, whether at home or in school, to ensure they grow knowing what is right and wrong as they are being brought up, this correction should not be punitive, embarrassing or inflicting pain and or to some extent, cause grievous bodily harm.

There are three cases that have occurred over the recent past which have greatly disturbed me and have led to this Statement.

The first incident is that of a widely circulated video clip of a scene, allegedly in a school where teachers supervised a traumatic sexual molestation of young children against each other. The said clip drew countrywide attention to what may be happening to our children at the hands of perverted grown-ups who are expected to be protectors, role models and morally upright individuals.

The second one was an incident in Kuria where one young girl who had run away from home in order to escape from being forced to undergo Female Genital Mutilation (FGM) and had been under protection of a school. When she decided to go back home at the end of the holidays to prepare to return to school, she ended up being badly assaulted, whipped and publicly humiliated by young men allegedly under the direction of her own brother. She had been accused of being a disgrace to her family for refusing to undergo the FGM practice and opted to pursue education when schools resumed. This incident is unacceptable as the Government has a whole department funded by taxpayers to champion anti-FGM practices among communities and to protect girls threatened by these traditions, cultures and rituals.

A third incident that came to the public attention happened in Kisii area where a young man was bound up with ropes and whipped in front of a girls' parade in school as punishment.

Mr. Deputy Speaker, Sir, the scary question is, how many more graphic, horrible crimes against the rights of children have gone unnoticed, unreported or have been intentionally covered up?

Whereas the above incidents may appear isolated and remote, it has prompted my concern regarding what kind of punishment is right. What amounts to adequate correction, both within schools and in community environments?

Mr. Deputy Speaker, Sir, I condemn these heinous acts in the strongest terms possible. They have, obviously, traumatized the victims and may have permanent effects in their lives.

Teachers, boards of management members, parents and the society in general should be dependable role models, mentors and good moral champions to ensure such incidences do not continue happening in our society.

We cannot stand by while children are brutalized and traumatized in the name of administering punishments. Let parents, guardians and school administrators have compassion while correcting the children under their care whenever they err.

We must all uphold respect for the rights of children as provided for in the laws. Anyone messing with children's lives should answer for their irresponsible and unbecoming conduct. I also call for psychological counselling to help remove the trauma visited upon these victims and many others in the society.

As a leader and a mother, I am of the view that the Children's Department should work with the law enforcers to take appropriate action if and where necessary in order to safeguard children from abuse, neglect and violence.

I beseech all leaders all over the country to ensure that the rights of children are safeguarded and protected against such evil deeds.

Local leaders and communities including all clergy and leaders of all faiths should also remain vigilant and act swiftly whenever any person subjects children to such acts that amount to sexually molesting or excessive extreme punishment.

Children are at their most critical, formative and mind development stage. We must be extremely careful what we allow the minds of our children to pick.

Our children must be brought up to be upright, morally responsible and law-abiding citizens. Our generation is responsible for the posterity we are preparing for this country.

Mr. Deputy Speaker, Sir, I thank you for the opportunity to speak on this matter.

The Deputy Speaker (Hon. Kathuri): Thank you. I will give one or two comments on these Statements starting with Sen. Okiya Omtatah of Busia County.

Sen. Okiya Omtatah: Thank you, Mr. Deputy Speaker, Sir. Before I make my comments, I wish to recognize the presence of my constituents – the 10 teachers from the Moody Awori Primary School. It is the best public primary school in Busia.

(Applause)

They should feel most welcome. They are here courtesy of the Eminent retired former Vice President, Hon. Moody Awori, who gave them a tour of the city in recognition of their performance.

During their tour, they decided to visit Parliament. They are now winding up their tour. They have visited the National Assembly and are now in the Senate. I thank them.

Mr. Deputy Speaker, Sir, with regard to the Statement made by Sen. Peninah Tobiko, it is obvious that something has gone amiss in this country. There is a lot of violence visited upon our innocent children. If you go back to the Biblical times and look at Jesus Christ---

The Deputy Speaker (Hon. Kathuri): What is it, Sen. Peris Tobiko?

Sen. Okiya Omtatah: Mr. Deputy Speaker, Sir, it is not Peninah but Peris Tobiko. In the New Testament, Jesus Christ looked at children and said they belonged to the Kingdom of God. We cannot claim to be Christians or believers in anything if we do not look after our children. It means we do not value what God values.

Children are very vulnerable and defenseless. There are many videos that go around and some of those modern cameras give coordinates or the Global Positioning System (GPS) locations of where these crimes happen.

When a video is recorded, any serious police-person should be able to pinpoint and arrest the perpetrators just by examining the video and looking at the coordinates of where it was recorded. I hope that our police department will be proactive in that.

I pray that the Children's Act be revisited and maybe higher sanctions can be passed on people who abuse children especially within the framework of schools and families where children should feel the safest.

Mr. Deputy Speaker, Sir, I stand to support this Motion and plead with this House to rally behind the Statement and make sure that anybody perpetrating violence against children lives to regret it. Violence against children at the institutional level should be taken further.

We should get to a point where the Government provides lunch for primary school children. It is extreme violence to have a child go to school on an empty stomach and be expected to stay on for eight hours. Some form of a feeding program should be initiated.

For my colleagues in the "bottom-up" formation, there is no better bottom-up than raising a child. This is because you raise him from the bottom to a full human being. Within the bottom-up arrangement, let us find a formula for providing children with some of food.

Former President Daniel Arap Moi, (may his soul rest in peace), was able to give children milk when Kenya had a much smaller economy. The budget of Kenya in those days was a few shillings yet he was able to do that. Why can we not feed our children with the trillions we have today as well as support our dairy farmers who are struggling?

I know where Sen. Cherarkey comes from, farmers are struggling to break even. A feeding program could be one way of an affirmative action that would also support our farmers as well as give us a win-win situation whereby our children go to school and can get a bowl of soup or a plate of maize and beans.

We should not look at violence in terms of whips and kicking around. We should also look at violence in terms of sustaining a ritually neutral environment where a child can grow and thrive.

I support.

The Deputy Speaker (Hon. Kathuri): Thank you, Sen. Okiya Omtatah. We are limited by time. I want to give a chance to one more Senator. Sen. Cherarkey, you have done enough today. What you said earlier this afternoon is enough for the people of Nandi.

Let us give Sen. Mutinda this chance. Proceed.

Sen. Tabitha Mutinda: Thank you, Mr. Deputy Speaker. I rise to support the Statement from our colleague, Sen. Tobiko. As a leader and a parent, I agree that the joy of our children is something godly and one we are proud of. Through social media, we have seen what is happening to our younger generation and it is a sad.

I wish to quote Article 53 which states clearly that the Constitution protects our children from abuse, neglect, harmful cultural practices and all forms of violence, inhuman treatment and punishment.

I humbly ask our authorities, as Sen. Omtatah has indicated, that these culprits can be apprehended and justice be served to these children. This will set an example to the coming generation who might think that this can go scot-free. Action needs to be taken. If not, that is how we continue seeing children burning schools. If we do not condemn this much further, then we are going to get into a more critical conditions that we will not get out of.

To support Sen. Tobiko, I urge that the law takes its course and the police take action. To parents and learning institutions where we take our children for the knowledge that they need to have, it is high time we knew that we are in 2023 and that things have changed.

We are in a digital space with all the gadgets that we have and cannot deny modernity. However, as parents, let us try and offer more time to our kids and communicate the morals for the betterment of our future generation.

The Deputy Speaker (Sen. Kathuri): Kindly, let us go to the next Order.

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

The Deputy Speaker (Sen. Kathuri): What is it, Sen. (Dr.) Khalwale?

POINT OF ORDER

ALLEGED DELAY BY COMMITTEES IN TABLING RESPONSES TO STATEMENTS

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, I rise on Standing Order No.52(3) and 53(3)(b).

Just like today, week-in, week-out from the last Session, you have been referring this Statements to Committees. I never miss sittings. I am yet to see a single Chair of a Committee tabling a Statement in response to the issues raised by Members.

Personally, for the last two months, I have been waiting for a Statement on pending bills in Kakamega County. Many Senators supported the request and brought the need to address pending bills in their respective counties.

Mr. Deputy Speaker, Sir, could you guide the House on whether we should expect those responses to be tabled and what the time limit is, if we should expect a response?

Some of the statements were on issues of security. For example, a Senator has raised the issue of police and personnel deployed in an area and they are not up to it. You would expect them to be moved and so on. You would expect an answer. For how long shall we be waiting? Or are we speaking in vain in this House?

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Khalwale, I hear you. The Chairs have no obligation to report to the Floor of the House. However, it means that, for two months, your Statement has not been responded to by the relevant Ministry.

The Committee should invite any Senator who has raised any matter on this Floor to their Committee sitting, when you summon the relevant offices. It could be the ministries, the Cabinet Secretaries (CSs) or any other body.

Sen. Cheptumo: On a point of information, Mr. Deputy Speaker, Sir!

The Deputy Speaker (Sen. Kathuri): Sen. Cheptumo, whom do you want to inform? He is no longer on the Floor.

Sen. Cheptumo: Mr. Deputy Speaker, Sir, what Sen. (Dr.) Khalwale is raising is a concern.

I thought it is good to just share that once a Member raises a question or a Statement, we take up the issues with the relevant ministry. When a written answer is obtained from the ministry, it is shared with the Member.

If there are issues that are not sufficiently responded to in the Statement, then we still do a further inquiry from the department. That is what happens in this House.

It is interesting that Sen. (Dr.) Khalwale has not got a Statement from the relevant Committee two months after he raised the question. The problem here is the procedure we used to inform Members on the responses from the ministries. It is not how we used to do in the other House as you recall. You and I were Committee Chairs and we used to read those Statements before the Plenary. That is the procedure we have right now.

(Loud consultations)

The Deputy Speaker (Sen. Kathuri): I can see some Chairs have been agitated, including the Chair who has my response, the Chair of the Committee on Roads, Transportation and Housing. I give one minute each.

Sen. Thang'wa: Mr. Deputy Speaker, Sir, I do not purport to speak on behalf of the other chairs because you are the Chair of Chairs.

All I want to tell the Senator for Kakamega County who raised that issue, is that the President had seen this problem. That is why he proposed that we should be having CSs on the Floor of this House so that they answer questions with the speed that is required.

Before pointing at any other Chairman, in my Committee, Senators who have requested for Statements have been invited to appear before our Committee and see the responses before we table them in the House. It is better for the Senate to sit, even without waiting for the National Assembly and come up with the right procedures to be inviting CSs to answer those questions.

That is why I had tried to catch your eye. For example, we have a Statement that was raised by the Senator for Embu County, on the issue of delocalization of teachers. When I tried to ask for the same Statement with a tweak or a little bit of a difference, I was told I could not raise such a Statement yet it is in regard to the teachers working in other counties but come from Kiambu County.

My teachers, all the way from Mt. Kenya, are suffering in Narok. However, we cannot ask that Statement because somebody raised it two weeks or two days ago yet it has not been responded to here.

Mr. Deputy Speaker, Sir, I request you because you have that power, when you look at a Statement and see that it has some urgency, give it some timeline. Tell the Chair to give the answer within a specific timeline, so that we can have some Statements answered or reported back to the House with immediate effect.

The Deputy Speaker (Sen. Kathuri): I am constrained with time. I give Sen. Orwoba one minute.

Sen. Orwoba: Thank you, Mr. Deputy Speaker, Sir. I am glad Sen. (Dr.) Khalwale has raised this. It is an issue I have been dealing with personally. I am not a

Chair. I was a Vice-Chair but I was de-whipped because of literally pushing for the efficiency of the business of a Committee.

I personally brought several Statements to the Floor of the House concerning issues on Safaricom registration and protection of Kenyans' data.

Mr. Deputy Speaker, Sir, being in the Committee as a Vice Chair, I could see the bureaucracy that was being practiced not necessarily by the Chair but there was a lot of dynamics. The efficiency of that Committee---

Mr. Deputy Speaker, Sir, allow me. Do not cut me off, I have seen you.

This is a very serious matter. Therefore, if we are not going to give timelines, then you can imagine the Statement that I raised on the registration of SIM Cards last year has not been dealt with.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

A Statement I raised on issues of ICT and protection of data, a simple thing such as seeking information, we did not deal with it.

Madam Temporary Speaker, the only thing that happened to me is that I was de-whipped. I was removed from that Committee because I kept on demanding that the efficiency of the Secretariat has to be put into account. As we are dealing with all these Statements, I have learnt. I am no longer bringing Statements to the House. I am bringing Motions and tabling Bills. I am going to make as much noise as possible.

Nonetheless, if the committees are going to continue with issues to the effect that by the time they are bringing the reports the matter is no longer relevant, how is it relevant on registration? Safaricom has done what they wanted to do and moved on yet we have not received any tangible response.

As a Vice Chair in that Committee, I can tell you there was a lot of bureaucracy that was engineered. I reported several issues with the secretariat. I thank you, Sen (Dr.) Khalwale, for handling the issue because this is the matter that I wanted dealt with even if I am no longer the Vice Chair of the Committee on ICT. I will be Vice Chair in this seat and I will ensure that we push for accountability so that our Statements do not go down.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order, Sen. Cherarkey?

Sen. Cherarkey: Thank you, Madam Temporary Speaker. I note the change on the Chair. My congratulations, I can see you are wearing our party colors.

Madam Temporary Speaker, when you look at the Secretariat, and I need guidance on this; Standing Order No.52 and 53 (3) (b), the Speaker may allow comments in relation to the Statement in not more than 15 minutes. I am saying this being aware that we are past the Statement hour.

Kenyans and everybody should know that when we give comments or when we ride on Statements of our colleagues, it is provided under the Standing Orders.

Madam Temporary Speaker, Standing Order No. 53(3)(b), I have had the benefit of chairing a committee and it is known in the annals of history of this House, I was ranked the best. I was not only the youngest but the best then.

Standing Order No. 53(3)(b), States that –

The Committee may invite the Senator who requested the Statement, the relevant Cabinet Secretary or any other person the Committee may consider necessary during deliberations on the Statement and may prepare and Table a report on the matter.

We need to be fair, this is our Standing Orders. The Standing Order No. 1, talks about the precedent, the tradition, the rule of law and the tradition of the Parliament that has been set. It states – after the deliberations, the report must be tabled.

Madam Temporary Speaker, what we are treated to is theatre of the absurd. The Chairpersons of these Committees are purported Cabinet Secretaries (CSs). If they are having a problem in accessing CSs, because I am told some CSs and Principal Secretaries (PSs) might not be picking calls yet the President is picking our calls, then they should say it.

Last year, as Sen. Orwoba has said, I requested a Statement on the Tokyo Scandal of our athletes, no one has responded up to today. If the Chairpersons are having problems, they should be able to speak to the Majority side and the Majority leadership including the Majority Whip.

As we wait for the Constitution to be amended for CSs and PSs to sit here, we must be efficient and effective because we are using the resources from the Exchequer.

Finally, Standing Order 53(4) states-

The Speaker may allow the Senator who made the request for a Statement under paragraph (1) or any other Senator to make comments or observations in relation to the report tabled under paragraph (3) (b), for not more than twenty minutes.

I can be invited to the Committee of Labour and Social Welfare where I can go, sit and deliberate but maybe other Senators are waiting for the report to be tabled to give their comments and transmit for implementation. My request on this matter---

The Temporary Speaker (Sen. Veronica Maina): Please, wind up Sen. Cherarkey.

Sen. Cherarkey: Madam Temporary Speaker, I am winding up. The report must be tabled.

As a friend of the Committee, I do not have powers to sign the report or vote on the report because I am not a Member of the Committee. So, where do I get my recourse? I get my recourse on the Floor of the House among other colleagues.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): On that issue of Statements, I hear your interjection. From the reading of Standing Order 53(3) (b), it is clear that a Statement may be prepared and tabled on that matter. It would be good practice that Chairpersons of Committees ensure that they conclude on Statements that are raised against the Committees and they are encourage to table them.

Although the wording of the Standing Order is that a Committee may prepare and table a report on that matter, ‘may’ then means it is almost discretionary. However, the good practice would be that the Committees or the Chairpersons of the Committees table a report that issues are responded to and issues are given closure.

I believe that should be the final intervention on that matter. Next Order.

There is a point of order by Sen. Munyi Mundigi. Make it very short.

Sen. Munyi Mundigi: Bi Spika wa Muda, naunga mkono yale yaliyozungumziwa hapa. Hii ni kwa sababu, mambo niliyosoma kuhusu elimu ni kitu cha kushangaza sana. Utaona ikiendelea hivi na itaishia uko msituni ilhali kuna sheria, hata Rais alisema walimu wote warudi nyumbani kwao.

Kama kaunti, tuko na majimbo arubainne na saba, moja wapo ni Embu. Walimu wa Embu wale wako jimbo la Machakos, Kitui, Meru na Kirinyaga, tumeshtuka sana kunasemekana hakuna mahali wataenda. Hii ni kwa sababu kaunti ya Embu iko na walimu wengi.

Lakini tunauliza, je, wakati wale walimu walipelekwa nje ya jimbo la Embu, inastahili kufuatiliwa ama kamati iende ifanye upelelezi. Inakuwaje walimu wa Embu hawaezi kurudi Embu?

Akina mama ambao wamekaribia miaka sitini wanalilia uko kwa mkubwa wa elimu. Kwa hivyo, tufuatilie vizuri ndio walimu wa Embu waweze kurudi nyumbani. Sio lazima wapige magoti. Kama jambo hilo halitasuluhishwa, Embu, tutaandamana hadi ofisi ya tume ya walimu. Hakuna mtu atatusimamisha. Ni aibu kubwa sana.

Kama kulikubaliwa Teachers Service Commission (TSC) jinsi ilivyowapeleka wale ndivyo iwarudishe na wale wengine waende nyumbani kwao.

Asante, Bi. Spika.

The Temporary Speaker (Sen. Veronica Maina): Sen. Munyi Mundigi, I doubt whether that is an intervention or a point of order you are raising. However, I doubt if that is a point of order.

The idea should be for the Chairpersons of the Committees to respond and do their work. They should be encouraged to take stock of all the Statements that have been tabled since the commencement of this House and proceed to make sure that we can wind up those issues that have not been responded to as a House.

Proceed, Clerk.

I call upon the Chairperson of the Standing Committee on Finance and Budget to move the next Motion.

MOTION

ADOPTION OF REPORT ON THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATION CASH DISBURSEMENT SCHEDULE FOR FY 2022/2023

Sen. Ali Roba: Madam Temporary Speaker, I beg to move-

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the County Governments Additional Allocations Cash Disbursement Schedule for the Financial Year 2022/2023, laid on the Table of the Senate on Thursday, 16th February, 2023, and that pursuant to Section 17 (7) of the Public Finance Management Act and Standing Order No.189 (3), the Senate approves the County Governments Additional Allocations Cash Disbursement Schedule for the Financial Year 2022/2023.

Madam Temporary Speaker, the County Governments Additional Allocation Cash Disbursement Schedule is submitted to the Senate by the National Treasury pursuant to Section 17 of the Public Finance Management Act, 2012.

Section 17(7) of the Public Finance Management Act, 2012 requires that the National Treasury prepares cash disbursement schedule for the monies to be disbursed to county governments and transmit it to the Senate for consideration and approval. The National Treasury is also required to publish and gazette the approved disbursement schedule.

Madam Temporary Speaker, the purpose of the disbursement schedule is to ensure predictable transfers of funds from the National Treasury to county governments. Therefore, it serves as a guide and facilitates predictable flow of funds to county governments. This, therefore, enables counties to effectively plan implementation of targeted projects and programmes in a systematic manner in order to deliver their critical functions.

Madam Temporary Speaker, Parliament approved the County Government Additional Allocation Bill (Senate Bill No.4 of 2022), in November and it was enacted into law.

The President assented to it on the 12th of December, 2022. Following the enactment of this law, the National Treasury transmitted to the Senate the County Government Additional Allocation Cash Disbursement Schedule for the Financial Year 2022/2023. This schedule was tabled in the Senate on 14th February, 2023. Therefore, the disbursement schedule was committed to the Standing Committee on Finance and Budget for consideration and subsequent reporting back to the House.

Madam Temporary Speaker, the Committee has considered the cash disbursement schedule and tabled its report in the House for debate and adoption.

The County Government Additional Allocation Act, 2022 as well as the disbursement schedule has a total of Kshs163 million for conditional grant on supplement for construction of county headquarters and Kshs17.159 billion on conditional allocation finance from proceeds of loans, grants and development partners.

This conditional allocation from proceeds of loans and grants include-

- (i) The World Bank credit for National Agricultural and Rural inclusive Growth amounting to Kshs3.9 billion,
- (ii) The World Bank credit for National Agricultural Value Chain Development Project amounting to Kshs1.82 billion,
- (iii) The World Bank credit of Kenya Climate Smart Agriculture amounting to Kshs2.2 billion,
- (iv) The World Bank credit of water and sanitation development amounting to Kshs3.5 billion,
- (v) Danish International Development Agency (DANIDA) grant for primary health and devolved system amounting to Kshs1.018 billion,
- (vi) The World Bank credit for Financing Locally-Led Climate Action (FLLOCA) level amounting to Kshs1.034 billion,
- (vii) The Government of Sweden grant for Agriculture Sector Development Support Programme II amounting to Kshs665.17 million,
- (viii) The Germany Development Bank Financing Drought Resilience Programme in Northern Kenya to the tune of Kshs410 ---

Sen. Osotsi: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Senator, he is moving a Motion.

(Sen. Osotsi spoke off record)

What is out of order?

(Several Senators spoke off record)

Not when he is moving a Motion. Let him finish moving the Motion and then you will raise your point of order.

Sen. Ali Roba: Thank you.

- (ix) The Germany Development Bank Financing Drought Resilience Programme in Northern Kenya to the tune of Kshs410 million,
- (x) The World Bank credit for Emergency Locust Response amounting to Kshs1.2 billion,
- (xi) The World Bank Credit to finance Kenya Informal Settlements Improvement Programme (KISIP II) amounting to Kshs1.3 billion.

Madam Temporary Speaker, the Committee considered cash disbursement schedule and observed the following-

That the disbursement will be made in two tranches as commitment was made by the National Treasury, to be done on 15th March, 2023 as well as 15th April, 2023, so that within the Financial Year 2022/2023, the disbursement can be realized. With only four months remaining to the end of the financial year, the County Government also needs to expeditiously do their Appropriations Act in order to facilitate the flow of those funds.

The disbursement of conditional allocation finance from the national Government share of revenue, as it has happened before, will be subject to collection of revenue or funds by the national Government.

Lastly, the National Treasury should comply with the schedule as indicated to make sure that within the remaining few months of the financial year, the two tranches, as promised, should also be realized.

There is also need for the Senate and county assemblies to tighten oversight on these funds. The Committee recommends the following-

(1) That the Senate approves the County Government Additional Allocation Cash Disbursement Schedule for the Financial Year 2022/2023 tabled in the Senate on 14th February, 2023.

(2) The County Assemblies should also expedite passage of Appropriations Bills to ensure that the funds are accessed upon disbursement from the National Treasury.

(3) The National Treasury should adhere to the approved disbursement schedule in the proposal they gave of disbursing the entire amount in two tranches as required.

Madam Temporary Speaker, finally, the Committee acknowledges the National Treasury's effort, for their submission of county government additional allocation cash disbursement schedule, which is a critical requirement for the execution of county government budget.

The Committee also thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

I also wish to thank the Members of the Committee for their patience and steadfast in making sure this has been promptly processed.

Madam Temporary Speaker, I beg to move and call upon Sen. (Dr.) Khalwale to second the Motion.

Sen. Dr. Khalwale seconded

Sen. Osotsi: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order?

(Interruption of Debate on Motion)

QUORUM

Sen. Osotsi: Madam Temporary Speaker, I did not want to interrupt my good friend, Sen. Ali Roba. However, as you know, this is a House of rules.

I rise on Standing Order No. 41. When I look around, we do not have quorum to transact business in this House. Standing Order No. 41, on quorum during proceeding of the Senate states-

“(1) If at any time in the course of the proceedings of the Senate a Senator objects that there is not a quorum present, the Speaker or the Chairperson shall count the Senators present in the Senate or the Committee as the case may be.

(2) If on the count under paragraph (1) a quorum does not appear to be present, the Speaker or the Chairperson shall cause the Division Bell to be rung as on a division, and if no quorum is present at the expiration of the ten minutes -

(a) If the Speaker is in the Chair, the Speaker shall adjourn the Senate until the next sitting without question put; or

(b) If the Senate is in Committee, the Chairperson shall leave the Chair and report the fact to the Speaker, and the Speaker shall adjourn the Senate until the next sitting without question put.

(3) Whenever the Speaker or the Chairperson, as the case may be, is engaged in counting the Senate or the Committee respectively, the doors shall remain unlocked.”

Madam Temporary Speaker, we do not have quorum. The substantive Speaker was very clear, that henceforth, the Senate should strictly comply with the Standing Orders.

Therefore, I ask you to comply with Standing Order No. 41 on quorum during Senate proceedings.

The Temporary Speaker (Sen. Veronica Maina): Clerk, can you confirm whether we have quorum in the House?

(The Clerk-at-the-Table- approached the Chair)

The Temporary Speaker (Sen. Veronica Maina): I authorize the Division Bell to be rung for 10 minutes.

(The Division Bell was rung)

The Temporary Speaker (Sen. Veronica Maina): We now have quorum. Proceed, Sen. (Dr.) Khalwale.

(Resumption of Debate on Motion)

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I rise to second this Motion as moved by the Chair of the Committee. Before I second this Motion, one of

the milestones of the last session was when we passed the Bill for additional allocation of revenue. I was pleased that during the recess to see His Excellency the President ascent it to law; something that is unprecedented. The Office of the Clerk will tell you that not many parliaments have been able to make law in the first session but we did.

I, therefore, congratulate the President and all his colleagues the Members of Parliament (MP), the office of the Clerk and everybody else who made this industry to come to fruition. Why should I commend this? It is because this law has paved way for better delivery of health services across the 47 Counties. I am so glad that my County of Kakamega - thanks to this Bill - was able to access in excess of Kshs982 million. I congratulate the Governor of Kakamega County because I have seen that he has been moving around the sub counties trying to give out an additional supply of drugs.

I urge him to give priority out of this particular vote. He should avoid the temptation of channeling this money to recurrent expenditure. He should ensure that this money is purely for development within the health sector. Allow me to quote in Kiswahili. *Waswahili husema mgema akisifiwa pombe hulia maji.* Having congratulated the governor, he might be thinking he is doing very well on this particular allocation. I beg to differ. I would like him to desist from the temptation to give money favoring certain sub counties at the expense of others. We are a huge County with a population of 2.5 million people; 12 sub counties, 60 wards and everybody is in dire need of good health.

Therefore, he should play the principal of equity to make sure that this money is felt in every corner of Kakamega County.

In moving this Motion, the chairperson has spoken to the issue of disbursement schedule. Colleague Senators, may I remind you - and I think you know - that we have the 15th day of the month rule. It was intended by the second Senate to ensure that on the 15th day of the month, the National Government should have deposited money in the account of every county. This is the famous County Revenue Fund.

I appeal to my colleagues, let all of us 47 plus all our delegations ensure that we are in constant communication with our governors to be assuring us on the 16th day that the 15th day of the month rule has been respected by the National Government; failing which we convene in this House and put pressure on the National Treasury to ensure that this money goes to the County Revenue Accounts. Indeed, this is what we are there for because under Article 96 of the Constitution, we are expected to protect the interest of the counties and their county governments.

A message to the governors: Governors must resist the temptations to start new projects. It is there. I do not want to cast aspersions on all governors, but there are a few unscrupulous governors who rushed to start new projects so that they can enter into little arrangements with the companies and individuals from whom they are procuring these services for personal gain. I want to appeal to them to complete stalled projects and ensure that all ongoing projects do not get stalled again.

Madam Temporary Speaker, you are a senior lawyer in this country and you know the principal in law of perpetual succession of Government. The principal of perpetual succession of Government demands that succeeding governments ensure that the projects they are succeeding are continued to their completion.

It is painful that when you go to a great county such as Kakamega which enjoys an annual budget in excess of Kshs15 billion, you find that over a period of 10 years of

devolution during which the governor handled in excess of Kshs200 billion because there is the donor funding aspect that normally comes and the additional funds they have been getting.

Over a period of 10 years the governor handled over Kshs200 billion and what is on the ground? Bukhungu Stadium has stalled. The Kakamega Teaching and Referral Hospital has also stalled. Shamakhubu Hospital in Shinyalu Sub County has stalled. Tumbeni Milk and Dairy project in Malava Constituency has stalled.

Khayega Market in Shinyalu Constituency, Malinya Market in Ikolomani Constituency, Nambacha Market in Navakholo Constituency, Navakholo Market in Navakholo Constituency, *eiyeeyeyiye*, *eiyeeyeyiye*. They have all stalled despite Kshs.200 billion.

The Temporary Speaker (Sen. Veronica Maina): Sen. Khalwale, which one is that which is *eiyeeyeyiye*, *eiyeeyeyiye*?

Sen. (Dr.) Khalwale: That is the musical way of saying *etcetera*; and many others.

The Temporary Speaker (Sen. Veronica Maina): That is a new one.

Sen. (Dr.) Khalwale: Yes, Madam Temporary Speaker. You I know I keep on learning from my young children. They teach me many things. These days they do not tell me etc., etc. They just say, *tata*, *eiyeeyeyiye*, *eiyeeyeyiye*. If you are experienced like me, you know have --- you do not want to hear more.

That is not meant to be language but it is meant to deliver the message. This is serious. I will be moving this Senate not just for the purposes of Kakamega but to make a decision on what we shall do.

This is because, you find a new governor comes in and tip! into the dust bin the ongoing projects. It is happening in Kiambu, across the road here, it happens in your home in Murang'a, it is in Kakamega, it is in the home of my in-laws in Kisii. In fact, in Kisii, it is terrible. Governor Arati went there and even found I do not know 46 vehicles, driven by 400 drivers.

The rot in counties. We are failing. We must put our good brothers and sisters under a very huge microscope. This cannot continue. Otherwise, we will just be saying devolution was meant to massage the ego and pleasures of the high and mighty.

Madam Temporary Speaker, with those many remarks I strongly support the Motion.

Sen Mungatana MGH: Second the Motion

Sen. (Dr.) Khalwale: Sorry, I was the seconder. You know Madam Temporary Speaker; I was confused by my daughter here. Where has she gone? She told me that she was going to second then I support.

I strongly second the Motion. Thank you, Sen. Mungatana. That is why I always love to know that you always listen to me.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Senator. Hon. Senators, I propose the question.

(Question proposed)

I call upon Senators to now make contributions to the Motion. I begin with Sen. Okenyuri. Is she there? Sen. Mungatana, you may proceed.

Sen. Mungatana, MGH: I thank you, Madam Temporary Speaker. I support this Motion. I have listened carefully to the Mover of this Motion, Sen. Ali Roba; the Chairperson of this Committee.

I record my thanks to the industry and the effort they put in as a Committee to make sure that this Report is presented in good time so that the disbursement can be done timely.

I also pay my respect to my honourable colleague who seconded this Motion, the one and only Sen. (Dr.) Khalwale. He raised many relevant issues.

I note that in passing this Motion, there is Kshs163 million that is a conditional grant on the supplement of the construction of county headquarters which is the first bit.

This is important to us in Tana River County. If you look into the Report, you will see that four counties are going to benefit from this allocation. One of them was Tana River. Others were Lamu, Isiolo, and Nyandarua. This Kshs.163 million will come and help Tana River County finish the construction of the County Headquarters.

I feel very embarrassed many times when I visit other county headquarters and see they have beautiful buildings which are housing the head of the county government. In the last dispensation, the county government of Machakos had beautiful buildings and works that was going on in.

Kitui which is our neighbor in Tana River and Kilifi County have finalized the construction of the county headquarters. In Tana River County, we have not finalized this. I hope that we shall benefit as it is intended. We hope that with this batch then, we shall get out of being left behind as it were.

This is because it seems that it is only four counties that had not finished the construction of their county headquarters, Tana River being one. Therefore, the message we are sending to the governor and county government is that we are passing this money and we want to see results on the ground. We want to see proper building, relocation of staff to the correct place so that the working environment can be good for our counties.

I support this Bill so that this money is made available as soon as possible by the schedule that has been proposed here on the 15th of March and on the 15th of April in those two batches that the Chairperson of this Committee on Budget and Finance has proposed.

Madam Temporary Speaker, I also noted that the second bit of the allocation is Kshs.17.15 billion which is conditional allocations financed from proceeds of loans and grants from development partners.

From this Report, you will note, there are: -

- a) The allocation from World Bank Credit for the National Agricultural and Rural Inclusive Growth (NARGIP) Project.
- b) World Bank Credit for National Agricultural Value Chain Development Project.
- c) World Bank Credit for Kenya Climate Smart Agriculture Project;
- d) World Bank Project for Water and Sanitation.
- e) World Bank Credit facility for locally-led climate action and so on and so forth.

I wanted to bring to the attention of this House what our President has been championing. I speak as the Head of the Delegation of Pan African Parliament. I wanted us to look at what is happening when we access this credit.

The Chairperson of Budget and Finance has not told us what is happening. The global north in the world generally has been very unfair to us who are in the global south.

The World Bank being one of the Bretton Woods organs, believe it or not, they have been giving credit to the Global North at about 0.01 per cent, allowing them access to big facilities for development in their countries.

When the Global South such as Kenya, Tanzania and Zambia want to access the same facility, they will go to the same Bretton Woods Institution and will be given the same facility but at the rate of 10 per cent interest.

That means Kenya, Zambia and Tanzania repay these loans 100 times more than the amount that the United States of America (USA), France and Canada will pay. The Global North has rigged the financial system against the Global South.

Madam Temporary Speaker, I was very proud to see President Ruto taking up this issue at the African Union (AU) in the recently concluded meetings. We need to ask these questions. Not only in this Parliament and the continental and the international level. Something is wrong.

We are told that we are backward. Kenya is told we have loans and are not doing well. However, the same institution gives USA a loan at 0.01 per cent while Kenya is given at 10 per cent. Meaning, if I am taking a USD100 million facility, I will pay 100 times more than what USA will pay. How fair is this situation to Kenya and the African countries?

As we celebrate the giving of these facilities to us, we must start questioning what we can do to raise our own and assess the sources of revenue. As Africa, we must start talking about where we can get money. Let us involve the African Development Bank (ADB) and the infrastructure and the multilaterals that are based in Africa more. This will be better than working with institutions like the World Bank and other multilaterals that are rigged against us.

Madam Temporary Speaker, the problem with the Senate and the National Assembly in Kenya, is that they have no idea of what is happening. We have a problem. We must consistently fight to restructure the global financial institutions that have been rigged against the Global South. We must continue this battle.

I am very proud to see our President, having understood the issues as they are, debating them at the African level at the AU functions. We pray that this will continue.

As I contribute, I state again that it is time we relook at our debt level. This country needs to find a way of raising our own money so that we do not have to go to these Western institutions that have really impoverished us. They say they are helping us but in actual fact, they are helping their brothers and sisters in the Western world. They say they are giving us aid and they want us to celebrate but in actual fact, they are making money out of us. When you charge me 100 times more than another country in the West, you are actually riding on our back.

We need to even discuss the loans that have been paid and the ones that we are servicing. As we thank these people who have helped us so far, we need to ask ourselves what we can do as a country and as Africa.

Madam Temporary Speaker, as we pass this report, I urge this Senate to think again. President Ruto and his administration have started certain initiatives. Let us support initiatives such as the national lottery, the hustler fund and creating a culture of saving for this country. It is because these people are also giving us money from what they saved from their own finances.

Let us raise the saving culture so that we can borrow from within our resources. If we borrow from within, our country will not go into more debt and we will not be exposed to discrimination by the World Bank and other Bretton Woods Institutions. This is how we are going to help this country grow and not from these loans.

Another thing that my learned friend and colleague, Sen. (Dr.) Khalwale, has talked about, is that this money we are taking is expensive. We are praying that all the 47 county governors who will receive this Kshs17.159 billion will use it well. We want the governors to know that we are borrowing this money from the World Bank at 100 times more than what Britain is paying because these institutions are theirs. These institutions are making them richer. Therefore, let us not misuse these monies.

The governor of Tana River County and all the other governors, please, let us not misuse this money. Have a heart for the people of your county. Use this money for the benefit of the people. This is not free money, Government allocations or direct money. We are borrowing this is money at a rate 100 times more than what the United Kingdom (UK), USA, France and Germany access this money from these Bretton Woods Institutions. Use this money fairly for the benefit of the people.

When we, Senators, come for you, do not feel bad. This is because when we come for you, we are aware that this money is expensive. When you misuse this money, we shall come for you at that county level. It is not politics.

Some people think that when we are doing our oversight--- When Sen. (Dr.) Khalwale says many billions have been pumped into Kakamega County and the money is not being seen on the ground; and I also stand to say the same thing for Tana River County, people think you want those seats. No. As Senators, we know these monies are difficult and expensive to access. When it comes to the people, we want the monies to be used for the purpose for which we borrowed and approved it for them to come to you.

I hope governors and County Executive Committee Members (CECMs) somewhere are listening. If this money is misused and comes to us through the Committee on Public Accounts of the Senate, we shall not be very kind to those people who will be found to have misused them.

Madam Temporary Speaker, with those few remarks, I support and congratulate the Chairman for the work they have done in this Committee.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Mungatana.

I now call upon Sen. Tobiko to contribute to this Motion.

Sen. Tobiko: Thank you, Madam Temporary Speaker. I congratulate the Mover of the Motion, Sen. Ali Roba, party leader, for the good job that the Committee has done. I also congratulate the President for signing this into Law.

At the moment, our counties are at crossroads. Majority of our counties, particularly those in the Arid and Semi-Arid Areas (ASAL) are going through unprecedented drought and famine. Right now, we are facing starvation of the population.

Madam Temporary Speaker, due of this, I am glad that Kajiado County is one of the beneficiaries of the additional conditional revenue. Just like the earlier speakers have said, our counties do not have the luxury of spending this money on other things, unless it is the necessities of that county.

We know our people are battling cancer and kidney failures in the hospitals. Healthcare has become extremely expensive. The more the facilities we have in our hospitals, the better for the people.

Madam Temporary Speaker, when we have a situation like what we are facing in the country right now, it calls for posterity measures, prudent spending and projects to be prioritised. We expect all Governors to be careful in expending of this money, to remember that we will pay very expensively for these loans, and to know that the people are very needy.

Now, children are not even going to school in our counties because they are not energetic enough. There is neither food at home nor at school. Over the weekend, I had parents coming to my home saying they are not sending their kids to school because if there was food in school, they would go. However, they would rather stay with them at home. Not that there is food at home but because there is no choice.

For every project the governors will put this money into, there must be priority needs. Water is a crucial issue right now in our counties in this time when boreholes are running dry. Drought mitigation measures including relief food, both in schools and to the communities are the things we expect the Governors to address as a matter of priority.

Madam Temporary Speaker, I rise to support and also to urge governors to be careful in the spending of this money and for the national Government to be prompt in disbursement of the same funds. The Committee on Devolution and Intergovernmental Relations, has visited a number of counties. We realised that sometimes, we blame the Governors and the County Executives but the problem lies with the disbursement from National Treasury. The county governments are not receiving this money on time so governors are put in very awkward situations. We will also call upon National Treasury to have prompt release of these funds to the counties so that it can benefit the people.

This brings me to another issue of the tug of war going on between the County Assemblies and the governors. It is not so much on delivery of services. You find county assemblies and governors are still stuck in the general elections. By now, Kenyans should move on because elections were done and finished.

At the national level, we do not understand what our good colleagues in the Minority side are still fighting and being restless about; the *Azimio* rallies that are going on that we do not understand when the country is in dire need. When the country is facing a situation even those they are calling upon to come for these rallies can barely come because people cannot even get enough food let alone money for transport to follow the party leaders to Machakos County and every other place.

Madam Temporary Speaker, I urge the governors to concentrate on the work that they were given. They were elected.

They were elected. So, let them concentrate on the work that they were given. Let them work with the national Government that is duly elected. Let them work with the President of the Republic of Kenya. Let us move as a county and prioritize the needs of our people who at the moment are facing very difficult situations.

I urge our counties to make sure that schools are given priority. For example, the Early Childhood Development Education (ECDE) programmes.

You have seen the most unfortunate situation of the ECDE teachers. The other day, the Salaries and Remuneration Commission (SRC) said that they will be paid around

eight thousand, ten thousand and maximum fifteen thousand which is really on the lower side.

I am not encouraging this money to be used for recurrent expenditure but governors should also take care of their staff, so that we do not have a situation where by the ECDE teachers cannot deliver.

I encourage governors to concentrate on development and situations that are facing most of our counties right now.

I thank you, madam Temporary Speaker.

I support.

The Temporary Speaker (Sen. Veronica Maina): I thank you, Senator.

I now call upon Sen. Okenyuri.

Sen Okenyuri: I thank you, Madam Temporary Speaker. I also want to support this Report by the able Chairperson Capt. Sen. Ali Roba.

I have had a look at my county and we are beneficiaries of the same. However, I want to give a general call for action from the county chiefs in the 47 counties to embark on an Own Source Revenue (OSR) action by generating our revenue.

As much as we are benefiting from these conditional grants and disbursement from the national Government, we need to avoid wastage in form of corruption and stiffer penalties on people who are found culpable. Currently, we have desperate people out there who are in dire need of these services.

Devolution came to ensure that services get closer to the people. However, what we are seeing now is that services are getting close to the people but they are not able to benefit because of wastage of resources.

We have county chiefs who are also overpromising on what their counties can generate. As a result, we have so many pending bills. Thereby, we are unable to pay suppliers who are ordinary Kenyans looking to get their payment so that they can support their families.

I support the report but urge 47 county chiefs to minimize wastage and apply stiffer penalties on people who will be found capable of these activities that are contributing to losses knowing very well that this money is borrowed.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Okenyuri. Now we will have Sen. Wafula.

Sen. Wafula: Ahsante Bi. Spika wa Muda kwa fursa hii ambayo umenipa kuchangia hususan mada ya kuangazia pesa zinazokwenda mashinani.

Tunapopiga kurunzi mashinani, kuna kaunti ambazo kwa sasa zimeshindwa kuwapa wakulima pembejeo na mbegu za ukulima kwa sababu fedha hazipo. Hizi pesa zitakapoachiliwa, ninatumai ya kwamba wakulima watapewa nafasi bora, wanawake na mayatima ili waweze kujipanga katika musimu huu wa upanzi.

Vilevile, Serikali imetoa mufumo mpya wa kutoka kidato cha saba, cha nane hadi shule za upili. Hivi kwamba inahitajika miundo mbinu ambayo watoto wataweza kupata madarasa, madawati na vitabu. Vyote hivi vinahitaji pesa ili yote yawezekane.

Katika sekta ya kilimo, kuna viwango mbalimbali ambazo serikali imeweka pesa. Lakini ndani ya serikali kuna kupe ambazo hujificha katika miradi hii na kufuja pesa za wakulima.

Ningependa kuwarai mawaziri wa kilimo na serikali za kaunti kwamba sisi kama Bunge la Seneti tutamulika hawa watu na “kuwapuliza *doom*” kuhakikisha kwamba pesa za Kaunti zinafanya kazi kwa mujibu wa sheria.

Pesa hizi zitakapofika nikuhakikisha kuna mstakabadhi mwema kati yetu, magavana na serikali ya Kitaifa. Sitarajii kwamba watakapopata pesa wakose kulipa pesa ambazo zinaenda kwa halmashauri ya afya, halmashauri ya kijamii (NSSF), na vile kulipa ushuru. Katika vitabu vya hesabu tumeona wafanyikazi wa serikali wanalipwa mishahara lakini pesa zitakazo lipa ushuru katika serikali ama kugharamia matibabu katika sekta ya afya hazitumwi katika *National Hospital Insurance Fund (NHIF)*. Hizi pesa zitakapofikia wafanyikazi, wapewe haki yao kwa kulipa ushuru, NHIF na *National Social Security Fund (NSSF)*, haya madeni yaondolewe.

Kuna wanakandarasi ambao kwa muda mrefu pesa zao hazijalipwa. Haiwezekani tuwe tunawapa pesa kila uchao lakini hawalipi madeni ya wafanyikazi na wanakandarasi. Tuhakikishe wale wachapa kazi wa mashinani walipwe pesa zao, wale ambao wako katika ratiba ya mwaka 2023/2024 wapewe pesa zao, ili kwa pamoja tusonge mbele na tuimarisha nchi yetu ya Kenya.

Asante sana.

The Temporary Speaker (Sen. Veronicah Maina): Thank you, Senator.

We will now have Sen. Cherarkey contributing to this Motion.

Sen. Cherarkey: Thank you, Madam Temporary Speaker for this opportunity. I want to thank the Committee for the good job they have done which is in line with the provisions of Chapter 12 of the Constitution where this Motion has originated from.

I also want to thank the new Senator from Bungoma. I did not know that the people from Bungoma County speak fluent and good Kiswahili. In future you should be challenged to also preside over the proceedings of this House in Kiswahili. We have translated our Standing Orders to Kiswahili and I know our secretariat have been efficient in terms of facilitating Members.

On the issue of disbursement of funds to counties, I sit in the County Public Accounts Committee (CPAC) and when you look at the Auditor General’s Report, the audit queries and the financial statements of the counties, the major issue is the delay in disbursement from the National Treasury.

I remember at some point we wanted to sanction the former Cabinet Secretary National Treasury because of violating Article 219. The current Cabinet Secretary should be watching this. Article 219 states that –

“A county's share of revenue raised by the National Government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225”

There is a process on how you can stop that allocation of funds. It is hard for us to play our oversight role. For instance, when you ask the Murang’a county governor - our good brother Sen. Kang’ata who was a Majority Whip and my good friend - what he did on matters roads from one point to another in Kiharu, Maragwa or Mugoiri? When you ask them about budget performance and control, they are not able to absorb Kshs2 billion especially on development budget because of violation of Article 219 where the National Treasury is not keen on following the provision of the Constitution.

Therefore, as we pass this Motion, the National Treasury and other Government agencies must work to ensure that the money is dispersed as appropriated.

I think also county assemblies should work very hard because the law provides they should pass those budget estimates and others within the county assemblies especially in Article 224 on County Appropriation Bills.

Most county assemblies when they are passing county budgets do not have problems. Before, especially from 2013 most of the budgets were being rejected by the Controller of Budget (CoB) considering in the last two terms, there were challenges. However, I am happy with the capacity building of the county assemblies. The processing of budgets for county executives and assemblies is becoming much easier.

Thirdly, we need to relook at the financial autonomy of county assemblies. That is a soft underbelly in terms of our primary oversight. We need to give them financial autonomy as per the Public Financial Management (PFM) Act.

Madam Temporary Speaker, can you believe the Governor of Murangá, Nairobi or Nandi Counties whose Finance Executive Committee Member (CECM) gets money as per the PFM Act through the County Revenue Fund (CRF) from their bank account in the National Treasury.

It is processed to the county government, then the clerk of the county assembly makes a requisition for those monies to be taken to the county assemblies. How then are the Members of the County Assemblies (MCAs) expected to oversight this when the governor is holding it?

I was asking Sen. (Dr.) Khalwale to talk about accountability in Kakamega. Those MCAs could not oversight. If they oversight, the governor will not give them the money.

They will go without salaries, car loans and mortgages as well as allowances, yet, we know MCAs are the first line of defence for *wananchi* who have small harambees, baby showers, funerals and wedding preparations in the villages. I do not know whether they participate in the preparation of bull-fighting matches.

Madam Temporary Speaker, the point I am making is that the CECM makes a requisition. The Senate must be ready to give financial autonomy to our county assemblies. Governors are mischievous. They can tell the *wananchi*, “MCAs wanted to be given allowances yet there is no medicine. Do you want me to buy medicine or to give them money?” The *wananchi* will say medicine should be bought.

What happens if a Governor is summoned or invited to appear before a county assembly? They will use their power to withdraw and ensure non-accessibility. There was a policy before but we need to amend the PFM Act. I appeal to the House to give financial autonomy to MCAs in order to perform their duties.

I have seen Nandi County’s total conditional grants from the National Government which is provided for under Chapter 12 on Principles of Finance is getting a total of Kshs153,297,872. There is also conditional leasing of medical equipment.

I once investigated this medical equipment with the former Chairperson of Health, the former Senator for Trans Nzoia. We found it to be an automatic rip-off. Counties then were leasing syringes. Can a syringe be leased? They were leasing gloves and bedsheets. This was an outright rip-off.

Senator Ali Roba as a former governor knows that. I know he is now comfortable if I tell him about this. The last time I tried saying this, I was given a thorough engagement in the House. He knows that this is an outright rip-off. I expected him as the current Chair to demand and not fear.

I do not know whether this is in the Quran but I am a Christian. The Bible says, “fear not.” They should be told off during budget hearing that there will be no longer medical equipment supplies. Let the counties be given for needs assessment basis. If they want to buy kidney transplant machines or any other machines, then are free buy but they should not lease syringes and gloves.

Madam Temporary Speaker, those contracts were skewed and impacted our oversight, transparency and accountability.

The issue of accountability is not negotiable and the governors should be told as much. When governors demand for additional money, they make a lot of noise shouting at us. I heard the Deputy President tell governors that there would be no additional allocation even if the governors wanted to whip the Government. He said it is because the economy is not doing well. I agree.

Madam Temporary Speaker, I want governors to use the same energy to account for money the way they are demanding for more. It is paining because the work of oversight is that of a mortician. We are doing post-mortem on a dead body. We are looking after the facts. For example, when looking at the audit queries of Kakamega County, we question how much was consumed by Bukhungu Stadium, who the contractor was and the scope of works. We are just morticians operating somebody already dead.

Therefore, governors have no option. I am not afraid to say that in accountability issues, the soft under belly is the Ethics and Anti-Corruption Commission (EACC). This body is part and parcel of allegations of corruption within governors. When serious whistle blowers report these issues to EACC under the Witness Protection Act, the rogue EACC officers see the governor, show him the evidence and they also “eat”.

I am not talking about the whistle blowers that we are seeing in the Azimio Coalition rallies. You can see the Minority Side has run away because they are using fake whistle blowers.

That is why when you go to *mashinani*, wananchi will tell you the issue has been reported to EACC, but no action has been taken. The EACC only goes for *omena* and arrests clerks instead of going for *mbuta* or the big fish. That is where the challenge of accountability lies. I know you will ask why our Committee tables very nice reports with serious recommendations, having been facilitated by the secretariat.

However, there is no implementation mechanism after tabling. Instead of the Directorate of Criminal Investigations (DCI), EACC, Controller of Budget (CoB) or the Auditor General (AG)--- Article 225 of the Constitution demands that a county that has violated the law should not receive any allocation. However, they go ahead and become part of this. Even for us who believe in the Holy Book, must account.

Madam Temporary Speaker, I know time is spent but this is a serious matter for this House. I know I have fifteen minutes or so. How many minutes to go?

(The clerk-at-the-Table spoke off record)

10 minutes. We need to be honest and I am happy the person who did this report is a former governor and did it with hindsight of understanding.

Point No.7 is on county supplement for construction of county headquarters. I thank them for looking at the Kshs163million. For example, Nandi and Nyamira counties

are still going on with the construction of county headquarters. Tana River and a number of counties---

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, I do not want to interfere, but it is 6.23 p.m. Please, bear in mind that we have a few minutes as you continue with your submission.

Sen. Cherarkey: Okay Madam Temporary Speaker. The people who boycotted the House should be here because they are here for this reason. Of course, I understand. They need to be here so that we dispense it off.

Finally, Madam Temporary Speaker, the governors are not going to hide anywhere when it comes to accountability. Governor Oparanya went to court in 2013 to try to block governors from appearing before the Senate but the courts ruled in our favour. The Supreme Court Advisory and our role under Article 96, is crystal clear.

For example, the Nandi County headquarters that was under construction has stalled. There is no value for Kabiye Dairy Cooperative Society and yet it has consumed a lot of money under the National Agricultural and Rural Inclusive Growth Project (NARIGP). Kibogok Tea Estate sits on 256 acres and that is own source revenue. Counties are not being creative in terms of own source revenue.

Madam Temporary Speaker, it only generates Kshs13 million. I know you come from Tea growing area. How can you tell me 256 hectares generate only Kshs13 million per year? That is corruption that we must fight and ensure that every penny and project that is taken to the county must be accounted for.

For instance, in Nandi County, more than three hundred projects have stalled and yet money has been consumed up to Kshs 300 million. The way the governors are excited in getting this allocation, they must also be excited and smiling when they come for accounting before the Senate of the Republic of Kenya.

In the interest of time that we can dispense and send money in good time. I beg to support and thank the Committee for the job well done.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you very much Sen. Cherarkey. There are no more requests for contribution, I call upon the mover of the Motion to reply.

Sen. Ali Roba: Thank you, Madam Temporary Speaker. I take this opportunity to first extend my gratitude to the Senators for the contribution that they have given to this Motion.

It is very important to understand that this money is not a small amount. It includes the Kshs163 million for construction of County Headquarters. We are looking at Kshs17.319 billion being released to the county governments within the next three to four months.

The impact it will have in terms of circular flow of income in the country because the 47 counties stand to benefit from this money, it is extremely critical. The extreme and important role and function of the Senate is for us to prosecute a matter that is so critical in terms of releasing additional money to county governments for purpose of making sure the county governments are able to do these functions.

I know we have had a bit of controversial issues that may have led to a number of our Senators walking out. However, to be very frank, this is a very critical function of a Senator to understand that releasing additional funds to their counties is something that

they needed to look at the Order Paper and say we must execute this. This is because time is running out and we need to think beyond the issue of political parties and such other issues.

It is very painful because as a Senator who has served as a governor for two terms, getting this money released very fast should be the interest of every Senator in making sure the funds get to these counties. This money is a lot as it is.

I appreciate the Senators that have taken their time to respond and give their input. We have taken note. In the interest of time, I beg to reply and request in line with the Standing Order No. 66 (3).

Madam Temporary Speaker, I would like to request you to defer the putting of the question to a later date and with that I beg to reply.

I thank you.

(Applause)

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, I want to thank you more sincerely, first beginning with the mover of this Motion. A very important Motion has been moved in Senate today on matters that are affecting the county especially the budgets and the budgets allocations.

Hon. Senators, it is now close to 6.30 p.m. and this Motion is very important and I will request that the same be listed in the Order Paper tomorrow.

I request that this matter be listed in the Order Paper for Division, during tomorrow's Session. I believe it is almost 6.30. p.m., may we all rise.

(The Temporary Speaker consulted the Clerk-at-the-Table)

ADJOURNMENT

The Temporary Speaker: (Sen. Veronica Maina): Apologies for that.

Hon. Senators, it is now 6.30. p.m., time to adjourn the House. The Senate therefore stands adjourned until tomorrow Wednesday, 22nd February, 2023 at 2.30. p.m.

The Senate rose at 6.31. p.m.