

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 3rd November, 2015**

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

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

PAPERS LAID

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 3rd November, 2015:-

THE REPORT ON THE PETITION ON ALLEGED FLAWS
IN THE BUSIA COUNTY BUDGET MAKING PROCESS

The Report of the Standing Committee on Finance, Commerce and Budget on the examination of the Petition by Hon. Vincent Wanyama Opisa, MCA, on alleged flaws in the Busia County budget making process.

REPORT ON CRA CIRCULAR ON FINANCING OF
NON-CORE CAPITAL PROJECTS

Report on the Standing Committee on Finance, Commerce and Budget on the Message from the County Assembly of Kilifi on Commission of Revenue Allocation Circular No.5/2015 dated 19th May, 2015 on financing of non-core capital projects.

REPORT ON THE PETITION BY MAJOR (RTD.) JOEL
KIPRONO ROP ON THE STATE OF KENYA'S ECONOMY

Report of the Standing Committee on Finance, Commerce and Budget on the examination of the Petition by Major (Rtd.) Joel Kiprono Rop, a resident of Bomet County on the state of Kenya's economy.

(Sen. Billow laid the documents on the Table)

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we have several Statements that are listed. First, are there any Senators seeking Statements?

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

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

FAILURE BY THE CS, INTERIOR AND CO-ORDINATION
OF NATIONAL GOVERNMENT TO APPEAR BEFORE THE
SENATE ON TUESDAY, 3RD NOVEMBER, 2015

Sen. Haji: My point of order, Mr. Deputy Speaker, Sir, is that I want to sincerely apologise to the House. You will recall that last week I told Members that the Cabinet Secretary, Interior and Coordination of National Government would appear before a *Kamukunji* of the Senate. Unfortunately, he never appeared. The information we have is that he was summoned to State House because of the problem at the border of Isiolo and Meru.

This is the second time that I have promised this House that the Cabinet Secretary will appear before them. I want to sincerely apologise for this. I want to declare that I will never ever call him to a *Kamukunji*. I will only summon him---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Haji. I cannot allow you to get to where you want to because if I do, I will be allowing you to bind yourself and the Committee. I do not want, when the Vice Chairperson of your committee is here and you are not here, to do something contrary to what you are just about to do. So, please, do not get there.

Sen. Haji: Mr. Deputy Speaker, Sir, actually, I was leading into saying that I will be summoning the Cabinet Secretary to my committee. But in a *Kamukunji*, I think this should be done by the Senate Majority Leader and not me. Twice, I have invited him, and this has not succeeded. I am not blaming the Cabinet Secretary.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, you are the Chairman of the Committee. You have a very big responsibility to the House and to the nation. If you are not blaming the Cabinet Secretary, which would mean that you understand his predicament, then it is in my view wrong for you to make that far reaching statement. What I propose is that you should in the first instance summon him to your committee, like you have proposed. Get the facts right and then know when it will be possible for him to come. The Senators still need him to come to this House. Under the Constitution and our Standing Orders, you are the only person who has the mandate to invite him or if need be, have him summoned to come before the House.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I would like to share the bitterness of the Chairman of the Committee. Twice, we have been kept waiting. On one of the occasions, the grapevine was that some forces---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. You know this is a House of rules and procedure. In as much as we do not rely on newspaper cuttings for our proceedings, in the same manner we do not rely on the grapevine. So, you either have something to tell me, but if you want to invite me to your grapevine, I will not come.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, then allow me to tell you, there is no grape vine. The rule of thumb in any Parliament is that in a parliamentary democracy, parliamentary work takes precedence over any other engagement. How then shall we know that it is not out of contempt or impunity that the Cabinet Secretary has twice kept

us waiting? Could I seek your indulgence, you now take it as the head of this Senate to prevail upon the Government, that Cabinet Secretaries must honour summons of committees of this House. It is something which is bigger than the Chairman because this is not only happening to his committee, but other committees are also falling prey to the same tactics.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, do you want to say something before I make a ruling on this?

Sen. Haji: Mr. Deputy Speaker, Sir, I do not agree with blaming the Cabinet Secretary. It is beyond his capability because if he has been summoned to State House, he must oblige. I have said I have made this Statement because many of the Senators told me today that this is the second time I have called them and the Cabinet Secretary has not appeared. They said the next time I call them, they will not attend. So, it will be embarrassing if I call the Cabinet Secretary here and the Senators do not attend the meeting.

I understand your sentiments and I oblige that I will do what is possible. The Cabinet Secretary is blameless in this matter.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Haji.

Sen. (Dr.) Khalwale, I regret I am not able to do what you are asking me to, at least not now. Only last week, I talked about Article 125 of the Constitution. There are procedures to be followed. So, Sen. Haji has said it, and I think correctly, that before he invites the Cabinet Secretary, again he will invite him in the first instance to his Committee so that he can explain himself. I think that is the right way to go in the present circumstances.

I would also like to say, that on behalf of the House, I also regret the fact that the House has been called here twice and in both occasions the Cabinet Secretary has not come. There has been no explanation from the Cabinet Secretary except what we have been told by Sen. Haji, which I have no reason not to believe. We should leave the matter at that for now and let Sen. Haji, maybe some time next week, tell us what has transpired on his invitation of the Cabinet Secretary to his Committee. I think that rests the matter.

It appears that no Senator is seeking a Statement. Let us start with the Statement listed as "a". Sen. Mutula Kilonzo Jnr., is expecting a Statement from the Committee on Energy.

Sen. Moi, if you may proceed.

CAUSES OF OIL SPILLAGE INTO RIVER THANGE IN MAKUENI COUNTY

Sen. Moi: Mr. Deputy Speaker, Sir, Sen. Mutula Kilonzo Jnr., requested a Statement regarding oil spillage into River Thange in Makueni County. The Statement sought the following information:-

- 1) The date when the leakage commenced.
- (2) Explain the cause of the spillage.
- (3) State the reason the said leakage and/or spillage has not been repaired or stopped.

(4) Whether the National Environment and Management Authority (NEMA) was notified of the above incident.

(5) State whether an Environmental Impact Assessment (EIA) has been conducted on the underground water by the NEMA.

Mr. Deputy Speaker, Sir, it is quite a lengthy Statement.

The Deputy Speaker (Sen. Kembi-Gitura): Does Sen. Mutula Kilonzo Jnr., have a copy of the response?

Sen. Moi: Yes, he does.

The Deputy Speaker (Sen. Kembi-Gitura): Are you able to summarise it?

Sen. Moi: Yes, I could summarise it.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr, you have had the Statement and read it. Have you not? It is quite lengthy. Would you be satisfied with a summary taking us to the observations? Do you insist that it must be read?

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, I have read the Statement and it is lengthy, but it does not have to be read. He can summarise the positions that the Kenya Pipeline has taken.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered. Let us do it like that. Proceed, Sen. Moi.

Sen. Moi Mr. Deputy Speaker, Sir, there was a spillage which occurred in May. There were some remedial measures taken based on the cause of spillage into River Thange. This was because of the corrosion in the pipes. The leakage was stopped. There were temporary measures. Later on, permanent measures were put in place.

The National Environmental Management Authority (NEMA) was notified on the 19th June, 2015 to establish the point where the pipeline was leaking and mitigate effects and carry out environmental mediation. The letter yet, from NEMA has not been received on what they have undertaken and the results they have found.

We had been asked to state whether Environmental Assessment Impact (EAI) was conducted on the underground water. NEMA officers visited the scene, NEMA's County Director, Makueni, has been to the site and is apprised of the matter. The Water Resource Management Authority (WRMA) officers have also visited the scene. We are not privy to any independent report that may have been done by the two agencies. So, we have still not received the NEMA nor WRMA reports.

With regard to the remedial actions that have been undertaken, the Kenya Pipeline Corporation (KPC) has contracted SGS Kenya Ltd., a NEMA approved company providing verification, testing and certification service to map up the extent of petroleum spillage to form the basis of a comprehensive clean-up and restoration exercise. The report is expected by 6th November, 2015. From this report, the KPC will know what to do.

The KPC has an emergency response team that is trained to respond to emergency and minimize risks to any impacted communities and environment,

We were also asked to state the remedial action taken on the ground water and the cleaning of the river. So far, the KPC has continued to pump out any petroleum products in the shallow ground water. In conjunction with SGS, they are working to establish the optimal number of wells to pump out any petroleum water on the ground. They are also considering instituting remediation plans. The remedial plans will be shared with NEMA.

Skimming of petroleum product in the river has been done to ensure no contamination occurs downstream of the river.

Treatment of any soils along the river bed has also been done and the KPC will ensure that it is completely satisfactory using internal resources and hired services where necessary.

Thank you very much.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The consultations are on the higher side.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, despite speaking eloquently and in nice English, the answer Sen. Moi has given is completely unsatisfactory. It appears casual. The spillage was six months ago. Up to now, we do not have an EIA report on the oil that spilled into River Thange and is now going downstream.

The extent of the spillage is such that it was noted 100 metres away from where the pipeline is. That is equivalent to the size of a football pitch. The waters in River Thange and adjacent water resources have been entirely affected. The pipeline is 15 feet underground yet the oil has now been seen on the surface.

The clarifications I need from the Chairperson are:-

1. On what basis is KPC offering water to schools and the community, when they have not yet established the impact of the spillage on the rivers and other sources?

2. From the report, it appears that the level of flow on Kenya Pipeline is 800,000 litres per hour. The oil spillage was ongoing for more than 10 hours. How much of the oil leaked between 12th May, 2015 and from 6.30 p.m., when it was reported, to the following morning when they attempted to close the valves?

3. Why has the Ministry of Energy allowed KPC not to remedy the mistake that was caused by the spillage and allowed them to go and encase the pipeline without disclosing? The report done by KPC was on 30th June, 2015 and not 19th June 2015.

4. Why did KPC take more than 45 days to report to the Director-General, NEMA on oil spillage? Even on the report submitted, they purport that the spillage was on 15th June, 2015 when, in fact, it was on 12th May, 2015. A difference of 30 days.

They have even given pictures of the maize they have planted here, yet, we know from the reports appearing even in the daily press that there are people who are being treated for Lead poisoning in Makueni County.

5. Up to what extent has KPC conducted any test on the soil or the water, which is continuously flowing even now, to determine the extent of lead poisoning?

6. Why is it that, six months down the line, KPC has not issued a notice either in the press, in Thange, that the water flowing from River Thange has Lead poisoning?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Mutula Kilonzo! You are seeking a clarification and not making a fresh Statement.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I am still clarifying. There are many questions.

The Deputy Speaker (Sen. Kembi-Gitura): However, not too many.

Sen. Mutula Kilonzo Jnr.: Okay, I am summarizing, Mr. Speaker, Sir.

The people of Thange Ward, who live next to the pipeline and along River Thange, will not plant. Other than giving them 5,000 litres of water, what will the Kenya

Pipeline Corporation (KPC) do to ensure that they have food for the period that they are not going to be able to plant?

Lastly, how long will it take to clear the Lead pollution in River Thange that has been caused by the Kenya Pipeline Corporation?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Moi. There are many questions that you need to answer.

Sen. Kagwe.

Sen. Kagwe: Mr. Deputy Speaker, Sir, first of all, I think we are experiencing a sound problem in the House, because we could not hear Sen. Moi's answer very well. But, nonetheless, could he kindly explain to the House the level of preparedness in terms of oil disasters that could happen in the country? We have just heard about one in a river, which was quite serious. Suppose there was a ship docking in Kilindini that had a spill. What sort of disaster management system for oil spills does this country have at the moment?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this is a very---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, do you want to answer one by one?

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

The Deputy Speaker (Sen. Kembi-Gitura): Why do you not let us finish and then you deal with all of them? There is only one more coming.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this pipeline is very old. For that reason, it is open to corrosion, internally and externally. Could the Chairman tell the country when the entire pipeline, from the beginning to the end, will be replaced, because this leakage can recur any time, anywhere? Finally, the taxpayer lost 800,000 litres per hour for 10 hours. Could the Chairman tell us how that loss will be recovered and who is going to be held responsible for the same?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, it is common knowledge that most fuel used in this country also contains Lead. It is also common knowledge that the fuel that we use is a benzene derivative. Could the Chairman tell us when the Kenya Pipeline Corporation will carry out a study of the extent of Lead poisoning to the community so affected; bear all the costs of treatment for all the Lead-poisoned Kenyans and continue monitoring for the prevalence of cancer that may emanate from this poisoning by benzene products? How much is the Kenya Pipeline Corporation ready to put into this process?

(Sen. Murkomen crossed the Floor without bowing to the Chair)

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. When Sen. Murkomen came in, he greeted Sen. Kanainza and Sen. Sijeny and then walked to the other side and greeted the Members on that side. He should have walked to the Bar and bowed to the Chair before crossing the Floor. Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, you are out of order. Do the right thing and sit down. Go back to the Bar and bow to the Chair.

(Sen. Murkomen walked to the Bar and bowed to the Chair)

Sen. Moi: Mr. Deputy Speaker, Sir, a myriad of questions have been asked. If I went through the whole Statement, about three-quarters of those questions could have been answered. But there is a very pertinent question which was asked by my colleague, Sen. Mutula Kilonzo Jnr.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order! The Consultation is good but it is too high. Could you, please, control it so that we can transact serious business?

Sen. Moi: Sen. Mutula Kilonzo Jnr. was kind enough, when we met last time to let me know about this oil spillage and its seriousness. We have taken this issue very seriously. You mentioned issues of lead poisoning, contamination of underground water and what is happening in River Thange. We have summoned the whole team and agreed that we will all go to River Thange. I will be there and hope that you will be there too. A team from the Kenya Pipeline Corporation will also be there so that we can ascertain exactly what the situation is and what remedial action is being taken.

Regarding the eight million litres that were lost, that has been taken care of by insurance. I would beg your indulgence that next week, after interrogating the whole team from Kenya Pipeline Corporation, we will be in a better position to give this noble House a good explanation on what happened and the measures that have been taken.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! I have indicated to you more than three times that the consultations are too high.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, an order ought to be issued from you as to when we should receive a response---

Sen. Obure: On a point of order, Mr. Deputy Speaker, Sir. Did you notice that we have enjoyed relative peace in this House until Sen. Murkomen arrived?

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Murkomen, I do not know whether you are following the proceedings of the House, but Sen. Obure has risen on a point of order; that the House was relatively peaceful until you came in. He is requesting that if you must consult, do it within the decibels that are allowed in the House, so that all of us can have some relative peace.

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. It is not only today, but the whole of last week we had relative peace in this House when he was absent. May I kindly request that you---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator. You are out of order. I have already ruled on the issue.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, Sen. Moi has been graceful enough to tell us that he has summoned a team next week. He intends to go to Makueni, but he has not given a timeline on any of those matters. Would I be in order to suggest that he gives a timeline? My concern is that the rains have begun and the problem is

going to continue. If we do not watch, Sen. Moi will not be seen here for another few more days. He will go wherever he disappears to when he pleases.

(Sen. Murkomen crossed the Floor and consulted loudly with other Senators)

Sen. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. Clearly, the harassment has moved from this side to the other side of the House. There is a clear personification of that harassment.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order, Senators! We will have some order in the House. We are transacting very serious business. We are discussing matters of the environment and serious issues are coming up. I cannot possibly tell you not to continue consulting, but I think we need to have some respect for the House. That is going to be found if we adhere to the rules of our own House. We will transact our own business the way we normally do it.

Sen. Murkomen, if you must go from side to side, please, do not export or import trouble in the House. That is my ruling now, so that we can have some peace. I do not want to take a position where I will ask you to leave this Chamber. But we must transact business the way we normally do.

Sen. Kagwe was on a point of order.

Sen. Kagwe: Mr. Deputy Speaker, Sir, as Sen. Moi answers the question regarding the oil spill, there was the matter of the national level of preparedness in the event of an oil spillage. Is there a department or system in place to take care of that kind of situation? You will recall that even in the United States (US) there has been some very serious oil spillage in Florida and other places. The US Government was almost unable to deal with it. If the US Government is unable to deal with it, what is the level of preparedness in Kenya?

Sen. Moi: Mr. Deputy Speaker, Sir, we will be going there next week. Within two weeks, I promise to have a full and concise report because we will be together.

Concerning the level of preparedness which Sen. Kagwe has asked, Kenya Pipeline Company (KPC) has a unit for emergency response. Nationally, we have the Kenya Maritime Authority (KMA) which has a unit to prepare themselves in case of any eventualities or disaster of this magnitude.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM HOMA BAY
COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I would like to acknowledge the presence of the delegation of visiting Members and staff from Homa Bay County Assembly Committee on Social Welfare and Equal Opportunities seated in the Speaker's Gallery this afternoon.

(Applause)

The county assembly Members and staff are here on a benchmarking visit with the Senate Committee on Labour and Social Welfare. I request each Member of the delegation to stand when called out so that they can be acknowledged in the usual Senate tradition.

1. Hon. Julius Nyabok- Chairperson
2. Hon. John Kwanya- Vice Chairperson
3. Hon. Tom Ometo- Member
4. Hon. James Oyugi- Member
5. Hon. Zacharaya Olango- Member
6. Hon. Walter Okumu- Member
7. Hon. Ann Akeyo- Member
8. Hon. Caroline Okumu- Member
9. Hon. Ruth Abongo- Member
10. Hon. Moses Dieno- Member

The delegation is accompanied by the following staff;

1. Mr. Tobias Opana
2. Mr. Thomas Opere
3. Ms. Faith Apuko
4. Mr. Amos Aluoch
5. Mr. Stephen Olago
6. Mr. John Oyoko.

I take this opportunity on behalf of the Senate, and on my own behalf, to wish the delegation a happy and fruitful visit in the Senate.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, I would like to take this opportunity to welcome the delegation from Homa Bay County. I had an opportunity to sit with this team before they commenced their tour and benchmarking trip of this institution. I would like to thank and congratulate them for choosing the Senate for benchmarking as opposed to some other counties where people go to Congo Brazzaville and some other funny countries for benchmarking. They have truly shown that there are proper structures and leadership in the Senate to act as a benchmark for the Homa Bay County Assembly.

Mr. Deputy Speaker, Sir, this team has brought up the point that, it is not enough for us, as the Senate, to pass the Division of Revenue Bill and the Allocation of Revenue Bill. As we speak, some counties do not have money and have not paid their employees. I am informed that these distinguished Members have come to Nairobi without allowances, yet this Senate has already passed the relevant Bill to facilitate county governments; both executive and the assembly. We will be failing in our duty if we do not extend our mandate to using an iron fist or a heavy stick to ensure that the Government sends out the money to the counties, because as things stand, people are suffering in the counties.

Nonetheless, I want to welcome the Committee and wish them a fruitful visit.

Sen. (Dr.) Machage: Bw. Naibu Spika, niruhusu niwakaribishe na kuwapongeza viongozi kutoka Homa Bay, ambayo ni Kaunti jirani. Ninafuraha, taathima na heshima, kuwatukuza viongozi hawa kwa kufika hapa siku ya leo, kwa ajili ya kujifunza. Huu uwe mfano bora kwa viongozi wa Kaunti ya Migori ambao tabia yao ni vita tu na kula rushwa. Natumai kwamba nyinyi hamna tabia kama hiyo.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I would like to acknowledge the county assembly Members of Homa Bay, just as you have done it. I noticed that it is a Committee dealing with the welfare of the county assembly Members.

(Loud Consultations)

Mr. Deputy Speaker, Sir, if you could protect me from Sen. Moi, just like you protected everyone---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, do you also want to be protected?

(Laughter)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I thought you were more aggressive when it came to me.

The Deputy Speaker (Sen. Kembi-Gitura): Order Senators! Order, Senate Minority Leader! I do not know why today, unlike other days, there seems to be a lot of excitement in the House. Please let us go slow so that we can hear each other.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I was saying that while welcoming that Committee, I have realised that it deals with the welfare of county assembly Members.

Even as they do that, I would like to ask them to do it with a lot of caution. Everything they deal with in terms of their welfare, they must have public interest in mind. There is great concern out there, that the only function that has now been fully devolved to the county governments, with the resources and everything, is corruption.

We rely upon the county government. In fact, a friend of mine was telling me that it is the only function that was devolved without a transition period. We want to ask the county assembly Members to continue being vigilant because they are the watchmen on behalf of the people at the local level. If you need any benchmarking on matters of oversight, our County Public Accounts and Investment Committee (CPAIC) led by Sen. (Dr.) Khalwale is there. The Senate and the resources are available for you, so that we can ensure that whatever little resources that go to Homa Bay will be of great meaning.

I know that the Senator for Homa Bay is excited. I hope that even as Members of the County Assembly come here, unity of purpose between the Senate and county assemblies will be fostered.

I again welcome the Members of the County Assembly of Homa Bay. I have never been to Homa Bay and it is my dream that it will be the first place I will go in the very near future, so that as a Committee on Devolved Government, we can interact with the Homa Bay County Assembly Members.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Onge'ra, have you sought the Floor?

Sen. Onge'ra: Yes, Mr. Deputy Speaker, Sir. Thank you for giving me this opportunity to welcome and congratulate hon. Members from Homa Bay County, which neighbours Kisii County. It gives me great pleasure to see Members of my neighbouring county in this distinguished House. I want to commend the County Assembly of Homa Bay for the great oversight role they are doing, particularly on matters pertaining to the management of resources in the government of Homa Bay, together with their

distinguished Senator. They deserve all the accreditation. It is a shame that they have travelled all the way without allowances. I hope that this matter will be resolved soon, so that the counties can continue to do their work with enough resources.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, allow me to also welcome the delegation from Homa Bay County which is a CORD county. As we welcome them, we also take this opportunity to once again send our collective condolences to Homa County for having lost their first Senator, Sen. Otieno Kajwang and congratulate them for electing young Sen. M. Kajwang to join us in this House. The distinguished young Senator has been a very active Member of the House in every aspect. We believe that the partnership between the counties and this House will continue in the protection and growth of devolution in the country.

I want to urge the visiting delegation to never compromise on the war against corruption.

Mr. Deputy Speaker, Sir, we urge the counties not to compromise on the war against corruption. The kind of corruption that the Government of Jubilee has institutionalized today has become the order of the day. Every day we hear about massive looting of State funds through the Eurobond, National Youth Service (NYS) and many other ways. Let us make sure that we do not allow what is going on at the national level to be replicated at the counties. The money that we send to counties must be spent on development to eradicate poverty, enhance the lifestyles of *wananchi* and, more importantly, make a difference from the neglect that many parts of the country, including your own county, have suffered in the successive previous regimes.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, have you sought the Floor on the same issue?

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

The Deputy Speaker (Sen. Kembi-Gitura): Please, proceed.

Sen. Kittony: Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to join you in welcoming the distinguished delegation from Homa Bay County. They have an urge to learn and I think that this is the right place for them. They have come from far to learn from the Senate. I welcome them and wish them a good stay while in Nairobi and safe travel back to Homa Bay.

Sen. Madzayo: Bw. Naibu Spika, asante kwa kunipa nafasi hii. Ninaungana na wenzangu kuwakaribisha viongozi wa Kaunti ya Homa Bay. Wako hapa leo kwa minajili ya kuelewa jinsi ya kuendeleza serikali ya mashinani. Ni jambo la muhimu kwamba viongozi wa Homa Bay wamefika hapa na natumai watajifunza mambo mengi. Hatimaye, watakaporudi nyumbani, watakuwa vielelezo vya uongozi huko kwao. Nawahimiza kwamba ufisadi usipelekwe katika serikali za kaunti. Ninahakika kwamba kuja kwao hapa watajifunza mengi.

Bw. Naibu Spika, sina la ziada ila kukushukuru kwa kuruhusu viongozi wa Kaunti ya Homa Bay kuja hapa kuungana nasi ili waweze kujifunza jinsi ya kuendeleza serikali za kaunti.

The Deputy Speaker (Sen. Kembi-Gitura): Delegates from Homa Bay County, you have heard the sentiments of the Senate. We are your colleagues. You are welcome to benchmark with us. Let us do what is right for devolution. Thank you very much.

(Resumption of Statements)

Let us go back to the Statements. As I said, the next Statement is from the Senator for Murang'a County. Sen. Khaniri, do you have an answer or how do you propose to go about it?

ONGOING PROPERTY DEVELOPMENT ON
LORESHO RIDGE ROAD

Sen. Khaniri: Mr. Deputy Speaker, Sir, you will recall that we received an answer from the relevant Cabinet Secretary, Hon. Fred Matiangi. In the answer, question one and two which were the most important parts of this Statement were not answered. They answered questions three, four and five. After discussions with the distinguished Senator for Muranga County, we agreed that we have to write back to the Cabinet Secretary to answer questions one and two which he was to refer to the Nairobi City County.

On Tuesday 27th October 2015, we wrote to the Cabinet Secretary and the contents of the letter are in your possession as I have tabled. The Cabinet Secretary responded yesterday, on 2nd November 2015, to request for more time. However, I am not very comfortable because he did not specify how long he needs to get these answers from the Nairobi City County. I request for an additional week. We will make a follow up to see if we can get the answers to questions one and two so that we can respond to this Statement next week.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Khaniri. As you know, the Senator for Murang'a has an interest in this issue. Therefore, I cannot talk too much about it. I hope that we will get a response on Thursday, next week.

The next Statement was sought by Sen. Khaniri. The Senate Deputy Majority Leader, do you have an answer for him now?

DEATH OF MR. ALEX MADAGA FOLLOWING
A ROAD ACCIDENT

Sen. Keter: Thank you, Mr. Deputy Speaker, Sir. This is the third time that I rise to attempt to answer this Statement. All along, we have been getting the same answers until 2.00 p.m. today, when I personally went to the Ministry of Health, met the Cabinet Secretary and the relevant officers. It is at that point when I realized that request that was sent is not what was approved by the Office of the Clerk. Therefore, whatever they have been answering is not what Sen. Khaniri, the Senator for Vihiga County really wanted.

Therefore, I have explained to the Senator for Vihiga County and given him a copy of what the Office of the Clerk sent to the Ministry. We have agreed that we need to send another request today from the Clerk's Office to request exactly what he needs.

I wish to table the answers we received earlier and the request that was sent to the Ministry that was not approved by the Clerk. I request that we be given a few more days, either Wednesday or Thursday, next week, so that we get comprehensive answers.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, is that good for you?

Sen. Khaniri: Mr. Deputy Speaker, Sir, please, allow me to thank the Senate Deputy Majority Leader for the effort that he has put into this matter. Initially, the Statement was directed to the Committee on Health, but he took it upon himself to get answers and he has done very well. It is, unfortunate, that it has taken too long to get this Statement. We expected to get the Statement before the burial of the young man so that the family can get the information that they want to get. I guess that we have no choice, but to wait for next week. I hope that the Statement will be brought next week.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Sen. Khaniri. The Statement will be brought on Tuesday.

Sen. Musila, do you have a point of order?

Sen. Musila: On a point of order, Mr. Deputy Speaker, Sir, I seek the indulgence of the Chair and the House, as a matter of record, to state that today, we waited for the Cabinet Secretary in charge of the Ministry of Interior and Coordination of National Government, Hon. Nkaisery to issue a Statement on matters of national security but he did not show up.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Musila! Before you came in, we canvassed that matter at great length because Sen. Haji, the Chairman of the Committee on National Security and Foreign Relations, rose in his place, explained the situation and we gave certain directions. I do not know whether you are aware of that or you would like to raise a new issue?

Sen. Musila: Mr. Deputy Speaker, Sir, I am not aware because we waited with the distinguished Chairperson of the Committee and gave up. I do not know whether he got additional information which I would be happy to receive.

The Deputy Speaker (Sen. Kembi-Gitura): The point I am making is that we have canvassed and dealt with the issue already. It is among the very first issues we dealt with this afternoon. I do not think that you were present, but Sen. Haji reported about the lack of appearance by the Cabinet Secretary and certain directions were issued which are in the HANSARD. The matter is now beyond us for the time being.

Sen. Musila: Mr. Deputy Speaker, Sir, I am much obliged. I want to thank my former colleague and I am not surprised that he volunteered to give the---

The Deputy Speaker (Sen. Kembi Gitura): I indicated to you, Sen. Musila, that it is not good to call him former colleague. You must call him former colleague and present colleague in the Senate

Sen. Musila: Mr. Deputy Speaker, Sir, I thank him because he is honest enough to own up to it. But, I still remain in the dark because this, principally, was my issue as to the way forward on this matter.

The Deputy Speaker (Sen. Kembi Gitura): Sen. Musila, by Tuesday or Thursday next week, we shall hear from Sen. Haji further on this issue. He dealt with it clearly and eloquently. We did agree that we will deal with it next week.

The next Statements were sought by Sen. (Eng.) Muriuki who I notice is not here. So, we move to the next Statement which was sought by Sen. (Dr.) Machage who I notice is not here, I thought he was here. So, again we will pass and the final one was sought by Sen. Murungi, from the standing Committee on Lands and Natural Resources regarding issuance of title deeds in Meru County.

ISSUANCE OF TITLE DEEDS IN MERU COUNTY

Sen. Khaniri: Thank you Mr. Deputy Speaker, Sir. Sen Murungi sought four issues.

1. How many title deeds have been processed and issued in Meru County since 29th March 2015?

According to the records from the National Titling Center, a total of 894 titles had been issued in Meru County since 29th March 2015 as listed below. I am not going to read that because we have tabled that and I have furnished him with an answer but it is a total of 894 title deeds.

2. How many title deeds have been issued in each adjudication section in Meru County to date?

The answer is a total of 62,563 title deeds have been processed and issued in all adjudication sections in Meru County to date and the details are also attached which I will table for each adjudication section.

3. How many Title deeds have not been processed and issued in each adjudication section in Meru County to date?

The answer is there are 72,6660 Title deeds that have not been processed and issued in Meru County as indicated here below. I will Table that.

4. When the remaining title deeds will be issued, in view of the President's pledge to the people of Meru County that all title deeds would be issued by December, 2015?

The answer is, the issuance of title deeds is an ongoing exercise and the Cabinet Secretary (CS) Ministry of Lands, Housing and Urban development has assured us that the Ministry is committed to finalize this process by end of December 2015 as pledged by His Excellency the President. It is signed by Fred Matiangi, PhD, Cabinet secretary.

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Chairman of the Committee on Lands, Housing and Urban development for this Statement. The Statement leaves some gaps which the CS could have filled. It brings out the lack of commitment of this Government, in issuance of titles in Meru County, which is very clear.

If you look at the Statement in Meru North, in Athinga /Athanja Adjudication Scheme, only one title deed has been issued since March. We are now into the seventh month, one title deed in a whole adjudication section for seven months and they claim that they are serious.

Look at the following page in Meru North in Nyambene Uringu 1, only one title deed has been issued for that period. Meru Central, Igoji in Mweru, four title deeds. In Tigania Kitharene, again, four title deeds have been issued.

It shows that there are officers who are sitting in their offices doing nothing for months waiting to issue one title deed in six months. This is not acceptable. There is another adjudication scheme which is not captured in the statistics; the Ruiru/Rweria Adjudication Scheme is absent, not a single title deed has been issued in that adjudication scheme. When we tried to follow up, we were told that the adjudication officer in Meru requires Kshs5 million to do three days of hearings and conclude the objections. I hope that this Government which is spending trillions of money on the budget can afford Kshs 5million, so that title deeds in Ruiru/Rweria Adjudication scheme can be issued.

Mr. Deputy Speaker, Sir, I want to thank the Chairman for this Statement because it gives a story. It shows that this Government is not committed to the issuance of title deeds in our county.

Lastly, if you look at the final Statement which says that issuance of title deeds is an ongoing exercise and the Ministry is committed and trying to finalize the process by the end of December 2015, December 2015 is only about six weeks from today. What magic will the Government use to produce 72,660 titles within the six weeks, because it said that the Government is committing itself to processing and issuing 72,660 title deeds in less than two months when over all, this period it has only produced 62, 563 titles?

We are not impressed by this Ministry. It has to pull up its socks because the Presidential pledge cannot be honored at this pace. I would like to hear comments of the Chairman before we move on.

The Deputy Speaker (Sen. Kembi Gitura): Sen. (Dr.) Machage, it seems you want to stand. What is it?

Sen. Machage: Mr. Deputy Speaker, Sir, I just wanted to inform you that I am around.

The Deputy Speaker (Sen. Kembi Gitura): You were not around when I called you out.

Sen. (Dr.) Machage: I apologize.

The Deputy Speaker (Sen. Kembi Gitura): That can be canvassed at different levels not now. Now we are dealing with this situation.

Sen. Khaniri: Mr. Deputy Speaker, Sir, you will agree with me that when you look at the questions sought by the distinguished Senator from Meru, he actually wanted the statistics, which I have tabled for each and every Statement that he requested. I also do sympathize with the situation, that in some adjudication sections, very few title deeds have been issued. In response to part 4, the Cabinet Secretary has given the assurance and even the Senators alluded to that, that by the end of December, all the remaining 72,660 title deeds will have been issued.

We want to take the Government and the Ministry at their word. When we resume in January, assuming that this does not happen, then we can hold them to account. For now, there is not much we can do. They have assured us that by the end of December, eight weeks from now, all the 72, 660 remaining title deeds will have been issued. There is not much we can do except that we take their word and come that time, if nothing will have happened, we will hold them to account.

Thank you.

Sen. Murungi: Mr. Deputy Speaker, Sir, January is three months away from now. I will revisit the matter in January, but as a sign of seriousness and commitment, could the Cabinet Secretary release Kshs5 million to Ruiru/Rwarera Adjudication Scheme so that the objections can be heard? There are only three days left and the title deeds can be issued there as a sign that by January, they will do it.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I agree with the distinguished Senator. Issuance of title deeds is the responsibility of the Government and it is the right of all Kenyans who own pieces of land to get their title deeds. I give an assurance to the House that we will communicate the same.

(Laughter)

I do not know if the Government has that as a priority but we will communicate to the Cabinet Secretary so that the said funds are released to adjudication sections and the officers can process the title deeds.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, I can see you are satisfied because you are not seeking the Floor. Sen. (Dr.) Machage, I had already called out your Statement.

Thank you.

HEALTH STATUS OF CHILDREN MISHANDLED BY MEDICAL
STAFF IN BUSIA COUNTY

Sen. Kittony: Mr. Deputy Speaker, Sir, I have the supplementary information regarding the Statement to the Senate on the malaria outbreak in western Kenya and the inappropriate administration of the injectables in Busia County. This is the supplementary information requested as per the Senate HANSARD Report of 29th July, 2015.

(1) Efficacy of Artemether Lumefantrine for the treatment of uncomplicated malaria.

Through a collaborative effort with Kenya Medical Research Institute (KEMRI) and the Centre for Disease Control (CDC), the Ministry of Health conducts therapeutic efficacy trials every two years to check on the efficacy of anti-malarials. In 2014, data from two sites in high malaria burden areas (Kwale and Ahero) showed the efficacy to be 98 per cent. This is within the allowable limit for efficacy as set by the World Health Organisation (WHO). The management of malaria is carried out as per WHO guidelines and there are no plans to use Quinine for the management of uncomplicated malaria.

(2) Inappropriate administration of an injection.

We established that the injection of Artesunate was made to the wrong site but was not injected into the nerve trunk because all the children that were affected recovered. Out of the 21 children that were referred to the Nairobi Hospital for further management, all of them were discharged for follow up and rehabilitation at the county health facilities. It is expected that all children except one, will recover because it was partial paralysis.

(3) Similar errors committed in other counties.

No similar errors have been reported in other counties. The Ministry has been in communication with other counties on mitigation measures to avoid a repeat of the error. The measures proposed include the revitalization of County and Sub-County Therapeutic Committees and the strengthening of the supervision of health workers on procedures being used on patients. The counties have also been alerted on the need to report any adverse drug reactions whenever they appear to the Pharmacy and Poisons Board, Ministry of Health.

(4) Qualification and training personnel who carry out injection procedures.

Regarding qualification and training of personnel who carry out the procedures, we have established that personnel who gave the injection were trained to the level of Kenya Registered Community Health Nurse at diploma level. These officers were well

qualified but probably lacked regular supervision on procedures and skills on injection administration.

The Ministry has communicated to all counties on the need to enhance supervision. The Ministry has also issued guidelines and other relevant job aids to counties with the objective of ensuring that there is quality of procedures and that there is adherence to Standard Treatment Guidelines.

(5) Use of dichlorodiphenyltrichloroethane (DDT) for mosquito control.

Traditionally, the Ministry has used pyrethroids for Indoor Residual Spraying (IRS) for mosquito control. Concurrent with their use, their efficacy as being monitored and due to resistance problems, the Government has since shifted to organophosphates under the advice from the World Health (WHO). This is currently being carried out in a few high malaria burden areas due to its high cost.

DDT is persistent organic pollutant and its use has ramifications on the agricultural sector particularly with regard to exports. It is currently not an option for IRS since it could curtail agricultural exports, a major income source for our economy.

Prevention of malaria is currently being undertaken through the distribution of Long Lasting Insecticide Treated Nets (LLINs). There is an ongoing campaign covering all malaria endemic and epidemic prone areas where one net is being distributed for every two people. In tandem with the distribution, there are ongoing campaigns to encourage LLIN use among communities living in those areas.

The Statement was signed by James W. Macharia, the Cabinet Secretary for Health on 6th October, 2015.

Thank you.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. I want further clarification.

The Deputy Speaker (Sen. Kembi-Gitura): Go on.

Sen. Hassan: Mr. Deputy Speaker, Sir, the whole issue touches on grave medical negligence. She has said nothing about punitive measures taken against those who administered the vaccine. She should not tell us a narrative of what is being done. Could she tell us who has taken the responsibility for massive medical negligence by doctors and other medical officers?

The Deputy Speaker (Sen. Kembi-Gitura): I thought you were on a point of order. If I knew that you wanted to intervene, I would have allowed Sen. (Dr.) Machage first. However, there is no harm done.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I appreciate the technicality of this question to the hon. Chairperson. However, we have a duty to ask a few questions, but I will only ask a simple one. In her Statement, she said that the nurses that administered the drug were qualified and had diploma certificates from some institution in this country. Putting aside the Statement she read from the Minister, as the Chairperson of the Committee on Health in the Senate, is she satisfied that a person with a diploma in nursing can make a mistake of injecting a drug at a wrong site?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the Ministry of Health has a Quality Assurance Department. As a doctor, I am not satisfied that the mere injection of the drug at the wrong site could be done repeatedly at such an endemic level. Could the Chairperson confirm whether the Quality Assurance Department in the Ministry of Health moved in and established that what she has said is true, up to and including,

confirming that the chemical injected into the children's muscles was not something else other than a vaccine?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, before the distinguished Chairperson answers, the management of a health system particularly on children must be a matter of uttermost care. The distinguished Senator answering the question is sitting next to another distinguished Senator who is a nurse by training and she can tell her this. The children in Busia were taken to hospital for vaccination. The issue is not whether they were given the vaccine knowingly or unknowingly. Why would a public health institution keep and administer either expired or wrong drugs?

I take this opportunity to salute Dr. Cleopa Mailu – my former classmate in Friends School Kamusinga (FSK) and the Administrator of Nairobi Hospital – who offered the facilities of Nairobi Hospital to allow all the affected children in for correctional physiotherapy and surgery, to give some of them their limbs back. What action has the Government taken in dealing with doctors, qualified or unqualified, who administered the drugs on the children that rendered them disabled, some for the rest of their lives?

The Deputy Speaker (Sen. Kembi-Gitura): Chairperson.

Sen. Kittony: Mr. Deputy Speaker, Sir, I sympathise with what happened to the people of Busia. According to the Statement from the Cabinet Secretary, all of them except one were discharged. With your indulgence, we can still go back to the Ministry and raise the questions that have been raised, so that we could clarify further because I do not have the answers ready.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, is that it?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, it is okay. We need proper answers for proper questions.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I thank the Chairperson for accepting that the Committee could come to us with a better answer. However, could she also consider ensuring that those children are visited so that we know their current status? The fact that they were discharged from hospital does not mean that they are well. It means that they were fit enough to leave with the parents. The children went to the hospital walking. They were not unwell, but they were merely being given vaccination so that they do not get future infections. However, they went home disabled. Could she do that favour so that we know that the Government is supporting those children, including, giving physiotherapy, which is at a cost because we do not know who is meeting that cost?

Sen. Kittony: Mr. Deputy Speaker, Sir, in the Statement, I said that there is a follow-up to make sure that the children fully recover. As I said earlier, I sympathise with the whole situation. However, we will go back to the Ministry because the distinguished Senators have a reason to seek clarification. I have undertaken to go further and pursue for more answers to be brought to this august House. Therefore, I am most obliged.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, that seems to be it. That should be the end of that position and it should be the end of Statements time.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Before you call for the next Order, I rise under Standing Order No. 46 to make a brief personal statement.

The Deputy Speaker (Sen. Kembi-Gitura): Go on.

PERSONAL STATEMENT

CONDOLENCES TO THE FAMILY OF THE
DECEASED PEDESTRIAN WHO WAS HIT BY
SEN. (DR.) KHALWALE'S CAR

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I thank you for giving the indulgence. My statement is very brief to the effect that the death of any Kenyan is a very painful experience for the family and friends.

Mr. Deputy Speaker, Sir, on Saturday, my car, in which I was driving to Kitale via Kakamega early in the morning, fatally hit a pedestrian. We have gone through the legal process, up to and including, reporting the accident at the police station. My driver and I recorded a statement. My driver was arrested but he was released on a cash bail. He has been given a date to appear in court.

Mr. Deputy Speaker, Sir, I took the initiative of sending my condolences through the nearest and easiest method that I could because, at that time, I did not know the family of the deceased. Therefore, I used the internet and very many Kenyans responded to it. I thank all of them for joining me in sending condolences.

Let me conclude by again, reiterating my condolences to the family. I also assure all Kenyans that it does not matter whether it was the pedestrian, machine or driver that was at fault. What matters is that we lost the life of a dear Kenyan. I have had the opportunity to link up with the family and I am glad to report that the family has accepted my friendship and invited me to participate in the final burial arrangements. I thank Mr. Kenneth Too Gogo, Mr. Pius Sambayi, former military officer and Mr. Gilbert Tenai who have been my contact people. I held my final meeting with them today at the Kenyatta International Convention Centre (KICC) and I assure the country and the family that we are with them at this difficult time.

Senators: Pole! Pole!

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale.
Hon. Senators, ---

POINTS OF ORDER

PERMISSION TO RAISE AN ISSUE OF PROCEDURE
ON CONDUCT OF BUSINESS BEFORE THE HOUSE

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Just before I argue my point, I need your guidance. The point I want to argue or present to the Chair and the House is in relation to the next orders which require going to Committee of the Whole. I respectfully submit that you allow us, me and like-minded colleagues, to raise an important constitutional and Standing Order point before we retreat into the Committee of the Whole, so that eventually your ruling will determine the direction in which we will determine the next two Orders.

The Deputy Speaker (Sen. Kembi-Gitura): Under what Standing Order do you want to raise a point of order?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the matter will touch on Standing Order No. 76(2) and Articles 123, 115, 122 of the Constitution.

The Deputy Speaker (Sen. Kembi-Gitura): Standing Order No. 76(2) to do with roll call?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am on a point of order but I want to argue a point based on that Standing Order ---

The Deputy Speaker (Sen. Kembi-Gitura): Yes, I am listening to you. You are anticipating. Are you not? You are saying you want to raise a point of order. So that I can know the direction to take, I am asking you to take me through it. Under what Standing Order do you want to raise a point of order?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have said that this is in furtherance of the submissions that we made to the Chair last week and you ruled that the matter goes on. Now, we want to prosecute an argument on the ultimate outcome of the process that is going on under Standing Order No.76(2) and Articles 123, 115, 122 of the Constitution, to the effect that we need a clear direction from the Chair on the thresholds and the manner in which the eventual voting will be conducted. If you give us an opportunity, we have very cogent legal and constitutional arguments to place before you and the House, so that you make a ruling that will not only help the House have a direction that is clear on the matter, but a precedence setting that will help future conducts over matters of this nature.

The Deputy Speaker (Sen. Kembi-Gitura): Obviously, I do not know what you want to raise. That is why I asked you if you wanted to raise a point of order and under what Standing Order it will be raised. As at now, we have dealt with Orders No. 1 to 7. The next Order is the Committee of the Whole. So, if you want to raise a point of order to do with those two, then it has to be after they are called and not before. I cannot anticipate what will happen.

However, Sen. Wetangula, you recall that last week we went through a similar process and it was not an easy one. You raised it in the Committee of the Whole which, as you agreed then, was the correct point at which to raise it. We are now in between two orders. We have finished with Order No.7 and we are going to No.8. We cannot deal with order No. 8 until we get there. Only after we get to Order No. 8, would we be able to deal with those issues.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. That is why I sought your direction. Last week you directed that Orders No. 8 and 9 be dealt with in succession without ending one and going back to the other. My request to the Chair is that when you call for the next Order and they are called out, you do not then leave the Chair but hear our argument first, so that you determine the mode and manner in which the vote will be conducted in these two Orders.

The Deputy Speaker (Sen. Kembi-Gitura): The trouble I have, Sen. Wetangula – I say this with great respect – is that you are one of the most senior Members of Parliament (MPs) in this Chamber today. You and maybe Sen. Murungi and Sen. Khaniri, of course, in terms of people who have been here longest. The fundamental point which I am making is that we are not on Order No. 8 yet. In the same way that we dealt

last week, we can only deal with order No. 8 when we get to it. Otherwise, we will be anticipating and I do not think that will be correct, procedurally. We canvassed the issue at length in Committee of the Whole last week, I made a ruling on it and that was it. I think it will be difficult.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. As a matter of fact, I said the point I want to raise and prosecute touches on the two Orders. In strict sense, it is a matter of procedure regardless of which Order we are doing because in future, we will still have presidential memoranda coming here and similar arguments can be prosecuted. We request the Chair to hear us on a matter of procedure. It may eventually touch on or affect Orders No. 8 and 9. It is generally procedure that the Speaker can rule and help the House for now for the future.

Being a distinguished learned colleague and a senior one at that, if you do hear me out, you will see the point we are trying to make. We are not reopening the argument that we prosecuted before you last week. We are pursuing a whole new procedural argument that will help you guide the House for now and for the future.

The Deputy Speaker (Sen. Kembi-Gitura): Could you give me a glimpse of what it is that you want to canvass?

(Sen. Hassan spoke off record)

Order, Sen. Hassan! I do not want to be ambushed, do you understand? I will not allow you to ambush me.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you are incapable of being ambushed.

The Deputy Speaker (Sen. Kembi-Gitura): No, it is possible. You can always make an attempt.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I want to prosecute an argument on the manner of voting; the precedence we have set right from the inception of this Senate and the threshold to have the vote as provided for both in the Standing Orders and the Constitution. This may have a bearing and a touching on the two orders that it is a general argument that the Chair can guide the House for now and for the future.

It cannot be an ambush because the Standing Orders are before you, the Constitution is available and the arguments are oral and are before you as well.

The Deputy Speaker (Sen. Kembi-Gitura): First and foremost, there are two issues. As I said, the mischief I want to avoid is that one of being ambushed. I do not want to be put in a position where then to become *a fait accompli*.

We have concluded Order No.7 on the Order Paper.

(Loud consultations)

Order, Members! You are causing me serious distraction. We have concluded Order No.7 on the Order Paper. If you wish to raise a substantive issue that might affect our procedure now and in the future, then maybe that would have been either by a substantive Motion or by a Motion brought to the House so that the Speaker can make a ruling.

However, I made a decision last week which was accepted by the House that, in the first instance, our Speaker sitting here, made a ruling by a way of communication from the Chair. That ruling was final then. So, if you are seeking to revise that ruling or the communication from the Chair that was made by the Speaker, it would have to be done procedurally. He ruled on the issue of a Presidential Memorandum. That was on Tuesday last week.

I mentioned to you that it would not be in my place to revise that ruling in the absence of a formal application to that effect because then, it would mean that we would not be setting a precedent for the House. However, as of now, the precedent is what the Speaker communicated to the House by way of the communication from the Chair. If you may recall, he made that communication then left the Chamber, then we went to Committee the following day. It was then that I had to make this decision last Thursday.

Therefore, if the point of order you want to make now will be geared towards making me change that position, it will not be possible because---

(Sen. Wetangula spoke off record)

Order, Sen. Wetangula!

It would not be possible because we have moved on from that position. That is the position I would like to request the House to respect.

What is your point of order, Sen. Kittony?

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. They walked out and we voted. So, if they wanted to defend their position, they should have been in the House.

(Applause)

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is very difficult for distinguished Senators to stand up to speak just because they have to speak.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! I have mentioned to you many times – and please do not let us get there - let us be courteous and respect each other.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am surprised that the Chair did not direct the distinguished Senator who I have tremendous respect and liking for. She is my friend. When she referred to Senators sitting across the Floor as “they”, the rules of the House require that you refer to Senators as either Senators by name or a Senator. You cannot just say: “They walked away.” These are not--.

Anyway, the point I want to make to the Chair, because I do not think we should engage in trivia on such a serious matter, is that nobody - and my colleagues who are waiting to support the argument we want to pursue; Sen. Mutula Kilonzo Jnr., Sen. Hassan, Sen. (Dr.) Khalwale, Sen. (Dr.) Machage and other Senators on this side---. This is not to drive the Chair to revise or reverse the ruling that you made. For the record, we do not agree with that ruling but we respected it as we should.

(Applause)

What we want now to bring to the Floor is something different. When we place our submissions, you will hear that none of us will be navigating an argument towards the revision of that ruling. The ruling was made, proceedings went on, and we did not agree with the ruling; we respected it unlike some people in this country who do not respect rulings. That is our position.

Secondly, there is no requirement that a Member who rises in the course of the proceedings of the House to bring to the attention of the House and the Chair a procedural issue is required to bring a formal Motion. There is none. Procedural issues are brought informally, prosecuted, supported or opposed and the Chair makes a ruling that helps the House and the country. So, what we are doing is for your assurance---

(An hon Senator spoke off record)

And if the distinguished Senator can let the Speaker listen to us, it will help a great deal.

(Sen. Hassan spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Omar! You cannot anticipate what I am discussing with Sen. Omar, can you?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the valve, the vent – because when we come here to arch points, it is not that we want the Chair to rule in our favour all the time but we want to bring issues that we feel are necessary, important, helpful and can guide this House and the country and even assist some of us are who are in a learning process, so that we can be apprised. Tomorrow, when Sen. Wetangula is gone, somebody else will pursue a similar argument to help the country.

I urge you to hear us on this procedural matter. It is not to make you revise the ruling you made. We respect it. We want to bring something new. Being a great lawyer, I am sure you will be quite appreciative of the points of law that we want to place before you.

Sen. Haji: Mr. Deputy Speaker, Sir, following your ruling that your inclination is that you do not want to be ambushed; and my brother here has been repeating and repeating; for the purpose of clarity, could he state directly what his fear is about us resolving to the Committee status so that you can make the ruling?

The Senate Minority Leader (Sen. Wetangula): Thank you Mr. Deputy Speaker, Sir. I will tell my distinguished friend and the Chair of my Committee for free, that lawyers never prosecute arguments because they fear. They prosecute arguments because they want the Chair, the House and the country, to benefit from our specialized training and to develop the jurisprudence, build precedents and build a strong foundation for the future conduct of business in the House.

We fear absolutely nothing. What we want is to make it easy for the distinguished Senator for Garissa County and any other Senator tomorrow to pick up the HANSARD, like we do, go to the library and look at what Tom Mboya said in 1965 or what Martin

Shikuku said or what Kiraitu said when he brought an argument to abolish the death sentence in the seventh Parliament and so on. It is not out of fear; it is out of building---

Mr. Deputy Speaker, Sir, I will only address the point when the Chair allows me, and that is why we are seeking the indulgence of the Chair. We do not want to ambush the Chair, we have to lay the foundation for the Chair to understand and appreciate what we want to say. If the Chair tells me to start, I absolutely have no difficulty in starting and prosecuting the argument.

*(The Deputy Speaker (Sen. Kembi-Gitura) consulted
the Clerks- at- the- Table)*

Sen. (Dr.) Khalwale: On a point of order. Mr. Deputy Speaker, Sir, it is rare and, indeed, unusual that the proceedings of the House can appear to stop. If these vigorous consultations is because of the arguments put on the Table by the Senator for Bungoma---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale, take your seat. Unlike you, I consult. And I am going to call the Leader of the Minority here and consult. So, you are not going to stop me from consulting. Do you understand? I do not think it is in your place, Sen. (Dr.) Khalwale, to tell me how to proceed about my business. I think that is disrespectful, anticipatory and I think it is wrong.

I am not going to accept that when I am presiding over this House. When I am presiding over this House, we are going to have order, decorum and respect for the House. You cannot tell me that I cannot consult, where I want to consult, when I want to consult. I cannot accept that. We are not discussing small issues. We are discussing matters that are very serious. The reason we have leadership in this House- both Majority and Minority- is so that they can guide and help you and all of us so that we are able to proceed together. So, I will not accept that you can tell me not to do consultations.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Khalwale. I am not going to accept that. As far as I am concerned, that matter is closed, and you allow me to consult and after I finish consultations, I will be able to give directions.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order! The House is still in process. Sen. (Dr.) Khalwale, you came here to consult me to allow you to make a Personal Statement. Did the House stop? Sen (Dr.) Khalwale, let us consult. We are raising serious issues and we must take them seriously. Are we together? So, let us proceed in that spirit.

Sen. (Dr.) Khalwale: The spirit in--- *(Inaudible)*

The Deputy Speaker (Sen. Kembi-Gitura): No. I know the line you are taking.

*(The Deputy Speaker (Sen. Kembi-Gitura) consulted
the Clerks- at- the- Table)*

(Sen. Leshore spoke off record)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. The distinguished Senator for Samburu with whom we first came to the House in 1993 has rapidly degenerated into an irritating heckler.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. (Dr.) Khalwale, Sen. Wetangula is on a point of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I see the difficulty in which we find ourselves. I want to reaffirm the point where I started that I have got a very critical procedural issue to raise. The procedural issue I want to raise may touch on Order No's 8 and 9. It is correct, that it will go beyond those Orders and touch on any similar Orders in future, is equally correct. What I would want to request the Chair because he repeatedly used the word "*ambush*", I do not want and it is not my habit to ambush anybody except where I am going to make political gain. Here, I am not making any political gain but I am simply helping the House and the country.

I request and move the Chair, that if you find it in concurrent with my thinking and those who think like me, we step down these two Orders and ask the Chair to give us the opportunity to prosecute this argument of procedure. This will help us in times to come. Once that is determined, it will be a seamless flow whenever such issues come to the House. Nobody will be prosecuting similar arguments.

Tomorrow, I will not be available. I am leaving for Tanzania to attend the inauguration of the President-elect on Thursday. I, therefore, request that you graciously direct that these two orders come on Tuesday, next week, so that we can prosecute these arguments then. Other business will take place on tomorrow and Thursday.

It will defeat the purpose for which you may grant me this application, if you then say that I must pursue my argument tomorrow or the day after when I will be absent.

The Deputy Speaker (Sen. Kembi-Gitura): Does the Senate Leader of Majority have any view on this issue?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Speaking on the importance of procedure in this House, it has become clearly apparent that you need to consult. If, indeed, that is the position, I request that the Chair considers suspending the House to allow him to consult.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! Were you listening to Sen. Wetangula when he was talking? If you were, you would note that you are saying exactly what he was saying.

Sen. (Dr.) Khalwale: No, Mr. Speaker, Sir. Sen., Wetangula is saying you step down the two Motions. However, I am saying, you have a window in which you can suspend the Sitting for about 10 to 30 minutes. We have done it before. You can use the time to consult and where we convene, you either make a ruling that we proceed and make our argument or rule in whatever your wisdom will have guided you. I am now advancing the case of suspension of the House not the case of stepping down the Motion.

Sen. Keter: Mr. Speaker, Sir, the issue of stepping down the two orders has not been canvassed here or put forward to us. I do not know about it, therefore, I do not subscribe to it. Unless otherwise, the issues which are said to be procedural are in order, I will agree to that.

Maybe, at this point, before we make a decision on whether we are stepping down the orders, we should allow Sen. Wetangula to raise the issues which he wanted to raise. Thereafter, we spend some time to see whether they are really weighty. We cannot step down these orders because of procedural issue which some of us are not aware of.

The procedure we know is voting which; you either have two-thirds or have the quorum in the House. These are some of the issues we need to be informed on. Last Thursday, we considered everything on the Presidential Memorandum. What is there today is to vote on those two orders. Therefore, maybe we could allow Sen. Wetangula to air the issue then spend another 10 minutes to make a decision. As it is now, some of us are lost. What are these procedural issues? Can we be given an insight and get to know them so that we can all agree? That way, we will be fair to one another.

Sen. Murkomen: Mr. Speaker, Sir, Sen. Wetangula is, within the constitution and the Standing Orders, right to raise any point of order. We cannot postpone the decision of the House on an anticipatory point of order. We cannot make such an important decision about postponing the House when we have nothing on the table.

If this is permissible or agreeable to you, you would give Sen. Wetangula a chance to make his point of order known to us now.

The Deputy Speaker (Sen. Kembi-Gitura): You are saying exactly what Sen. Keter has said.

Sen. Murkomen: Mr. Speaker, Sir, I have a small amendment; allow Sen. Wetangula to make his case and then make a decision in regard to the case he will have made; whether you are going to give that ruling now or post pone the day we are going to vote, as per the consequence of his request.

The Deputy Speaker (Sen. Kembi-Gitura): This is how I propose we proceed. It is not as easy a point as Sen. (Dr.) Khalwale would like to make us believe. If I redo the Order Paper, then we will have to resume tomorrow and deal with orders scheduled as Nos.8 and 9 in the Order Paper. The trouble with that is; Sen. Wetangula who has brought up the issue says he will be away in Tanzania. It is not my wish to inconvenience anybody. As Senators Dr. Khalwale and Murkomen have said, we cannot stop the process of the House because he will be in Tanzania.

I do not know what Point of Order he wants to make. However, I assume because I have consulted him and he said it himself, it has to do with orders listed as Nos.8 and 9 – I also assume it has to do with how we proceed in a situation like this. I will not adjourn it to Tuesday due to the timeframe we have. I will allow the point of order raised by Sen. Wetangula, then we are going to debate it if there will be any debate to ensue from that.

We are now supposed to proceed to orders listed as Nos. 8 and 9, which we looked at together in the Committee of the Whole and I made the ruling on both. However, we will proceed between the two orders so that Sen. Wetangula can make his arguments like he had sought to do, so that we cannot inconvenience him now that he will be away tomorrow. We hope to dispense off with this issue as soon as possible thereafter.

Sen. (Dr.) Khalwale: On a Point of Order, Mr. Speaker, Sir. Our experience in Parliament has taught us that when a vexing issue like this one comes up and it has been raised—

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I hope that you are not contesting my ruling.

Sen. (Dr.) Khalwale: Not at all. I want to free my mind. When such a vexing issue is raised by a Member through a point of order, traditionally, the Speaker has allowed Members who wish to help the Speaker to make a decision on that point of order raised by the Member to be canvassed from the Dispatched Box or from their places. This

House is not on record to know what the Members were canvassing for and therefore, what informed you to subsequently change your mind to allow Sen. Wetangula to proceed, when initially you had been reluctant? I would like for purposes of procedure, to be corrected if I am wrong, that the Speaker needed to be informed through plenary the contra-thinking of those Members who have briefly spoken, that is Sen. Keter and Sen. Murkomen. They said that they have no problem with Sen. Wetangula proceeding, unless the rules of the House are changing.

The Deputy Speaker (Sen. Kembi-Gitura): Well, I want to assume that Sen. (Dr.) Khalwale is not imputing any improper motives. If you want to free your mind, then your mind is freed because what I have done, like I am bound to do like I said I will do which is to consult. There is nothing wrong with consultation and listening. The decision I have made is convenient for Sen. Wetangula and for the House because he wanted to argue it. I have not ruled at any one point on that issue that it will not be argued today or tomorrow. I have now made the ruling. Let us hear Sen. Wetangula's point of order, debate it and make a decision on the way forward. How much time do you think it will be Sen. Wetangula?

(Sen. Hassan consulted loudly)

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Hassan. I did not address you, did I?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, on the lower side 20 minutes, on the upper side 30 minutes.

The Senate Majority Leader (Sen. (Prof) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. With great respect to the Senate Minority Leader (Sen. Wetangula), it is unfair to this House to take precious legislative and House time on a point of order for 20 minutes. This is not a Motion. In my view, I find it a bit patronizing because it is simply a point of order. It is a procedural issue to canvass matters in a few minutes. I find it a bit in appropriate.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, what is your point of order? We must make some progress now.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. You have given a very wise decision and ruling, which is acceptable by any wise person in this House. Therefore, is it in order for the Senate Majority Leader to think of trivialization even before he has heard what the Senate Minority Leader has to say on matters of procedure of this House?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, this is a point of order and I would like you to canvass it, but I will not allow you 30 minutes. I will grant you 15 minutes to canvass it, so that we can debate it. That is the best I can do.

The Senate Minority Leader (Sen. Wetangula): The Senate Majority Leader is rarely in this House, so he does not know how we have been prosecuting things.

(Laughter)

I want to raise—

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, if we take divergent issues---

The Senate Majority Leader (Sen. (Prof) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I have said so many times, that if the intention of the Senate Minority Leader is to annoy me, he should look for something else to do. Is it fair for him to stand here and he is a perpetual absentee--- He has even conceded that tomorrow he is going for a political rally in Dar es Salaam and he is piously talking about absenteeism. Is he in order? He is a trivial man.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, proceed.

PRECEDENT SET ON THRESHOLD FOR VOTING IN
THE SENATE VIS-A-VIS THE PROVISIONS OF THE
CONSTITUTION AND THE STANDING ORDERS

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I accept the 15 minutes, let us start. I want to bring to the attention of the Chair and the House that under Article 115 of the Constitution, which I will come back to, it defines under Sub Article 4, the manner of disposal of the memorandum from the President. Before I come back to that, I want to draw the attention of the House and the Deputy Speaker to Article 122 (1) of the Constitution on voting in Parliament.

It states:-

“Except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members in that House, present and voting”.

This is a general provision that in our usage and precedent in this House has not applied, because we have set ourselves a threshold, it is not about “present” and “voting”. We have indicated that for this House to go to a vote, we need to count a minimum of 24 delegations.

Article 123(4) of the Constitution that deals with decisions of the Senate states that:-

“Except as provided otherwise in this Constitution, any matter in the Senate affecting counties-”

We have extended this to mean that any Bill that comes to this House affects counties and so it must be dealt with as per such.

“(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation;

(b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of , or against, the matter, after consulting the other members of the delegation; and

(c) the matter is carried only if it is supported by a majority of all the delegations.”

That is where the Chair, in his wisdom, directed that for us to go to a vote; we must have a minimum of majority, which is 24 delegations. I am eternally grateful to you for consistently and persistently arguing that even when we go to proxy votes, the heads of delegations must furnish the Chair or the Clerks-at-the-Table with a nomination in writing, that if the distinguished Senator for Baringo is not here, Sen. Kittony is now

nominated to vote on his behalf. That is not a nomination *ad infinitum*; it is a nomination for every situation. Anytime we go to vote---

(A Senator interjected)

You are a good lawyer; the virtue and the value is to listen and counter if you wish.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you have said, and I agree with you fully, that there is no general proxy nomination. If Sen. Sonko wants Sen. Mugo to vote on his behalf at every vote, she has to be nominated as such, because Nairobi has more than eight Senators. This applies to other delegations.

I come to the point that after going through the process that we have gone through in Orders No.s 8 and 9, we are supposed to mount a vote. I want to make reference to Standing Order No. 76, read together with Article 115(4). Which states:-

“Parliament, after considering the President’s reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservation by, a vote supported-

- (a) by two-thirds of the Members of the National Assembly; and
- (b) two-thirds of the delegation in the Senate, if it is a Bill that requires the approval of the Senate.”

Mr. Deputy Speaker, Sir, this means that before we go to any vote of the two Orders before us, there must be 24 delegations in the House as we have established. During the Motion of impeachment of Mr. Kiala, the Deputy Governor of Machakos, you may recall that we argued deeply on the distinction between “quorum” and “voting”. The Speaker allowed us to debate and ruled that when it comes to debate, quorum is 15 as provided in the Standing Orders. However, when it comes to voting, the minimum threshold is 24. That was settled in this House by the Chair himself. For us to go to a vote, we must do a head count as we always do and that is why we keep postponing votes until we have a minimum of 24.

Mr. Deputy Speaker, Sir, two-thirds of this House is 32. Therefore, I am urging the Chair to guide the House through a reasoned ruling because for us to go to any vote on this matter, we must have 24 delegations. For us to overturn the Memorandum of the President, we must have a vote supported by 32 delegations. Looking at Standing Order No.76, the Constitution is the grand norm, and all other laws spring from it. For the procedures of the House, the Standing Orders spring from the Constitution to guide the procedure of this House. The Standing Order No.76(2) is very important even for those who will pursue counter argument, I want them to listen to me on this. It says:-

“The Speaker shall direct a roll call vote to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question or in instances where the Senate is to decide on a matter that requires voting by County Delegations.”

The meaning of this is that the Speaker shall not call a vote until and unless he has directed a roll call where a threshold has been set in the Constitution by Article 115(4)(b); that we need two-thirds to overturn the President’s Memorandum. Where we need to simply pass it, we need 24. These are set thresholds. Under Standing Order 76(2), you cannot cause a vote until and unless you have caused a roll call to establish that there

are enough delegations to meet the requirement under the Standing Orders and the Constitution. This is not just a general vote which we popularly call “noisy vote” which is decided by how many will open their mouths to say “Ayes” or “Noes”. We do not need that because we are dealing with a vote that has a set threshold in the law and the Constitution.

Mr. Deputy Speaker, Sir, the point I am making is that on Thursday, this side of the House was displeased with the ruling of the Chair; they did not agree with it, but respected it and left the Chamber. Rightly so, the matters were dealt with, but no vote was put. For the future of this country, this House and generations to come, we want to be incessantly clear that the meaning of Standing Order No.76 is that regardless of whether the distinguished Senators are in the House or not, if the House does not have 24 Delegations, it cannot go to a vote under whatever circumstances. That is what Standing Order 76 says. The Speaker shall direct a roll call to be taken in every instance where the Constitution lays down that fixed majority.

(Loud Consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Sen. Wetangula is entitled to his day at the Dispatch Box. You will have a chance to rebut.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, altercations are closed for as they are unhelpful---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! Your time is running out.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, we do not want an argument of force. We want the force of the argument. Some of us are used to arguments of force.

Mr. Deputy Speaker, Sir, I would like the Chair to rule because this is very important for now and the future; that when we have this memorandum and similar situation, no side will take advantage of the absence of the other, circumvent and engineer a vote that in law, will be no vote. No side will take advantage of the other and pull in fraudulent proxies that will then be made to vote.

I, therefore, seek from the Chair the meaning and importance of the Standing Orders No.76(2), read together with Articles 115(4)(b), 122(1), 123(4)(a) and (c). According to me, it means that there will be no vote until we either 24 or 32 that is set in the Constitution.

Secondly, I want a ruling now so that we do not end up playing games because sometimes, I have seen Members who leave their keys in the voting machines and people go round voting for them. Therefore, what I require you to rule is that from now on---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, the Senate Majority Leader?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, let me finish my point.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, in the usual tradition of the Senate Minority Leader, is he in order to cast aspersions and impute improper motives on the distinguished Senators and Members of this House

considering that the description that he is giving amounts to a violation of the rules that govern this House. Could he substantiate?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Jesus said, “How come that people with eyes do not see, people with ears do not hear and people with mouths decline to say what ought to be said.”

I have not imputed improper motive on anybody. I have just cited the fact that the voting process in this House has not been strict and as a result, it has been abused.

I want to urge the Chair in the ruling also to make it succinctly clear, as a precedent, that proxy voters must carry an up to date appointment. You cannot be appointed last year and vote today. You must be appointed to vote in every situation, because we are going to get to a situation where every vote counts, that is not defined as proxy. I urge that the Chair considers these very serious constitutional issues which are blended and supported by the Standing Orders of our own House and designed by ourselves to guide in how this House works.

Mr. Deputy Speaker, Sir, I rest my case. I do not encourage that when such issues are raised, they become a matter of trivial and infantile jokes. This is a matter that will help hon. Members when they cross to either side of the Floor in future.

The Deputy Speaker (Sen. Kembi-Gitura): The only thing I ask of you as your Deputy Speaker is; let us show restraint and respect for each other. At the end of the day, we are honorable Senators. We must lead from the front. So, please, let us show some restraint and respect. There are a lot of requests. Shall we set ground rules?

Hon. Members: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): How many minutes?

Hon. Members: Five minutes!

The Deputy Speaker (Sen. Kembi Gitura): Five minute will be enough. If you want two minutes, just take two minutes yourself. However, for now, we agree on five minutes. It is 5.00 p.m. now and I have more than five requests. If we use five that will take us almost to the time that we are to finish.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I want to sympathize with the Senate Minority Leader, because the argument he has laid before us is hollow and not substantiated by the Constitution. I will go straight to the point because there is shortage of time. One, is in Rule of 123 with regard to how many Members will vote. The decision that, if we want to vote in this House, we must have 24 Members before us is not a constitutional decision.

(Applause)

It was a gentleman’s decision in the House where this House agreed - and I will give you an example - which this House agreed that for us to assist each other in passing Bills, it would be nice if we had 24 Senators. I remember this very well; that a decision not to sit in the House and vote is a decision by itself.

The Constitution anticipated that 24 Senators would be needed to pass or require Senate’s intervention. It will be defeated if you decided that you are going to get 24 Senators. The Senate Minority Leader has become a master of contradiction which even President Obama said. In the case of Kiala’s decision which was done in this Chamber, I moved that we did not need the 24 threshold. The Senate Minority Leader, Sen. Hassan

and Sen. (Dr.) Khalwale supported me. It is on record of the HANSARD. The argument was that at that point in time, most of the Jubilee Senators walked out, CORD Senators who were in the House, including myself and a few of us in the Jubilee side, wanted to save Kiala .

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the HANSARD carries everything we say here. In the case of Kiala, the argument that we placed before the Speaker was whether we were going to--- Is he in order to misquote me?

The Deputy Speaker (Sen. Kembi-Gitura): The reason I am stopping you is because when the ruling is made and he has referred to the HANSARD report, we shall refer to it.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, he is -
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The Deputy Speaker (Sen. Kembi Gitura): Sen. Wetangula, I hear you, but the point I am making is that, that cannot be a point of order because---

The Senate Minority Leader (Sen. Wetangula): Is he in order to misquote the HANSARD which is a public record when, in fact, in the case of Kiala, the argument was whether we needed 15 Members for a quorum to debate the matter or 24 Members to vote? The Speaker said we convinced him to allow 15 as a quorum to debate the Motion.

Sen. Murkomen: Mr. Deputy Speaker, Sir, the HANSARD is my witness because I was on this side with Senator Charles Keter. I want to conclude that point because it is very important. In making your decision, go to the decision on the Kiala case. The Senators who remained in the Chamber were not 24 and that is how Kiala was saved. He was saved because those of us who were in the House were less than 24 and, therefore, the decision to vote against was achieved. That was the right decision. There is nowhere in the Constitution it is mandated to us to be 24. It is not written anywhere.

(Applause)

Even now, the quorum is no longer a factor of 15. If there are two Senators in this House and a vote must be taken, then that vote will be defeated if it does not attain 24.

The second point is on the nomination of proxy. If you read Article 123 because I do not know which Constitution these people are reading. Article 123(4)---

The Deputy Speaker (Sen. Kembi Gitura): Order, Senator! These are Senators and not these people. I said we must respect each other and behave with decorum

Sen. Murkomen: I just said I do not know which Constitution the Senate Minority Leader reads because if you read Article 123(4), it says that:-

“Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties-

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another Member of the delegation designated by the head of the delegation.”

It does not say designated daily or hourly or yearly. It could be a designation for the whole term of five years. So I do not know which interpretation of the designation is a fact of daily.

(Applause)

The most important thing is for the speaker to satisfy himself or herself that there was a designation. It is on record.

I am requesting two minutes because I was interrupted by the Point of Order. Standing Order No.76 is on the roll call. I want to make straightforward point---

Sen. Wamatangi: On a point of order, Mr. Deputy Speaker, Sir. We are debating a very serious issue, I seek your guidance on what has been argued and canvassed by the Minority Leader and also by Sen. Murkomen. Even the Constitution does not express the number of Senators who need to vote, but our own rules provide that we have 24 Members. Does it mean that we can ignore the rules of the House? Just for clarity of the House.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wamatangi, I think you are making an important point, but that is not a point of order. That is a point of argument, seek the Floor and I will grant you time to debate.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir.

Sen. Murkomen: Mr. Deputy Speaker, Sir, in conclusion, the Roll Call Division under Standing Order No.76(2) states that the Senate does not vote on any matter affecting counties by way of "Ayes" or "Noes." I do not know why the Senate Minority Leader forgot this. Every time we vote on matters affecting counties, we vote by taking a Roll Call. That is why we have to count the number of people who have voted electronically or by shouting "Aye" or "No." In essence, the special nature of the Senate is that we are unlike the National Assembly; in every vote on any matter that affects counties, we vote by taking a proper Roll Call. The argument that we have to have 24 Members is not what Article 24 provides. We only do the 24 membership agreements because we, as House, have been working and trying to marshal Members to enable voting on the Bills.

Where Members wish to defeat a Bill, they can walk out like how the Senate Minority Leader has been walking out.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, the late Michael Kijana Wamalwa once said in the Nanyuki II conference that it is difficult at times to make decisions or understand arguments when people hide their cards under the table. I see that happening in this House. The Constitution and the Standing Orders are clear on matters that are being debated, especially on Standing Order 76(2). We also have a tradition which also guides the decisions of this House. What is more important is; we have a country that we should help to govern. We, as Senators, have a country before us and our decisions on matters such as these will set a precedent in tomorrow's debate as was eloquently put by the Senate Minority Leader in his request to get a point of order.

My advice is; let us set partisan issues on politics aside. Let us also set aside the feelings of the protection of the presidency or the protection of this House and our own egos. Let us make legislative decisions and let us think like so.

Sen. Keter: Thank you, Mr. Deputy Speaker, Sir. May I concentrate on the issue on whether we have to have 24 Members for the vote to be called or not. The Constitution under Article 121 states clearly that the quorum for this House is 15 Members. The other issue which arises is whether to approve the Bill or the Motion when there is a minimum number of Members. Therefore, the argument on whether there

should be a minimum of 24 Members before calling the vote is wrong. If there are 24 or 26 Members for the Bill to be passed, there should be a simple majority which in this case should not be half of the 24. We have been appealing to both sides of the House to be present in order to avoid losing the Motions or Bills. We have never anticipated a situation where we want to lose it.

In this case, to overturn a Presidential Memorandum, we need 32 Members. If we do not attain that and we have a minimum of 15 Members, do we need, therefore, to have 24 Members? There can be 16 Members present and they can vote. They would not have attained the 32 threshold requirement, but they have the minimum number to transact the business of the House.

Another scenario is where there are 24 or 25 Members present and all of them vote against the Presidential Memorandum. Do we, therefore, lose the Memorandum? There are issues which the lawyers ought to help us so that we can move the House as per the prayers of the Senate Minority Leader. My understanding is if we have a minimum of 15 Members, we ought to transact business because that is the law. We have to adhere to it.

Article 123 (4) (c) states that:-

“The matter is carried only if it is supported by the majority of all the delegations.”

It, therefore, means if it is not supported by the majority, it will be lost. If the majority of the Members do not support the Memorandum from the President, it will be lost. In that case, where a minimum of 32 Members is not attained, then the Memorandum overrides. Whether we attain or lose it, to me, it does not help.

Mr. Deputy Speaker, Sir, before making your ruling, consider the issue whether we should have a quorum as per the Constitution or whether we should have 32 Members present to overturn a Presidential Memorandum. It does not anticipate where we do not attain 32 or the simple majority to pass. These are some of the issues we need to consider. The presence of 24 Members has been our agreement to pass or disallow the Bills. Here is a situation where we want to lose it when we do not have a minimum of 24 Members present. The Presidential Memorandum will pass whether it is by simple majority or not.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, when we voted on Kiala’s Impeachment, we were 24. I was here and, therefore, the record must be clear. For purposes of those who are not lawyers, there is something called “the letter” of the law and “the spirit” of the law. The ruling we are seeking from you is for purposes of developing the law on how Presidential Memoranda are passed.

Sen. Keter has misread the Constitution. If the drafters of the Constitution in Article 121 envisaged that a quorum of 15 was enough to make a decision of the Senate, they would have said so. There is a fundamental reason why there is an Article on Quorum, Voting in Parliament and on decisions of the Senate. However, there is a fundamental reason the Constitution has provision on “Quorum,” “Voting in Parliament” and “Decisions of the Senate.” There is a fundamental difference. Therefore, in reading the letter, you must understand the spirit. That is where Sen. Keter got lost a bit. Therefore, I want to take him on the road to Damascus.

Mr. Deputy Speaker, Sir, the spirit of the Constitution under Article 123 that the Senate Minority Leader quoted states that a matter will be approved by the majority. The spirit of the Constitution, read with Standing Order No.76(4), means that if there are 15

Senators, there is no point to vote because they would have lost. You cannot call for a vote because the decision of the Senate is contained in Article 123, but not Article 121 of the Constitution. The framers of the Constitution envisioned that if we are supposed to make a decision, we would refer and apply Article 123(4), but not Article 121. Therefore, according to the wisdom of the drafters of the Standing Order No.76(2), the Speaker is supposed to call a roll call on a matter concerning the Constitution and the provided number is 24. If you allow me to go back, so that I can correct Sen. Keter, it is only Standing Order No.76(1)(b) where you find the quorum of 15 Members. It states that:-

“If, on a question other than a question of procedure, fifteen or more Senators rise in their places to support the Senator claiming the roll call division.”

Therefore, the 15 in Standing Order No.76(1)(b) read with Article 121 of the Constitution, is only for a division on technical issues, but not for a matter on the Constitution. Standing Order No.76(2) states that:-

“The Speaker shall direct a roll call to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question or in instances where the Senate is to decide on a matter that requires voting by County Delegations.”

Mr. Deputy Speaker, Sir, Article 123 of the Constitution lays a foundation. For example, the foundation is the majority when we make a decision on the Presidential Memorandum to overturn, agree or amend something, and the number is 32. Therefore, Article 121 on quorum does not apply to a decision on whether or not to approve a Memorandum of the President. That is the law.

To read it any other way---

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Hon. Senators, let him finish because you will have your time.

Sen. Mutula Kilonzo Jnr.: By the way, Mr. Deputy Speaker, Sir, I am a senior to both Sen. Murkomen and the Senate Majority Leader in the profession. I say so, with respect. To read it any other way, where you have 15, 24 and 32--- It is the golden rule of interpretation, where you interpret the law and lead yourself to an absurdity. Therefore, for us to make a decision on the Presidential Memorandum, we must have a majority of--

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(Sen. Mutula Kilonzo spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Everybody is on a point of order.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, have you noticed that there has been a lot of interference with the television transmission in the House? The “Lower” House is on recess. This is the only House that is being aired live. Is it, therefore, in order that there is intentional interference or sabotage on recording of what is going on in the House?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, I cannot rule on that.

*(The Deputy Speaker (Sen. Kembi-Gitura)
consulted the Clerk-at-the-Table)*

Sen. (Dr.) Machage, I do not want you to impute improper motive on anybody. I have been informed that the transmission is continuous and that it is your monitor that is not working. I do not want to assume that somebody is interfering. Why would anybody want to interfere with what we are doing?

Sen. Chelule: Mr. Deputy Speaker, Sir, I was to stand on a point of order. I tried to catch your eye, but you did not see me.

The Deputy Speaker (Sen. Kembi-Gitura): The trouble is that everybody is on a point of order. Therefore, it is very difficult to---

Sen. Chelule: Mr. Deputy Speaker, Sir, I wanted your clarification on what Sen. Wetangula was talking about earlier, concerning how we do voting. I did not understand whether he wanted to tell us about what we are supposed to do today. That is the clarification I wanted to seek.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Chelule for that. However, that is overtaken because I thought you wanted to contribute and that is why I gave you permission.

The Senate Majority Leader, I will allow you 10 minutes because the Senate Minority Leader had 10 minutes. Sorry, I will allow you 15 minutes. That is if you need it.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I will try my best to speak within the time limit that you have provided.

Mr. Deputy Speaker, Sir, I have listened with a lot of patience to the arguments that have been made by the Senate Minority Leader and those who have supported his view. However, I find great difficulty to appreciate how difficult it is to see the very plain provisions of the Constitution in the matters that we are discussing here this afternoon.

Mr. Deputy Speaker, Sir, what Article 121 says is simple. You cannot transact any business in this House unless you have 15 Senators present. In fact, Article 121 does not even envisage delegations. It talks of 15 Senators even if they are from one delegation. Assuming that there is a delegation with 15 Senators, they can transact business of this House legitimately.

Mr. Deputy Speaker, Sir, much has been said about Article 123(4)(C) which states that:-

“The matter is carried only if it is supported by a majority of all the delegations.”

The key word is “supported.”

Mr. Deputy Speaker, Sir, unlike what my distinguished colleague, the Senator for Makueni, Sen. Mutula Kilonzo Jnr., whom I respect a lot has said, I vehemently reject the argument that there is a connection between Articles 123(4)(c) and 121. There is no connection. I heard him say that Article 123(4)(c) means – according to him – that you cannot vote on an issue unless there are 24 Members. That is not true. If the law intended to say what he has said, nothing would have been easier than to write so. There is nothing in the Constitution, whether in letter or in spirit, suggesting that you need 24 Senators to vote on an issue.

I support what my colleagues, Sen. Murkomen and Sen. Keter, argued here before that, in fact, the 24 phenomenon is a gentleman's agreement. We agreed here in this Senate for one purpose being that it is not sometimes proper for somebody who has brought a Bill to lose it just because of threshold issues. If you can build consensus across the board, we should not take a vote unless you are sure that you not only have the 24, but also the consensus of the threshold that should support the Bill. Technically, there is no requirement for 24 Members.

Twenty four becomes important and relevant in terms of carrying the decision sought. The word used is "carrying." The matter is carried if it is supported by 24 delegations. This means that, if indeed, the support is less than 24 delegations, the matter is not carried. However, it does not mean that you cannot bring the matter. It just means that the matter is lost or does not go through.

Mr. Deputy Speaker, Sir, Articles 121 and 123(4)(c) are plainly saying that, if you have 15 Senators irrespective of how many delegations they come from, you can take a vote. However, be warned that unless you have 24 delegations supporting that matter, that Motion will be lost. It is simple and clear because that is the law. It is very clear and you do not have to be a professor of law like me to understand this. Let me not say that because you do not have to be anything other than a plain reader of plain English, which all of us here are, to understand this. Our position and my view is that this memorandum can be introduced at any time when we have 15 Senators at any time in this House.

Secondly, it means that voting can take place so long as you have 15 Senators, but unless the Motion --- In this case, I have looked at the way the wording was done even when this matter came to the Committee of the Whole. The issue is whether or not this Senate supports the reservations of the President. In fact, I am prepared to argue that were this Motion coached in negative terms, you would not even have required that 24. You would only need 15 Senators in the sense that the issue here is that ---.

(Sen. Wetangula spoke off record)

Mr. Deputy Speaker, Sir, let me explain why we need 24 delegates and that is my last point. We need 24 delegates here because by virtue of Article 115, the Senate must pass a decision which means, the Senate must vote. However, there is no requirement that the Senate must support the memorandum, in this case, the Motion, but it can pass. You pass a decision by either positive or negative. I see no legal hindrance and the 24 number is a myth. It is a number created for convenience and not backed by the Constitution or Standing Orders. All we require is 15 Senators and we are home and dry on this Motion.

I think it is important for us – I agree with the Senate Minority Leader on this one – to make decisions consistently based on the Constitution and the law and not whimsical decisions that suit either the Mover or what the Opposer of a Motion needs to achieve. I say so, because I listened with horror as the Senate Minority Leader wanted to impute improper motives on the distinguished Members of this House, trying to suggest that there are Senators here who have been voting without the authority to do so. He was trying even to create a fictitious rule that the delegation or designation to vote must be done on a case by case basis. It is not in the Constitution or Standing Orders. It only exists in the whims and fertile imagination of the Senate Minority Leader.

Finally, it is not right to try and cast aspersions at other Senators, trying to pretend or purport that there has been some illegalities going on here. Although you went quiet on that one, unless this matter rests there, I will be very agitated and restless next time the Senate Minority Leader is left to go scot free on an allegation like this one where he suggests, for example, that some decisions in this House have been carried out unlawfully, illegally and fraudulently. If that is the assertion, he must bring a substantive Motion here and substantiate those remarks.

That is my submission.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, my understanding is that this very important point of order by the Senate Minority Leader is because we want to make a decision on the Memorandum of the President. The Constitution, in Article 123, guides us on how to make a decision in this Senate. Article 123(4) (c) clearly puts that threshold which speaks to the majority of all the delegations. Majority of all delegations is a number called 24. The Constitution has refused. You will never change it even if you are a professor of law.

(Laughter)

Having given that provision in Article 123(4)(c), I would like the Senate Majority Leader to help me in reading English. Article 123(4), says:-

“Except as provided otherwise in this Constitution ---”

So, it is guiding us to 24, unless it is provided for elsewhere. I ask you to find out where that “elsewhere” is in this Constitution. It is in Article 115. This is where the Constitution wants the Senate to now make a decision on a Presidential Memorandum. It tells you, okay, you understand Article 123, but kindly go to Article 115. Article 115(4) says:-

“Parliament after considering the President’s reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations, by a vote supported –”

My understanding of the good English is that all those commas are telling you that what will apply in (a) and (b) must apply to all; passing it a second time either with amendments or without amendments. It then says in the case of the Senate, that passage should be done with two thirds of the delegations of the Senate if the Bill requires approval by the Senate.

I, therefore, invite you not to lose focus in your ruling. Read Articles 115 and 123 together. An attempt by the Senate Majority Leader and Sen. Murkomen to now bring in Article 121 and any other provision of the Constitution is to try and muddy the waters. I have never represented any client in court because I am not a lawyer. However, listening to Sen. Murkomen, I wonder whether he has represented any client in court.

The Senate Minority Leader (Sen. Wetangula): Or anywhere.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this is very serious. I conclude by appealing to Members – I have seen an attempt of people laughing away sheepishly when Members are persuading them to listen to reason.

A philosopher once said that once a man resolves not to listen to reason, an attempt to try and reason with him is like administering medicine to the dead. Please, this is a House of reason. We are reasoning.

Mr. Deputy Speaker, Sir, guide us. We want posterity to remember you and remember us for these great words that we utter here today.

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I will be very brief because most of the points I wanted to raise have been raised eloquently by the Senate Majority Leader. However, first, I want to raise a very important point. As I had raised earlier, when we refer to the Standing Orders *vis-a-vis* the provisions of the Constitution, it is important that we remember and be guided by Article 124 of the Constitution. It clearly stipulates that each House of Parliament may establish and shall make Standing Orders for the orderly conduct of proceedings. The word to note is “shall.”

Therefore, all arguments that we may make cannot seem to trivialize the Standing Orders because they are recognised by the Constitution. However, let me make my point on exactly what I think is in front of you. There have been many arguments in this House this afternoon citing various Articles of the Constitution and the Standing Orders yet the issue that has come to the fore is the question of threshold. However, what I would want to bring to your attention and the House as you make your decision, is the prayer on your table. What did the distinguished Senator for Bungoma ask you to rule on? After citing all the Standing Orders and the Articles of the Constitution, he narrowed his question to Standing Order No.76(2).

I am sure the HANSARD will bear us out as to what the Senator asked you to rule on. That is what I want to confine myself to in my submission because you cannot rule out of what you have been asked to rule out of. The questions of threshold were not raised by the Senator for Bungoma. He referred to various articles of the Constitution, but he asked you one thing which is: “Mr. Deputy Speaker, Sir, I want you to rule – and he read this:- he said, “I want you to rule that there is no time when this side can walk out and leave this side to make decisions.” That is the ruling you are supposed to make. If you look at the reference he made to Standing Order No.76(2), it beats logic. The decision you have to make is as simple as the question itself.

Mr. Deputy Speaker, Sir, is it possible, in the orderly conduct of this House, and the proper dispensation of the business of this House, supposing when you are there, you have complied with this provision that requires that you establish, indeed, whether there is quorum in the House; which you have done. After establishing that there is quorum, then one side decides to walk out. That is what you have been asked to rule on. The ruling you have been asked to make is: Can one side of this House walk out and leave the other to transact business?

If you are persuaded or even if arguments are made to ask you to look at other matters, they have not asked you to look at them. Arguments are there in the Constitution and so, in that one simple question whether, if after you have established, as far as this Standing Order is concerned, any side of this House can walk out and leave the other to transact business, the answer is simple; that if any Members of any side of this House, after the establishment that, indeed, there is quorum to start the business of this House and even to go to the voting of this House, if any side then decides to walk out, in the process--- That Standing Order is very clear and so is the Constitution. When the process has commenced, then if any side decides to walk out, it does not bind the Speaker to stop transacting business of this House.

Sen. Hassan: Mr. Deputy Speaker, Sir, thank you, for this opportunity. One of the things that is extremely puzzling me is for us not to appreciate the intricate

architecture of the Senate. We want to interpret it almost like the National Assembly. This is a House that envisages the equality of counties. It insists that at any decision, 24 of us must speak to it whether in the affirmative or otherwise. Therefore, for us to narrow down, particularly some of those Senators who I have heard speak - this Senate was supposed to pull us out of marginalization. That is the principle of this Senate. It was supposed to allow every county to speak to some of the decisions that this Senate was to take. I am happy that Sen. Wamatangi realises that these Standing Orders have the force of the Constitution and are as binding.

Mr. Deputy Speaker, Sir, reading from Article 123(c) and then looking at that with respect to Standing Order No.76(2) and appreciating the ruling of the Speaker on 15th August, 2014, during Mr. Kiala's impeachment, and since Sen. Murkomen made reference to the HANSARD, we actually adjourned the House because we were 15 Members. The Speaker insisted that the majority of delegations must speak to this issue. The outcome of the vote was simple; 17 Members voted against the impeachment of Mr. Kiala, five voted for his impeachment and two Members abstained; making the quorum 24.

I find it extremely disheartening for this Senate to always depart its position on account of expediency of politics. Whether we want to protect a presidency, you are a President today and you are not a President tomorrow. We must build the Senate for posterity. For us, we have raised these issues merely for the purposes of this record, when our sons, daughters and our fore-children who come after us read this to appreciate those of us who were sent to this Senate to protect the very interest of those counties. That is why counties must speak to whatever the President wants to do in person, either through abstention or voting, but there must be at least 32 present here.

Mr. Deputy Speaker, Sir, for us to conveniently and constantly evolve our rulings - and you are a stickler of rulings - this ruling was made on 15th August, 2014. I hope we will carry it forward so that we can exonerate ourselves from taking political decisions that are expedient. This designation has been a practice by the Speaker's office that you must present yourself a designation of who in your delegation is to vote for you. You want to depart from it today, because there is a convenient matter for you to rule upon on this particular day. I refer to the ruling of the Speaker on 15th August, 2014 because I think he based his ruling on Standing Order No.76(2) which says that:-

“(2) The Speaker shall direct a roll call vote to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question or in instances where the Senate is to decide on a matter that requires voting by County Delegations.”

The Speaker insisted in this instance of Mr. Kiala that it has to be 24 Members. If he decided then it was 24 Members, then it must now elevate itself to that threshold of 32 Members that the Constitution sets.

So, it is simple logic that you graduate that ruling, but if it is in the wisdom of the Speaker to depart from that ruling just for the expediency of politics, it would be an extremely sad day for this country.

Mr. Deputy Speaker, Sir, my colleagues in this House from the Jubilee side were supposed to check what the other House did wrongly. This is because it always brings wrong decisions simply to translocate them here on account of some kind of political expediency. Why do we want to be an “Upper” House? We always

keep complaining about mandates and how we are the House of wisdom and seriousness and yet they keep shooting this Senate every day. They come and tell us to get ourselves involved in trivial processes of amending the Constitution that they even do not believe in. So, why do we need this “Upper” House status? If we are really to be an “Upper” House, let us depart from making decisions much in the same way the National Assembly does.

Mr. Deputy Speaker, Sir, they keep honouring themselves as having more gravitas, more reason and more political thorax and yet they cannot make decisions that beat anybody’s logic. So, if we want to distinguish ourselves on how we conduct business, let us distinguish ourselves in the practice of this House. You cannot carry yourself like a National Assembly Member and you say that you are a Senator.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir, for allowing me to voice my thoughts on this important Motion. To begin with, let me revisit a vote that was done in the Eighth Parliament when the entire opposition walked out- I was in the opposition - and the Government side went ahead, transacted business and passed the Motion or the Bill. So, there is a precedence that one side can walk out and the business goes on. Otherwise, they will hold the country to ransom, which is what they are trying to do.

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

The Deputy Speaker (Sen. Kembi-Gitura): Senator, do you want to be informed?

Sen. Mugo: No, Mr. Deputy Speaker, Sir. So, I urge you that since the question that you were asked to decide on was whether only one side can make decisions; if one side decides to walk out because they are scared of the vote, then it is up to you to rule that the side that remains as long as there is quorum, are legally or constitutionally empowered to continue with business.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I hate to interrupt my distinguished colleague, but is she in order to pursue an argument that the point of order I raised was that one side cannot remain in the House and transact business? The argument on record is the threshold of numbers, not which side.

Sen. Mugo: Mr. Deputy Speaker, Sir, I have made my point.

Sen. Wamatangi: On a point of order. Mr. Deputy Speaker, Sir. While the HANSARD bears the Senate Minority Leader’s words exactly what he asked you to rule on, it is very clear that the question on the table this afternoon that you were asked to rule on is; can one side of this House walk out and leave the other side to pretend to continue with business? I want to urge that we look at the HANSARD as you make your ruling because that is the question that is on the table.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wamatangi! I promised you that the ruling will be based on facts, what has been said here and on law as contained in the Constitution, Standing Orders and other laws that guide us in this House. I can assure you that those will be the guiding documents.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir. It is just because I was concerned when the debate started to take another direction, but then the Speaker could be asked to go fishing, to introduce other matters that were not in the question.

The Deputy Speaker (Sen. Kembi-Gitura): I will not fish. I promise you.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir. My second point which has been laboured to a large extent, I hate to be repetitive, but just to also stress that the quorum is in Article 121 of the Constitution. The Senate quorum is 15 members and one cannot change that for their own convenience. The quorum remains a quorum. I believe a quorum means you can transact any business once you have a quorum.

Mr. Deputy Speaker, Sir, thirdly, it has been belaboured that, always, we keep on voting on Motions for political expediency. I would like to say that nobody shows that more than the Opposition, especially when they keep on abusing the Government. If it is a Motion to do with Government, they do not see anything good in it. They really have to hammer and use all kinds of abusive words, lying and stealing. We take it all. So, if it is political expediency, then the Members of the Opposition are the masters of that expediency. I support what has been said by Sen. Murkomen, Sen. Keter, Sen. Wamatangi and I would not want to be repetitive.

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. During the voting on Kiala's case, I was the one who really insisted to ensure we stand and continue with the precedence we had set in the House. Therefore, we cannot vote without ensuring we have the numbers of delegations we had agreed on as Senate. At the same time, it will be very unfortunate for us to only realize at this time that we need to stick to our rules just because of the convenience of what we have done through this other Motion of the Presidential veto.

Mr. Deputy Speaker, Sir, going forward - because we need to ensure we have all these things in law - either within our Standing Orders, we need to do an amendment that will show us that when we have a veto for the President, this is how to deal with that situation. The Senate Minority Leader has brought in the issue of procedure which is correct because we now need to move on from that precedence to understand that when we have a veto - I think it will be important for us to put it in our Standing Orders.

The most important thing we need to ask ourselves is what we will do with Article 123. Article 123 (4)(a) and (b) alludes to the fact that while you designate that vote of your county, and when we call, for example, the women who have been elected through the party list to come and stand in as Members of the delegations. When we call upon the women who were nominated through the party lists to stand in as Members of the delegations, and I hope that the Speaker will tell us in black and white, there is provision that says that we should designate in writing. This was our own making and we thought it was important. We need to follow the law.

For example, if there is a delegation from Nakuru County and the Senator for Nakuru says that Member X will stand in for my delegation, no one has to question why Member X of Nakuru delegation is voting. The most important thing is that while you do your ruling, we must also finalize the issue of delegations and how they vote, so that next time we do not question ourselves, yet we know that the law is very clear. As long as the head of the delegation has decided on a specific person to be voting on their behalf, they do not need to write letters every time.

Our Standing Orders go beyond and say if we do not agree then the delegation can decide not to vote on the issue. It does not say that you must either be on the minority or majority. It says that if that delegation or county-

That county vote is very critical because that issue may be affecting one county, but the other counties might be comfortable. The delegation of that county may decide

not to vote or support the issues. We need to ask ourselves how to deal with this. If we do not manage the different delegations, at one point, we will end up in mess.

As the Chair rules, we also need to come up clear on the issue of delegations. If there is need for a letter, let it be a letter for five years until the end of the term. The leader of delegation should not be writing a letter for every Motion. Members from a particular county all work for that county. I believe the people of that county see all of you as their leaders. We need to also canvass, agree and ensure that delegations work in harmony.

Mr. Deputy Speaker, Sir, it was, unfortunate, that we were going on Division---

The Deputy Speaker (Sen. Kembi-Gitura): That brings us to the end of that robust debate. As you are aware, whatever Sen. Wetangula or any of you may say, what will happen on Order Nos.8 and 9 would depend on what the ruling will say. So I will still have to proceed under Standing Order No.39 and re-arrange the Order Paper, so that we stand down Order Nos.8 and 9. I will give the ruling tomorrow at 2.30 p.m. or so soon thereafter as it is possible. It is subsequent to that ruling that will determine what will happen on Order Nos.8 and 9.

Order Nos.8 and 9 will still be on the Order Paper tomorrow. I am standing it down because of the fact that we must abide by the ruling. So, the ruling will be tomorrow at 2.30 p.m. or as soon as possible, thereafter.

The Deputy Speaker (Sen. Kembi-Gitura): The ruling on the two orders will be given tomorrow at 2.30 p.m. What will happen to Order No.s 8 and 9 will be from the ruling that I will make tomorrow. That was the whole purpose of all the arguments and debate that we have had this afternoon. Therefore, I would be surprised if any of you is trying to make a point of order to say otherwise because that would be contradictory.

Sen. Wamatangi, what is your point of order?

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I seek your indulgence. I affirm that I do not intend to contradict your ruling. However, in the course of deliberations this afternoon, there has been constant reference to the Deputy Governor, Mr. Kiala's impeachment, and it is in the HANSARD. I request that in your ruling; kindly assist this House to interpret what the Standing Order No.68(5) means in this case---

The Deputy Speaker (Sen. Kembi-Gitura) Sen. Wamatangi, it is too late now because I have closed that case. We are now dealing with the ruling that shall be made tomorrow on the arguments and debate that has been there. We will look at the HANSARD. The case of Deputy Governor, Mr. Kiala, has been canvassed at great length. I, therefore, expect that we have to look at the HANSARD to find out what the ruling of the Speaker was then. However, it is now too late to start canvassing an issue that we have been discussing for the last three hours.

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I do not intend to canvass it, but I just wanted to bring to your attention the---

The Deputy Speaker (Sen. Kembi-Gitura) Sen. Wamatangi, I will not allow you. You will be taking me back to 2.30p.m.

I am standing down Orders No.8, 9, 10, 11 and 12

COMMITTEE OF THE WHOLE

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON
THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL
(NATIONAL ASSEMBLY BILL No.40 OF 2014)

(Deferred)

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON
THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

(Deferred)

Second Reading

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO. 37 OF 2014)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)
BILL (SENATE BILL NO. 20 OF 2014)

(Deferred)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL, (SENATE
BILL NO. 32 OF 2014)

(Deferred)

Second Reading

THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT)
BILL (SENATE BILL NO. 7 OF 2015)

(Sen. Musila on 27.10.2015)

(Resumption of Debate interrupted on, 27.10.2015)

The Deputy Speaker (Sen. Kembi-Gitura): This is a resumption of debate. Sen. Wetangula had concluded contributing to this Bill. There is no indication of interest in this debate and I notice that Sen. Musila is not here. I, therefore, stand this Bill down.

(Bill deferred)

It is already 6.10 p.m. and I do not see the point of starting on Order Nos.14 or 15. Therefore, we conclude the business of the House at this point.

ADJOURNMENT

Hon. Senators, it is now time for interruption of the business of the Senate. As I said, the business that has to be dealt with now cannot be conveniently dealt with and that is the reason I have decided to reorganize the Order Paper and end the business of the House now at 6.10 p.m. Therefore, the Senate stands adjourned until tomorrow, 4th November, 2015, at 2.30 p.m.

The Senate rose at 6.10 p.m.