

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 15<sup>th</sup> June, 2016**

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.36 p.m.*

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

**PRAYERS**

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, what is your point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, according to the Standing Orders, this session starts at 2.30 p.m. There must be a compelling reason why we have not started at 2.30 p.m. I would like to seek clarification from the Chair, lest we look like we are starting to hold sessions of this House arbitrarily.

**The Deputy Speaker** (Sen. Kembi-Gitura): What time is it?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, you entered at 2.36.5 p.m.

**The Deputy Speaker** (Sen. Kembi-Gitura): So, what clarification are you seeking, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, probably the consultations were loud and, therefore, you did not hear what I said. I said, lest it appears like we are holding sittings of this House arbitrarily, it is good that the Chair clarifies why we have started at a time other than that stipulated in the Standing Orders. This is the third time that I am raising this issue in this House.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale. I do not know, but to be candid with you, I suspect that there appears to be a technical problem. The bell rang longer than it should have and so we could not start the procession before the bell stopped ringing. That is the only reason that I came in when I came in. I hope that satisfies you. This is an important question that you have raised because we cannot have arbitrary time for starting sessions.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, most obliged.

**COMMUNICATIONS FROM THE CHAIR**

RE-ORGANIZATION OF HOUSE BUSINESS DUE TO THE  
CHIEF JUSTICE'S ADDRESS TO THE SENATE

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, you may recall that on Thursday, last week, the Senate Majority Leader, while issuing his Statement on the Business of the Senate for this week, informed the House that the Hon. Chief Justice of Kenya who is also the President of the Supreme Court, Hon. (Dr.) Willy Mutunga, would address the Senate this week.

Taking into consideration that the business scheduled at Order Nos.9 to 12 requires to be expedited as a matter of urgency, I will re-organise the Order Paper so that we deal with Order No.1 to 7, skip Order No.8 and move to Order No.9 and 12.

I wish to bring to your attention that at the conclusion of Order No.12, I shall adjourn the Senate. The House will reconvene after 10 minutes to enable the Hon. Chief Justice and the President of the Supreme Court to come in and address the Senate. I will seek your indulgence in that regard.

I thank you.

### PAPER LAID

#### REPORT ON THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2015

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table:-

Report on the Fisheries Management and Development Bill 2015.

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

### STATEMENTS

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I propose that we take one or two statements. I do not want us to take too long on the statements because we have to deal with the Divisions which we cannot do until we have the numbers. I will call the Orders as soon as we have the numbers. In the mean time, seeing that there is no notice of Motion to be given, we can have one or two statements.

What is your point of order, Sen. (Dr.) Khalwale?

#### HARASSMENT OF *BODA BODA* RIDERS IN KAKAMEGA COUNTY

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise under Standing Order No.45(2)(b) to request for a Statement from the Chair of the Committee on Security and Foreign Affairs regarding---

**The Deputy Speaker** (Sen. Kembi-Gitura): Has your request been approved by the Speaker?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, my request is in regard to the harassment of the *boda boda* riders in Kakamega. The Chairman should clarify the following:

(i) What are the reasons as to why these boys in Kakamega are being subjected by police to:

- (a) Confiscation of their motorbikes
- (b) Arrest
- (c) Demands for bribes

(ii) Is the Inspector General of police aware that the matter is so grave that some of the boys have lost their lives through extra-judicial killings by the police?

(iii) What were the reasons as to why one *boda boda* rider by the name Jackton Apwoka, a father of four children aged one year to four years, was shot dead in cold blood on the morning of 14<sup>th</sup> June, 2016 at Sichirai area in Kakamega, leaving behind a widow?

(iv) What action has been taken against a police constable by the name Serem of Kakamega Police Station who shot Jaconia Apwoka, the *boda boda* youth?

(v) Why have no arrests been made and charges preferred against the above police, Constable Serem, who is blood thirsty and who has been severally involved in cases of extra-judicial killings in Kakamega in the past.

Mr. Deputy Speaker, Sir, I had two points of order. I do not know if you will allow me to raise the second one.

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you seeking for another Statement?

**Sen. (Dr.) Khalwale:** No, Mr. Deputy Speaker, Sir. This one is under Standing Order No.45(2)(a) and you need proper direction on it.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, when are you going to issue that Statement because that is your Committee, is it?

**Sen. Adan:** Yes, Mr. Deputy Speaker, Sir. I request to be allowed to give an answer to that Statement once we resume from recess.

**The Deputy Speaker** (Sen. Kembi-Gitura): Assuming that we go on recess tomorrow?

**Sen. Adan:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that okay, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** That is okay with me, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is there somebody else seeking a statement which has been approved?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. Sen. (Dr.) Khalwale has used very serious words "blood thirsty." I do not know whether it is parliamentary language. Why should he say that the person is blood thirsty yet the person is still alive? What do you mean?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, what is your second point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, my second point of order is that I wish to rise under Standing Order No.45(2)(a). I was asking you to permit me because I was not seeking for a statement. Instead, I want to make a statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): Has it been approved by the Speaker?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Could I have a look at it?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, it was approved out of consultation and he told me---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Before you go on with your statement, could I look at it?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

*(Sen. (Dr.) Khalwale consulted with the Deputy Speaker)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Is there somebody else seeking a statement? What is your point of order, Sen. Musila?

### POINT OF ORDER

#### PERMISSION TO RAISE A MATTER OF NATIONAL IMPORTANCE

**Sen. Musila:** On a point of order, Mr. Deputy Speaker, Sir. I would like to draw the attention of the House to a situation---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, you are rising under what Standing Order?

**Sen. Musila:** Mr. Deputy Speaker, Sir, I communicated with the Speaker in the morning and informed him that I wanted to raise a matter of importance. As I speak, at Pangani Police Station---

**The Deputy Speaker** (Sen. Kembi-Gitura): Has he approved it?

**Sen. Musila:** Mr. Deputy Speaker, Sir, I am rising under Standing Order No.45(2)(a). I communicated and I have a communication with me here---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, all I am saying is whether you communicated with the Speaker and not with me.

**Sen. Musila:** Mr. Deputy Speaker, Sir, you are the Speaker---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Who did you communicate with?

**Sen. Musila:** Mr. Deputy Speaker, Sir, I communicated with the Speaker, Hon. Ethuro and you are his Deputy.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is fine. That is why we have things in writing. Standing Order No.42(a) and (b) require that there is an approval of the Speaker before a certain time. I do not have it. I will allow you, if you communicated with the Speaker, Hon. Ethuro, and you have something in writing.

**Sen. Musila:** Mr. Deputy Speaker, Sir, the assumption---

**The Deputy Speaker** (Sen. Kembi-Gitura): Let me make myself clear, Sen. Musila. You have served in the same capacity that I am serving in now. I have no issue at all with the statement that you want to seek or issue, but if you look at Standing Order No.45(2)(a) and (b), it requires the approval of the Speaker. Does it not?

**Sen. Musila:** Mr. Deputy Speaker, Sir, it does. In any case, if you seek permission in writing and you do not get a response, the assumption is that it has been

allowed. If you look at that Standing Order 45(2)(a), there is no requirement. However, I informed the Speaker. I would appreciate if you allowed me to make my statement. It is on an important matter.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, just take your seat. Give me a few minutes, I will look at it then I will come back to you.

Sen. Musila, I do not know what you want to say. Let us start from that premise.

**Sen. Musila:** It is an issue of general topical concern.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is fine by me. Standing Order No.45(3) says:-

“A Senator who wishes to seek leave to raise a matter under paragraph 2(a) or (b) shall, before 1.00 p.m. on the day on which the Statement is proposed to be made, hand to the Speaker a written notification of the matter, but the Speaker may refuse to allow the request unless satisfied that the matter may properly be discussed in the Senate.”

So, all you need is to show me that there is such a written notification then I will allow you to seek the statement.

**Sen. Musila:** With pleasure.

*(Sen. Musila handed over a mobile phone)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, we will not proceed that way. Let us have some respect for the House. It may be electronic, but if you show me the Speaker's signature, I will allow you to proceed.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Not on that issue, Sen. (Dr.) Khalwale. I know that we have interpreted Standing Order No.45(2)(a) and (b) and if there was no notification to the Speaker by 1.00 p.m. I will not allow it.

What is your point of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, since I approached the Chair, it is important that now that this matter has taken this course, I be on record. I cannot lie about a discussion between me and the Speaker. It happens to pass that the matter being canvassed by the Senator of Kitui is the same for which I met the Speaker of the Senate. I had originally wanted to seek for a Motion of Adjournment so that we discuss the violent arrest of Members of Parliament, including Sen. Muthama. He told me that I do not have to go the route of Motion of Adjournment in view of the risk of the *sub judice* rule. However, he told me to go ahead and move under Standing Order No.45(2)(a) and clarify that you will not go into the merits and demerits of the case filed in the High Court. This is a serious matter of national importance, it is topical and I beg that you allow me to ventilate.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! I hear you, Sen. Musila. The only thing is that if you are saying that you communicated with me and I am not suggesting that you are telling anything other than the truth, I would have been the first person to confirm that you communicated with me. If you communicated to the Speaker, Hon. Ekwee Ethuro and he has not marked it down to me, then I have no way of knowing that there was a communication before 1.00 p.m. and, therefore, it should be allowed.

This is not the first time that the issue of Standing Order No.45(2)(a)(b) has been canvassed in this House. You know as well as I do that the Speaker would not ordinarily refuse a Senator from raising any issue under Standing Order No.45(2)(a)(b). For good order, it has to be done in writing and the Speaker communicates it and endorses it. Therefore, whether it is the Speaker, the Deputy Speaker or a Member of the Speaker's Panel, it would be common knowledge that such consent was given. So, why do you want to altercation with me and yet you did not communicate with me?

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. I do understand your predicament because you have no communication from the Speaker, Hon. Ethuro, on this matter. However, would I be in order to request you to expand a little bit more on the word "writing" because in this era, we have electronic and hand writing which has not been explained by Standing Order No.45(3)? Why is it assumed that this writing must only be handwritten?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, you belong to the Speaker's Panel and you could be sitting where I am now and maybe you would have allowed it or not. I have chosen my own interpretation of "in writing before 1.00 p.m." to mean that there must be a kind of communication so that if it is you, Sen. (Dr.) Machage, sitting here, you would not have lost ten minutes discussing an issue that you appreciate very much. Having said that, the Speaker will be on the Chair later and the matter could still be raised.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): If it is on the same thing, with the greatest respect, I must disallow it now.

**Sen. Musila:** Mr. Deputy Speaker, Sir, you are right in many ways, but there has been a precedence whereby we have sent a communication through Short Message Service (SMS) and the Speaker agreed.

**The Deputy Speaker** (Sen. Kembi-Gitura): Two wrongs do not make a right.

**Sen. Musila:** Mr. Deputy Speaker, Sir, as I stand here, we have colleagues, Members of Parliament, who have been denied food at Pangani Police Station and anything can happen.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Musila! You are a senior Member of this House and we are not going to dwell on the same issue unnecessarily. You are pushing me to act against your own Standing Orders. I am not going to do so. Let us proceed as we should and if you want to raise the same issue, you could still do it if you go to the Speaker's office and have him confirm that he spoke to you before 1.00 p.m. then let me get it in writing.

It is a matter of national concern, whatever it is that Sen. Musila wants to raise, but it has to be done procedurally. That is what I am requesting. I have no other issue to raise on that matter.

As I had indicated to you, I would like us to rearrange the Order Paper. I would like us to have a Division on Order Nos. 9, 10, 11 and 12. We shall then adjourn for ten minutes.

Hon. Senators, with your consent, I propose that we have only one Division and finish with the four items, give the results one by one, then proceed to the next Order. We shall vote four times as usual.

Please, read out the Orders.

**BILLS***Second Reading*

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION)  
BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2015)

*(Sen. (Prof.) Kindiki on 14.6.2016)*

*(Resumption of Debate interrupted on 14.6.2016)*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that the Petroleum (Exploration, Development and Production)  
Bill (National Assembly Bill No.44 of 2015) be read a Second Time, put  
and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ntutu, Narok County and Sen. Okong'o, Nyamira County.

**NOES:** 0

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 26

**NOES:** 0

**ABSTENTIONS:** 0

*(Question carried by 26 votes to 0)*

*(The Bill was read a Second Time and committed to a  
Committee of the Whole tomorrow)*

*Second Reading*

THE COMMUNITY LAND BILL (NATIONAL ASSEMBLY

BILL NO.45 OF 2015)

*(Sen. (Prof.) Kindiki on 14.6.2016)*

*(Resumption of Debate interrupted on 14.6.2016)*

### DIVISION

#### ELECTRONIC VOTING

*(Question, that the Community Land Bill (National Assembly Bill No.45 of 2015) be read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; and Sen. Ntutu, Narok County.

**NOES:** Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Leshore, Samburu County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County and Sen. Okong'o, Nyamira County.

**ABSTENTIONS:** Sen. Billow, Mandera County; and Sen. (Prof.) Lonyangapuo, West Pokot County.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 9

**NOES:** 16

**ABSTENTIONS:** 2

*(Question negatived by 16 votes to 9)*

#### *Second Reading*

THE LAND LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY  
BILL NO.55 OF 2015)

*(Sen. (Prof.) Kindiki on 14.6.2016)*

*(Resumption of Debate interrupted on 14.6.2016)*



## DIVISION

### ELECTRONIC VOTING

*(Question, that the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015) be read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'- Nyong'o, Kisumu County; Sen. Kembi-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Eng.) Muriuki, Nyandarua County and Sen. Murungi, Meru County.

**NOES:** Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County and Sen. Okong'o, Nyamira County.

**ABSTENTIONS:** Sen. Kagwe, Nyeri County and Sen. Leshore, Samburu County.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 5

**NOES:** 19

**ABSTENTIONS:** 2

*(Question negative by 19 votes to 5)*

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Dr.) Machage) took the Chair]*

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 2 OF 2016)

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Senators, we only have one Division. So, it is not a lengthy process. I beg for your indulgence that you do not walk out; we finish this before we allow our visitor to address the Senate. I want to put the question. We had canvassed and looked at Clause 3 to 28, the Title, Clause 2 and

1. All that is remaining is the Division. Ring the Division Bell for one minute. I ordered the Bars to be drawn and doors closed.

Hon. Senators, take your seats and log in. that is the procedure of the House. You have 30 seconds to vote.

*(The Division Bell was rung)*

*(The Bar was drawn and doors closed)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, the Title, Clause 2 and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. Anyang' -Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kindiki, Tharaka Nithi County; Sen. Leshore, Samburu County; Sen. Lonyangapuo, West Pokot County; Sen. M. Kajwang, Homa Bay County; Sen. Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

**NOES:** Sen. Bule, Tana River County and Sen. Mutula Kilonzo Jnr., Makueni County.

**The Temporary Chairperson (Sen. (Dr.) Machage):** Hon. Senators, the results of the Division are as follows:-

**AYES:** 29

**NOES:** 2

**ABSENTIONS:** Nil

The ayes have it.

*(Question carried by 29 votes to 2)*

*(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, the Title, Clause 2 and Clause 1 agreed to)*

**The Senate Majority Leader (Sen. (Prof.) Kindiki):** Mr. Temporary Chairperson, Sir, I beg to move that the Committee report to the Senate its consideration of the Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) and its approval without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.2 OF 2016)

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) and its approval thereof without amendments.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I request Sen. Khaniri to second.

**Sen. Khaniri** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) be now read a Third Time. I request the Senator for Vihiga, Sen. Khaniri to second.

**Sen. Khaniri** seconded.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, since nobody is interested in debating that proposal, I will put the question. Let the Division Bell be rung for one minute. Draw the Bars and close the door.

*(The Division Bell was rung)*

*(The Bars were drawn and the door closed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): You have 30 seconds to vote. Sen. Wamatangi, take you seat.

**DIVISION**

**ELECTRONIC VOTING**

*(Question, that the Political Parties (Amendment) Bill (National Assembly Bill No. 2 of 2016) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billoo, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. M. Kajwang, Homa bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

**NOES:** Sen. Mutula Kilonzo Jnr., Makueni County

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the results of the Division are as follows:-

**AYES:** 31

**NOES:** 1

**ABSTENTIONS** 0

*(Question carried by 31 votes to 1)*

*(The Bill was accordingly read the Third Time and passed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, as I had indicated in the Communication earlier, the Chief Justice, Hon. (Dr.) Willy Mutunga, will be addressing the Senate shortly. We shall adjourn for ten minutes to enable him to come into the House. Since this is the first time that the hon. Chief Justice will be addressing any House of Parliament, I request that all of us are here to listen to his Address.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Sen. (Dr.) Khalwale, you do not raise a point of order when the Chair is on his feet. That is a norm that we have had all through.

We will, therefore, adjourn until 3.50 p.m.

*(The Senate temporarily adjourned at 3.42 p.m.)*

*(The Senate resumed at 3.50 p.m.)*

## ARRIVAL OF THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA

*[The Chief Justice of the Republic of Kenya (Rt. Hon. (Dr.) Willy Mutunga) and the Speaker of the Senate (Hon. Ethuro) entered the Chamber at ten minutes to four o'clock, accompanied by the Mace]*

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

*[The Chief Justice of the Republic of Kenya (Rt. Hon. (Dr.) Willy Mutunga) took his Designated Chair]*

*(The Mace was placed on the Table)*

## PRAYERS

## COMMUNICATION FROM THE CHAIR

WELCOME TO THE CHIEF JUSTICE OF THE REPUBLIC  
OF KENYA, THE RT. HON. (DR.) WILLY MUTUNGA

**The Speaker** (Hon. Ethuro): Hon. Senators, you may recall that on Thursday last week, the Senate Majority Leader, while issuing his Statement on the Business of the Senate for this week, informed the House that the Hon. Chief Justice of the Republic of Kenya who is also the President of the Supreme Court, the Rt. Hon. (Dr.) Willy Mutunga, would address the Senate this week.

Hon. Senators, Standing Order No.25(1) of the Senate Standing Orders makes provision for a visiting dignitary to address the Senate. The specific section states as follows:-

“The Speaker may, after consultation with the Senate Majority Leader and the Senate Minority Leader, allow a visiting Head of State or other visiting dignitary to address the Senate.”

It is on this basis that I consulted with the Senate leadership and the Rules and Business Committee (RBC) following which it was agreed that the Hon. Chief Justice address the Senate on Tuesday, 14<sup>th</sup> June, 2016, at 2.30 p.m. Unfortunately, owing to his demanding schedule of work, the Hon. Chief Justice was not able to address the Senate as agreed, instead, opting to address the Senate today.

Hon. Senators, the Hon. (Dr.) Mutunga holds a Bachelor of Laws (LL.B) and a Master of Laws (LL.M) degrees, both awarded by the University of Dar es Salaam, Tanzania in 1971 and 1974, respectively and a Doctor of Jurisprudence Degree (JSD) awarded by Osgoode Hall Law School, Toronto, in 1992.

Dr. Mutunga has published many books, essays and papers on human rights, law and society. He has also presented conference papers at many national and international conferences. In his long and distinguished career, the Hon. Chief Justice of the Republic has served in various capacities as Chair, Executive Director or Member of several

professional and law oriented organisations, including University Staff Union, Kenya; the Legal Advice Centre (Kituo cha Sheria); the Law Society of Kenya (LSK); the Council of Legal Education; Citizens Coalition for Constitutional Change (4Cs); the Kenya Human Rights Commission (KHRC); the East African Centre for Constitutional Development (Kituo cha Katiba), Uganda; and, the International Centre for Human Rights and Democratic Development (ICHRDD), Montreal, Canada.

He has also undertaken professional consultancies in Kenya and abroad, in addition to being a lecturer at the Faculty of Law, University of Nairobi, among other positions. Prior to his appointment as the Chief Justice, Dr. Mutunga was the Regional Representative of the Ford Foundation.

For his outstanding contribution to the development of law, human rights, good governance and social justice, Dr. Mutunga has received several national and international honours and awards, including the national honour of Elder of the Golden Heart (EGH); the Status and Style of Senior Counsel; the Lifetime Award for the Protection and Promotion of Human Rights; the Jurist of the Year Award (2003); and, the first Law Society of Kenya Distinguished Services Award for Constitutionalism, Rule of Law and Human Rights.

The Hon. (Dr.) Willy Mutunga was appointed the Chief Justice of the Republic of Kenya on 16<sup>th</sup> June, 2011. It is, indeed, a great honour to have such an accomplished citizen as the Hon. (Dr.) Willy Mutunga address the Senate today.

Hon. Senators, the Hon. (Dr.) Willy Mutunga will go down in the annals of Kenya's parliamentary history as the first Chief Justice to address the first Senate under the Constitution of Kenya, 2010. This spectacular occasion will undoubtedly lend credence to the need to build and nurture closer institutional and organic engagement and collaboration; core values which this Senate holds in high regard. In the service of our people, it is most desirable that national, county and institutional leaderships should inculcate the culture of cooperation and consultation of talking to each other and engaging constructively rather than talking at each other.

James Madison, Federalist No.47, 1788 stated:-

“Montesquieu did not mean that these branches ought to have no partial agency in or no control over to the acts of each other. His meaning can amount to no more than this, that where the whole power of one branch is exercised by the hands that hold the whole power of another, the fundamental principles of our free constitution are subverted. There is not a single instance in which the several branches of power have been kept absolutely separate and distinct.”

Today as we assemble here to listen to your address, we pay tribute and appreciate you for your audacious leadership example, not only in our sister institution, the Judiciary, but also for your overall contribution towards the struggle to actualize the rule of law, justice and a culture of constitutionalism and institutional transformation in Kenya. This nation owes you a deep sense of gratitude and appreciation. Against great tremendous odds, you have accomplished many fetes and tackled many difficult tasks.

The Constitution of Kenya 2010 is explicit on the functions and roles of the major institutions of democratic governance. While interdependently constituted in the Constitution, there are quite distinct demarcations and operational zones for the various institutions. This applies to the Judiciary and the Senate. By and large, we are duty bound to co-exist harmoniously in the common dispensation of service to the people of Kenya.

Indeed, we ought to convene regular consultative consultations and engagements in our common endeavour.

However as most of our African communities would put it, pots and pans in the same container will always clang and clash. Yes, this jostling is sometimes necessary and healthy. This should not, however, be left to detrimentally escalate into adversarial tough struggles that could polarize and tear apart our common obligation of delivering services to the people of the Republic of Kenya.

We in the Senate strongly feel that the consultative and deliberative mechanism ought to be established to avoid an impasse as we discharge our respective mandates. Both institutions do have clear roles and functions to provide requisite leadership in matters of common endeavour that will make ordinary Kenyans sleep soundly, knowing and having faith and trust in both the Judiciary and the Legislature.

While we applaud and acknowledge that working closely is desirable, we also remain cognizant of the principle of separation of powers, which is a key pillar in our 2010 Constitution. The need to continuously bolster a nurtured democracy and promote institutional capacity development cannot therefore be over emphasised. We must never become complacent. Democracy is, therefore, a fragile baby. It must be cautiously nourished and affirmed. Unchecked autocratic and anti-democratic ideologies can easily creep back and take us to the dark days where we have run away from.

Our national and county-based institutions of governance are, therefore, under obligation to be accountable and demonstrate responsiveness to public aspirations and needs, embrace sound corporate governance practices, fidelity to the rule of law, legality and, ultimately, safeguard and advance democratic ideals and practices.

Dr. Willy Mutunga and Hon. Senators, while a considerable number of Kenyan regret your exit at this time, it is useful to heed the words of a renowned British author and satirist, Malcom Muggeridge who once said:-

“Few men of action have been able to make a graceful exit at the appropriate time’

I dare say that this is an audacious and instructive example to all our leaders across the board. The proponents of the culture of extending leadership term limits - be they presidential, institutional or county leadership - in our African countries can borrow a leaf from the humble Dr. Willy Mutunga. It is, indeed, possible to go home and still lead an enriching life.

Hon. Chief Justice, the Senate of the Republic of Kenya wishes you well in your retirement and in your future endeavours.

#### VISITING DELEGATION FROM THE JUDICIARY

Before I invite the Chief Justice, Hon. Senators, allow me to introduce the 16 member delegation from the Judiciary that is seated at the Speaker’s Gallery. As I recognize each member of the delegation by name, I will request each to stand when called out so that we may acknowledge them in our usual Senate great tradition.

- |   |   |  |
|---|---|--|
| 1. Prof. Margaret Kobia                     | - | Vice-Chairperson, Judicial Service Commission. |
| 2. The Hon. Justice Dr. SmokinWanjala       | - | Judge, Supreme Court.                          |
| 3. The Hon. Mr. Justice Paul Kihara Karuiki | - | President Court of Appeal.                     |

- |   |   |   |
|---|---|---|
| 4. The Hon. Justice Mohamed Warsame         | - | Judge Court of Appeal.  |
| 5. The Hon. Lady Justice Hannah Okwengu     | - | Judge Court of Appeal.  |
| 6. The Hon. (Prof.) Justice J. OtienoOdek   | - | Judge Court of Appeal/ Director,<br>Judicial Training Institute |
| 7. The Hon. Justice AggreyMuchelule         | - | Judge High Court of Kenya.                                      |
| 8. The Hon. Justice Richard Mwangi          | - | Principal Judge, High Court of<br>Kenya.                        |
| 9. The Hon. Mr. Justice Mathews NdumaNderi- |   | Principal Judge, Employment and<br>Labour Relations Court.      |
| 10. The Hon. Justice (Prof.) Joel Ngugi     | - | Judge High Court of Kenya.                                      |
| 11. The Hon. Emily Ominde                   | - | Chief Magistrate.   |
| 12. The Hon. Anne Amadi                     | - | Chief Registrar of Judiciary.                                   |
| 13. The Hon. TerresiaMatheka                | - | Chief Magistrate Mombasa.                                       |
| 14. Mr. Duncan Okello                       | - | Chief of Staff, Office of the Chief<br>Justice.                 |
| 15. The Hon. Moses Wanjala                  | - | Resident Magistrate, Office of the<br>Chief Justice and         |
| 16. Ms Martha Mueni                         | - | Assistant Legal Researcher, Office<br>of the Chief Justice.     |

I hope you noticed that the gender representation is fully factored.

Hon. Senators, I wish to bring to your attention that after the address by the Hon. Chief Justice, I will suspend this sitting of the Senate for 30 minutes to allow the Hon. Chief Justice to take his leave. Hon. Senators will join the Chief Justice and his delegation for a cup of tea immediately outside the Senate Chamber during which Senators will have an opportunity to interact with Hon. Chief Justice and his delegation. Thereafter, we shall all proceed for a photo session at the Parliament lawns.

The Bell will, thereafter, be rung and the Sitting will resume. On resumption and in accordance with the Standing Order No.25, the Senate Majority Leader shall lay the Address of the Chief Justice on the Table of the Senate and give notice of the requisite Motion. I will additionally, permit the moving of the Motion and debate thereon immediately thereafter.

Hon. Senators, it is now my singular honour and privilege to invite Hon. (Dr.) Willy Mutunga, Chief Justice of the Republic of Kenya and President of the Supreme Court to address the Senate.

### ADDRESS BY VISITING DIGNITARY

ADDRESS BY THE HON. CHIEF JUSTICE; (DR.) WILLY MUTUNGA

**Hon. Chief Justice** ((Dr.) Willy Mutunga): Mr. Speaker, Sir, I am delighted by your kind invitation to make this address to the Senate. I believe that this is the first time a Chief Justice is Addressing Parliament and the Senate in particular. It marks an important and significant development in our constitutional democracy where institutions create and build a custom and tradition of comity. Not too long ago, the Speaker of the Senate graced the occasion of the admission of the advocates to the Roll at the Supreme



Court Grounds; and, he and I attended the Council of Governors Devolution Conference in Meru. This is the spirit of cooperation and consultation that the Constitution invites, and which we, as leaders, must embrace.

Today I want to talk about the Senate and the Judiciary, especially in terms of what we have achieved in our transformation journey. The gains and challenges of transformation are contained in the Annual State of the Judiciary Reports that I have faithfully submitted to both Chambers of Parliament for debate in the last four years. But I would like us to have this discussion within a broader constitutional and political context, and conclude with my reading of what the comparative roles of the Senate and the new empowered Judiciary are.

One of the main reasons I was honoured by this invitation is that the Judiciary Transformation that I have been leading for the last five years has been partly premised on the principle of robust independence and constructive interdependence among agencies and institutions. For a political society that is obsessed with zero-sum politics, I understand it when the media continually, but wrongly frames what are normal and healthy constitutional contestations in the emerging or even mature democracy, as 'supremacy wars'. That is being a tad too reductionist.

Mr. Speaker, Sir, controversies around the role of institutions within and between arms are constitutionally anticipated – even encouraged. The moments of creative tension that, if responsibly handled by leadership, even yield better political and democratic dividends. It is what accounts for the interpretive role that the Constitution grants to the courts. The constitutional cases that have arisen since 2010, and the divergent institutional perspectives resulting there from, are not issues that are peculiar to Kenya. These are normal occurrences for countries struggling to find the right institutional equilibrium within the context of constitutional transition.

In the United States of America (USA), after the Supreme Court delivered the famous Marbury vs. Madison Judgement that set the stage for judicial review of legislative acts, the Congress, clearly offended by the Court's decision, defunded the Supreme Court and impeached one of the justices. Before we get too giddy and uppity here, remember that that was in the 19<sup>th</sup> Century and the democratic demands of the 21<sup>st</sup> Century do not permit such institutional ego-tripping games.

I applaud the Senate for showing statesmanship and enlightened leadership in this regard. I am glad that the Senate, for most part, even when it has disagreed with the court's decisions, has not yelled or hectored too much at the judges. It has, instead, accepted or appealed those decisions. The Senate, to its credit, organised a joint session with senior Judiciary leadership in November, 2014 to discuss sticking issues in the administration of justice and the intersection of legislative and judicial functions. That is how you build institutions and democracy, brick by brick.

*(Applause)*

Mr. Speaker, Sir, and hon. Members, I know many of you here have been surprised by the openness and direct engagement that the Judiciary has had with the Kenyan public as with other arms of Government. When I hosted the security agencies to discuss issues of bail, bond and general adjudication of criminal trials within the context of terrorism, many expressed shock and alarm, fearing that we were securitizing justice.

It was a sight never seen before in the history of this country. The men and woman – there was only one woman, the Deputy Inspector-General – of and in uniform meeting the men and women of ‘wigs’ and ‘robes’ in the hallowed grounds of the Supreme Court building, not to prosecute a case, but to discuss issues of State security and the role of the justice sector in this process.

We had a delightfully enlightened conversation, bound by the fact that regardless of our institutional location in the Constitution, we all swore to uphold one Constitution and not just sections that create or apply to us. I hope that there will be no alarm that the Chief Justice is addressing the Senate. We are not about to judicialize the Senate or politicize the Judiciary.

The alarmists forgot that the Constitution says that judicial authority, as is Executive and Legislative authority, is derived from the people of Kenya and it commands every organ of State to obey it and exercise power in public interest. This alarm that a dialogue between two independent organs of the State triggers is grounded on a fundamental misunderstanding of our Constitution. That is why I always get amused when some observers, clearly powered by a weak appreciation of the origins, content and context of our Constitution, charge that the Judiciary, through its decisions and conduct, has become “activist”.

The Constitution, 2010 is exactly activist by origin, design, text and intent. It has almost eliminated or blurred the traditional activist-judicial restraint divide. That is why it commands the courts in Article 159(2) to exercise judicial authority, guided by the ‘purpose and principles of this Constitution---’ - principles which are in Article 10 and which include such progressive principles as human dignity, social justice, human rights, sustainable development, protection of the marginalised, integrity and so on.

I sometimes wonder what the conservative meaning of this principle is. I wonder, too, what possible conservative meaning one could assign to the constitutional commandment of Article 259 that the Constitution must be interpreted in a manner that advances the rule of law, human rights and fundamental freedoms, while permitting the development of the law and while adhering to the delightful doctrine that the law is always speaking.

Further, judicial authority is derived from the people. This means whether you choose common, civil or religious law; whether you choose to don or doff foreign attire, or use exotic or vernacular accents, the primary source of judicial authority is the people themselves. I wonder why some people think Kenyans are a ‘conservative’ people despite evidence to the contrary. Conservative societies do not overwhelmingly vote for such a progressive Constitution. It is only an activist or progressive society that could have recommended the total disbanding or vetting of the Judiciary; not a conservative one. It is only an activist and a progressive society that could have provided for an open, competitive recruitment of a Chief Justice in the full glare of the media. Conservative societies do not do that. It is also a progressive and not conservative society that frowns upon legislative supremacy in favour of constitutional supremacy, even while acknowledging the important role played by the representatives of the people in a democracy.

Mr. Speaker, Sir and Hon. Members, if by “conservatism” they mean what I found in the Judiciary, then I am so glad I am not conservative even by unconscious accident. Let me illustrate by drawing a portrait of an institution I found. Many Members

here who were advocates remember that the current Supreme Court building used to stink; literally. Courts in many parts of the country were dilapidated and judicial officers were sitting on broken seats. Magistrates sometimes had to adjourn to go to the bathrooms in the nearest town centres.

The Judiciary did not even know how many cases were in the court system. Sixty five per cent of the Judiciary budget which stood at a meagre Kshs3 billion was taken up by about 53 judges. There was endemic institutional corruption, litigants were treated rudely and high courts were confined to the railway line, marginalizing large swathes of the Kenyan society. There was a spirit and culture of anti-intellectualism because judges argued that they could not be trained; and those who went for further studies on their own were punished. Some staff had served for over 20-25 years without attending a single training – none whatsoever and yet we expected first rate service from our registries. Over 80 per cent of our staff were Form Four graduates and we denied them training opportunities, paid them poorly, treated them with disdain and still expected excellent services.

Mr. Speaker, Sir, and Hon. Members, staff did not have a medical insurance cover and many had stagnated in their job groups for over ten years. Their salaries were pathetic, sapping away the confidence of colleagues and completely disempowering them through a culture of fear, recrimination; using transfer of judges as punishment, not having basic management manuals in finance, human resources, gender, disability; being overrun and overseen by the Executive, compromising judicial independence and so on.

Jurisprudentially, courts were shy to validate rights and all too often cowed to the whims of the Executive. Mechanical jurisprudence reigned; the jurisprudence of technicality menacingly stalked and policed our corridors of justice. Not anymore.

This is what I found and I have tried to reverse, which is activism and progressiveness in full unapologetic splendor. Those who frown upon an independent Judiciary only do so - and this is important because I am talking to politicians - until they get into trouble, at which point, their language changes from profane condemnation to profuse celebration of independent and strong judges.

Today, the Judiciary has changed significantly, in ways seen and unseen. First, the Judiciary has gallantly defended and protected the Constitution, even when it might have been politically convenient not to do so. Second, we have invested in reclaiming public confidence in the institution, through the public outreach programmes, establishing customer care desks and being friendly to litigants. But building public confidence is a daily grind as one incident in one court may influence perception of a very large and complex institution.

Third, we have reduced case backlog from an estimated one million cases in 2011 to 420,000 in June 2016, and declining. Fourth, we have reasserted the independence of the Judiciary. Fifth, we have improved on the internal organisation of the Judiciary. This has been accomplished through a number of policies. We never used to induct judges or staff. These have and are being done. We have introduced performance contracting, improved staff welfare, promoted nearly 500 staff who had stagnated for as many as 10 to 15 years, revived a learning culture by reviving the Judiciary Training Institute, which used to hold less than five trainings in a year to the current 65. This is the same culture of learning that now privileges constructive engagement: An enlightened mind sure of its learning, coupled with a humble soul confident of its integrity spurs and stokes structured

and respectful engagements and interaction with others and does not retreat to the judicial monastery at the slightest hint of intellectual debate.

Sixth, we have improved access to justice. This has been accomplished as the number of judges has increased from 53 to 136; magistrates have shot up from 316 to 443 and Kadhis have increased from 15 to 56. The number of High Court stations has risen from 14 to 34. You will be glad to know that we have High Courts in 34 counties. For the 13 counties that have no judges, we have High Court registries. Court-annexed mediation and alternative justice systems are being piloted.

The Court of Appeal has been decentralized to Malindi, Nyeri and Kisumu, and the waiting time in that court for civil matters has reduced from a high of nine years to a low of three to one year. Before, this court used to circuit once or twice a year in these towns. Now the court has a permanent seat and we have achieved a near perfect gender parity in the Judiciary. In 2011, the Court of Appeal had no woman judge; now, out of the 25 judges in the court, eight are women.

(Applause)

Seventh, we have fought corruption and led other arms of Government in this regard. We have done this with resolve and grit. In doing so, we have been open and transparent - ignoring the peddled wisdom among Government functionaries that 'dirty linen' about corruption should not be washed in public or swept under the rug so as to project the image of a clean institution. Instead, we have opened ourselves to public scrutiny - believing that sunshine is the best disinfectant. We set up the Office of the Judiciary Ombudsperson, which I noticed, Parliament was reluctant to create.

You will recall that long before the fight against corruption became vogue, we were the first arm of Government to take bold action against corruption in the administrative wing, and the cartels and bandits fought us viciously using their beach heads in the National Assembly, the Executive and the media, but we prevailed.

The peculiarity of Kenya is the tendency to attribute bad behaviour or corrupt activities of other people, to the person fighting these vices. So, if there is corruption, whose evidence they are reluctant to give you, they accuse you of not doing anything about it. When you act, they accuse you of a having failed to stop it, in the first instance, or acting in excesses of your powers. If you do something about it, they say: "Well, you are fighting it too loudly and it is too messy. Was there not another way?" They intone!

Mr. Speaker, Sir, hon. Members, as I conclude, let me turn your attention to the role of the Senate as I see it. The Senate, like the new empowered Judiciary, is a product of the new Constitution. As such, it is not surprising that the *status quo* and many individuals and institutions favoured by the old order would find the two new institutions a threat to the *status quo*. It is also not surprising that the two institutions are much misunderstood. They have even misunderstood each other.

Both the Senate and the new empowered Judiciary, as products of the new Constitution, are also given the obligations and authority to protect the Constitution. In particular, the two, together with governors are named partners in a joint venture called devolution. They have sacred duties to fight for and defend devolution as one of the mixture of tools forming the glue that Kenyans manufactured to bond together the

historically disenfranchised and disempowered Kenyans on the one hand, and the middle and upper classes with a stake in the political economy on the other hand.

The Kenyan Constitution is a social democratic pact, in which the different classes with a stake in the viability of 'Project Kenya' have agreed to live together, provided the promises of the Constitution are realised. From this perspective, the Senate, as much as the new Judiciary and the governors have a solemn duty to save Kenya by ensuring that the safety valves that sustain Kenya, of which devolution is key, are animated and implemented.

The first role of the Senate is that of representation of the counties and their governments. As a collective agency of counties, the Senate cannot afford to be an adjunct to the Executive or the national Government, as such would be dereliction of duty. It is, therefore, incumbent and proper for yourselves as Senators to ensure that your line of duty is to represent, assist and advocate for the rights and entitlements of the counties to the fullest extent possible as against the national Government. This is a duty that calls for objectivity, but not neutrality.

In other words, whenever we are at crossroads as to whether to act in favour of the counties or the national government, the Senator's constitutional obligation is already spoken for and must not be in doubt - the county comes first. I say this because there is a feeling that the impeachment proceedings that have arrived before you would give the impression that sometimes, this august institution considers itself as the executioner of the counties rather than its guardian and protector.

Mr. Speaker, Sir, the Senate as an institution must realize its constitutional promise and potential and seize the moment to be the vanguard of devolution. In doing so, the Senate must learn from history and comparative studies. History has taught us that an institution can rise above the authority given by the text of its birth certificate or constituting instruments; or sink way below its textual authority and relevance, depending on how the institution captures the imagination of the people, contextualizes its mission and functions and becomes socially relevant or irrelevant. The Colombian constitutional court gives as good an example as the Seven Bearded Sisters. They were actually eight; the eighth one was the only sister (one of who sits in this Senate today) shows how even a section of an institution can be vital for fighting for people's freedom.

Comparative jurisprudence also teaches us that the liberating role of an institution even when bequeathed by the Constitution is not readily accepted or nurtured. Instead, those threatened by potential for such liberation would do everything to ensure that the institution is still-born. The Senate's role in Kenya's constitutional architecture is not yet fully activated due to the political context. However, the solution is not to resort to overly assertive and extra-legal maneuvers to assert authority and relevance but to strategically assert Senate's constitutional role by strategically using the courts, constructively engaging with other arms of Government, the civil society and mounting enlightened civic awareness of the public.

It is the pedagogy of strategic engagement with the other arms and actors, consistent issue-oriented discourses with the public and systematic and sequential implementation of constitutional promises that will entrench Senate to its rightful role in our constitutional architecture.

Mr. Speaker, Sir, the Senate's role will only be entrenched by befriending the rule of law and making it an ally; not by competing with other Government organs to find

innovative and intransigent ways to disobey court orders. As a new crown institution in Kenya, the Senate must not allow itself to act like a toddler seeking to learn from the old hands. I get this impression from the fact that while the Constitution is clear that Kenya is a bicameral legislative body, the Senate appears to be treated, whether in the media or other political circles, as the backward chamber of the legislative functions.

The Constitution is clear that Parliament consists of the Senate and the National Assembly, yet too frequently it is the Members of the latter who are referred to as the MPs. While the Constitution does not seek to establish a hierarchy or seek to keep the National Assembly and the Senate in supremacy battles, it is important that the Senate should claim its space within the constitutional architecture as a Chamber of legislation and part of Parliament itself. This is no less important in the endeavour to implement the Constitution as intended.

Mr. Speaker, Sir, the Constitution and our history place in the Senate a monumental challenge irrespective of the age of the institution within Kenya. I urge you to reflect on the fact that on the average, a person gets to sit in this Senate by virtue of representation of a wider scope of space and large number of voters in comparison to other legislative houses. You must take this as the signal from the Constitution that you as Senators represent more than just political, regional or even parochial ethnic or religious interests. Indeed, take the history from Senators worldwide and you will understand that a Senator is not merely a politician. Senators are called to be statesmen and women.

*(Applause)*

This Chamber must, therefore, represent and exude conduct and speech worthy of statesmen and women. In other words, you should not simply debate issues. This is more than a debating chamber. It is a deliberating one. You should deliberate on issues that are national and which transcend mere party or regional interests.

*(Applause)*

Therefore, ensure that there is less politics among you and more statesmen and women in the way you conduct the affairs of this institution. In other words, you are expected to distinguish yourselves from ordinary legislators that Kenyans are used to. By all means, disagree with each other but let the Senate distinguish itself in the level of principled argumentation advocating for opposite sides of policy debates in the Chamber. By all means, embrace divergent visions for a prosperous Kenya, but let the Senators distinguish themselves by the mastery of the divergent economic theories and not the tyranny of voting numbers.

*(Applause)*

Let Senators distinguish themselves by the sheer eloquence of their commitment to the better parts of party ideologies and not the perfected biology laced ethnic-identity politics of the everyday politician.

Mr. Speaker, Sir, the place of the Senate in the future of this country will only be secured when the Senate acts and behaves like the “Upper House” it was supposed to be; a House eminently capable of rising above narrow partisan politics; a House capable of engaging beyond the ethnic lens of the Kenyan politics; a House capable of deliberating real issues affecting Kenyans, devoid of narrow political interests.

Hon. Senators, thank you very much for the support that you have given me during my tenure as the Chief Justice and the President of the Supreme Court of Kenya.

**The Speaker** (Hon. Ethuro): Hon. Senators, that brings us to the end of this particular segment. I, therefore, suspend the Sitting for 30 minutes to allow the Chief Justice and the President of the Supreme Court of Kenya to take leave and for the rest of us to join him and his delegation outside the Chamber.

*(The Senate stood suspended at 4.40 p.m.)*

*(The Senate resumed at 5.10 p.m.)*

*[The Temporary Speaker (Sen. (Dr.)  
Machage) in the Chair]*

### PAPER LAID

ADDRESS BY THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND  
PRESIDENT OF THE SUPREME COURT, DR. WILLY MUTUNGA

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 15<sup>th</sup> June, 2016:-

The Address by the Chief Justice of the Republic of Kenya and President of the Supreme Court, Dr. Willy Mutunga to the Senate, pursuant to Standing Order No.25.

### NOTICE OF MOTION

THANKS FOR THE ADDRESS BY THE HON. CHIEF JUSTICE

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the thanks of the Senate be recorded for the address of the Chief Justice of the Republic of Kenya, the Hon. (Dr.) Willy Mutunga, delivered on Wednesday 15<sup>th</sup> June, 2016.

### STATEMENTS

HARASSMENT OF *BODA BODA* OPERATORS  
IN NAIROBI COUNTY

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.45 (2)(b) to seek a Statement from the Chairperson of the Standing Committee on Roads and Transport regarding the harassment of *boda boda* operators in Nairobi County. In the statement the Chairperson should state the following:-

(a) Whether the Nairobi County Government has created a designated area for *boda boda* operations.

(b) Why *boda boda* motor bikes are detained in Nairobi County stores for 14 days with no charges preferred against the operators with a daily fee of Kshs1,000 per motor bike.

(c) Why more than 500 *boda boda* motor bikes have been detained in Nairobi County stores while demanding that each owner pays Kshs200,000 to retrieve their bikes

(d) What the Nairobi County Government is doing to create a conducive environment for *boda boda* operations to flourish so as to create employment.

**The Temporary Speaker** (Sen. (Dr.) Machage): Where is the Chairperson or Member of the Committee?

**Sen. Obure:** Mr. Temporary Speaker, Sir, on behalf of the Chairperson of the Committee on Roads and Transport, I have heard this request on those serious matters relating to *boda boda* riders in Nairobi. I hope we will raise a response in two weeks' time.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is so ordered.

## SENATOR'S GENERAL STATEMENT

### VIOLENT ARREST OF MEMBERS OF PARLIAMENT

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise under Standing Order No.45(2)(a) to make a statement on the violent arrest of Sen. Muthama, the Senator for Machakos and seven other Members of Parliament (MPs) that took place yesterday.

As the country knows very well, there is a new Constitution. Following that new Constitution, Kenyans were expecting a reformed police service. However, events that have been going on in terms of the procedure that the police use to arrest suspects which climaxed over the recent few weeks have left Kenyans in doubt as to whether there has been any reforms in the police force or whether, indeed, the chief of the police force has any respect for the new Constitution.

I say this because during the arrest of Sen. Muthama and Hon. Junet, what Kenyans witnessed was almost an episode from a *James Bond Movie*. We are told that members of the flying squad held the Nation Media House under siege just as others surrounded the homes of Sen. Muthama, hon. Bosire and others; waiting as if they are about to arrest a dangerous, armed, wanted criminal.

We would like Kenyans to know that under this Constitution, what took place yesterday was completely unnecessary because the police had a clear option. They could either have "placed a voice" to all those leaders who were arrested or send a text message and ask them to report to the nearest police station.

Mr. Temporary Speaker, Sir, they did not do that. Instead, they resorted to the humiliating, violent and bruising actions when they arrested these Members of Parliament. Out of this Statement, I will not attempt to address the merits or demerits of



the charges that they are faced with, because I am alive to the *sub judice* rule. However, it concerns me that under the Constitution, there is no reason for me to believe that those leaders should be denied bail.

As I speak, the lawyers of these leaders are in the High Court hoping that they will be granted bail.

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

**Sen (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, he can inform me.

**The Temporary Speaker** (Sen. (Dr.) Machage): Who do you want to inform? You do not assume the information is only meant for hon. Khalwale.

**Sen Murkomen:** Mr. Temporary Speaker, Sir, I would like to inform Sen (Dr.) Khalwale that the High Court has rejected that application. They have been denied bail.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, you are so informed.

**Sen (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, Sen. Murkomen is a privileged Member of this House because he is the Senate Deputy Majority Leader. Could he inform me the reasons why the bail was denied?

*(Sen. Murkomen stood in his place)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Have a seat.

There is nowhere in our Standing Orders where a Member can demand for information from a Senator. You are completely out of order.

*(Laughter)*

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

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, what is it?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I would like to inform---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Can you make the relevant call.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, is...

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Can you sit down and call out a point of information.

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Dr.) Khalwale in order to assume that I work for the Judiciary when, in reality, the courts have just issued a decision publicly saying that they will give their reasons tomorrow?

**The Temporary Speaker** (Sen. (Dr.) Machage): You are completely out of order. In my recollection, I did not hear Sen. (Dr.) Khalwale mention that you work for the Judiciary. All he said was that you are a privileged individual in this House.

*(Laughter)*

Continue, Sen. (Dr.) Khalwale.

**Sen (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, if it is true that they have been denied bail, then we are waiting anxiously to know why because the charges facing them are about hate speech. Is hate speech not a baillable offence in this country?

My colleagues, especially on the Government side, had better reflect on this, in view of the last remarks by retiring Judge, Chief Justice Willy Mutunga, that we are supposed to rise to the level of statesmanship.

**The Temporary Speaker** (Sen. (Dr.) Machage): Remember our Standing Orders give you only ten minutes---

**Sen (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am waiting for the signal light.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Kagwe?

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I want to seek guidance from you regarding the borderline where a contribution is not *sub judice* and where it begins. When we question the judges as to whether or not they should be given bail, is that discussion not *sub judice*? I want to get a clear understanding of it so that in case tomorrow I give a contribution in the same manner, I will know what to do.

**The Temporary Speaker** (Sen. (Dr.) Machage): I will refer you to Standing Order No.92 (2) which says:-

“A matter shall be considered sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination”

The decision whether such a matter is *sub judice* lies on me as a Speaker. That is Standing Order No.92 (5). It says:-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”

This is my decision. Sen (Dr.) Khalwale, continue.

**Sen (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I was coming to the tail end of my contribution, by appealing to colleagues to reflect on the statement by the retiring Chief Justice that we should rise to the level statesmanship.

I say this with maximum respect, because it is on record in the history of this nation that when hon. Kenneth Njindo Matiba, then Member of Parliament for Kiharu Constituency was arrested facing charges of consciousness touching on his beliefs, he was denied access to medical treatment. He got a stroke, while in there, and that was the end of the best president that Kenya would have had.

I know that Sen. Musila will speak about this more authoritatively, but we have information that hon. Junet Mohammed’s wife has been denied an opportunity to give him medication for control of blood pressure. I am a medical doctor. I want to caution the Government that by denying this hon. Member access to anti-hypertensive, you never know at which stage he may have a stroke.

This must come to an end. Let the new Constitution work.

If you think it is only happening to hon. Muthama; ask me. I was similarly treated a few weeks ago simply because I was participating in a peaceful anti-Independent Electoral and Boundaries Commission (IEBC) demonstration, for which the police had received notification and allowed it. Today, it is hon.Muthama, today it is us, and tomorrow it might be you. I condemn this violent harassment of leaders of the Republic.

**The Temporary Speaker** (Sen. (Dr.) Machage): I do not intend to allow too much discussion on this because we do not have a lot of time. We have also to consider the speech of the Chief Justice.

I know Standing Order No.45 (2) allows for some debate, unless you show me a contrary Standing Order. Let us also be conscious of time because we also have to

execute and finish the discussion of our guest's speech. However, I will not want to gag anybody over the issue. I am only calling for your own discretion of the importance of time.

I will also like to refer you to your own Constitution, Article 51; I thought Sen. (Dr.) Khalwale would have quoted this: the rights of persons detained, held in custody or in prison. That should be our guiding point on this issue. Therefore, if you become precise and short, I may allow more Senators.

**Sen. Musila:** Mr. Temporary Speaker, Sir, I am going to speak about the experience I had this morning. This morning, Sen. Madzayo, several Members of Parliament (MPs) and I visited Pangani Police Station with a view to seeing our colleagues.

**The Temporary Speaker** (Sen. (Dr.) Machage): Please let this not be more than three minutes.

**Sen. Musila:** Mr. Temporary Speaker, Sir, I beg you because I have some very important points to explain. We went to Pangani Police Station not to see Sen. Muthama, Hon. Junet or Hon. Bosire but to see all MPs who are there, including Members of the other side. We went to the Officer Commanding Police Station (OCS), Chief Inspector Benjamin Kisela. We begged him to allow us access to see our colleagues but he refused and insisted he cannot allow us.

What surprised and shocked us was that he threatened us. He said that, "If you do not get out of my office, I will open my armory." That was a direct threat. After we went outside, we met the spouses of the arrested MPs and they showed us the medications. They told us that they had tried to give the medication to their husbands but they were refused. They were refused to give them food, water and medicines. As you rightly said, their human rights were violated under Article 51 of the Constitution. Eventually, the police have ended up throwing teargas to those people who were there and who wanted to see their people.

If we had gone to Kamiti Maximum Prison, we would have been allowed to see our colleagues. Kenya has slowly become a police state where the rights of individuals are being violated. We want to appeal to the Government and in particular, Hon. Nkaissery, that police stations are not military installations. It is wrong if he has come with a military way of doing things. In my lifetime, I have never seen anywhere in the world where members of the public and spouses are refused to see their relatives when they are in custody, except Kenya.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I rise to comment about this very important issue. Hate speech and hate mongering is a threat to the fabric of this country. The bad manners of our politics will tear this country apart. It is nothing compared to sleeping in a cell and being arrested when Kenyans kill themselves and butcher each other because we politicians incite them. To the contrary, we continue to benefit from the same political environment that we find ourselves in when we are arrested, charged and taken to court.

This behaviour must come to an end. The Chief Justice has just spoken about statesmen. This country yearns for leadership that is focused on competition on issues but not talking about human genitalia, tribes and religion all the time. As a leader of this House, we must rise to the occasion to condemn what we have witnessed in our country in the past few weeks that can tear this country apart. In the end, there will be no Senate

to take care of this country. Our seats will be useless if the people of Kenya will continue killing themselves for us to remain or fight for power.

Mr. Temporary Speaker, Sir, be that as it may, the police and the Judiciary have a responsibility to abide by the law. Article 51 of the Constitution must be respected by the police and everybody who is going to preside over it. Although I heard the statements they made, as a lawyer, what I can say is that, maybe, they are morally wrong but they have the presumption of innocence until proven guilty. Therefore, if what has been said about being denied access to medicine and food and not being allowed to be visited by their lawyers is true, the situation must be corrected immediately. The Inspector-General of Police must take corrective action.

Secondly, if the Judiciary has made a decision about bail, it is not for this House to make a determination. There have been cases that this House has been a participant and we have lost in courts because we believe in the Independence of the Judiciary. The magistracy and the High Court which makes a decision must be respected. However, human rights of any Kenyan – because it could be them today and us tomorrow – must be respected.

In conclusion, we must, as politicians, learn from what we have seen and learn from the behaviour of those who have gone before us and behave ourselves for the sake of our children and the children of our children.

**Sen. Madzayo:** Bw. Spika wa Muda, mimi pia niliweza kufika katika kituo cha polisi cha Pangani leo asubuhi. Nilienda pale kama wakili wa wale walioshikwa. Nilikuwa nimeambatana na Sen. Musila. Tulitaka kuzungumza na mkuu wa kituo hicho anayeitwa Bw. Benjamin Kisela. Baada ya kumwambia kuwa mimi ni wakili na vile vile Seneta na kwamba nilikuwa Jaji wa Mahakama Kuu ya Kenya katika Mahakama ya Kazi, sijui ni kitu gani kilimfanya kuwa katika hali ya kutishika na kusema kwamba angetoa zana za vita ili apige watu risasi.

Hicho ni kitendo ambacho kinarejesha Serikali na nchi hii nyuma ya miaka ambayo tulishapita na ni lazima tukikemee kwa hali ya juu sana. Leo ni Sen. Muthama na Mheshimiwa Junet Mohammed. Huenda kitendo kama hicho kikatokea upande ule mwingine. Ni lazima wakae wakitega masikio na wajue kwamba ukila kuku, maguu yanaangalia upande wako.

Bw. Spika wa Muda, nilimwona Mheshimiwa Junet Mohammed, Mbunge wa Suna Mashariki, akiwa katika hali mbaya sana. Ana shinikizo ya damu ya juu sana. Mkewe alimwomba huyo afisa wa polisi amruhusu ampe dawa lakini alikataa. Ikiwa kitu chochote kitatokea, tutamlaumu nani kama si Serikali? Kwa hivyo, ikiwa itawezekana, Serikali ichukue hatua sasa hivi impe Mheshimiwa Junet Mohammed, Mbunge wa Suna Mashariki, dawa hizo za shinikizo ya damu ili aweze kupona pale ndani. Hatutaki kusikia kitu chochote kimetendeka kwa Mheshimiwa Junet Mohammed kama vile kifo.

La mwisho ni kwamba utumishi ni kwa wote bali si kutumikia upande mmoja na kulemea upande mwingine. Bw. Benjamin Kisela lazima aelewe kwamba ni lazima atumikie Wakenya wote pasipo kuegemea upande mmoja.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I also wish to comment on this matter and express my shock that an inspector or a person in charge of a police station can actually threaten Senators and MPs, particularly with the kind of violence that he was clearly intent on. When he talks about his armoury, he is talking about his guns. Therefore, we condemn that kind of activity without any reservation, whatsoever.

I agree that this is not a police State but a democracy. However, we must also be alive to the fact that democracy, if not watched, as was written way back in 1500 by Nicholai Machiavelli, can also degenerate very easily into anarchy. Those of us in the political field need to be very conscious that what we say does not stop at where we are. What we say goes a long distance and can create the kind of anarchy that I am referring to.

I would also like to urge the media in our country to also exercise caution and to realize that when eventually a chaotic situation or anarchy sets in, in this country, they too will not be able to exercise the freedom of the media that they exercise today.

Mr. Temporary Speaker, Sir, had those who spoke in a manner that was prejudicial to our people; if the hate speech that they expressed had never been reported by the media, the circumstances would have been completely different. Let the media not say that, for example, because I have a *panga*, I am not responsible for who the *panga* cuts; or because I have a gun, if the gun goes off, I am not responsible for who the gun shoots.

Let it be clear that the media also has a responsibility. They are perpetuating this problem by ensuring that, not only do they report, but also report in an exaggerated manner, anything that is divisive in our country. Anything that is positive in our country takes a back burner. Anything that is negative or of hate speech gets attention on the first pages of the newspapers or the first item on the news. What is it supposed to do? What is supposed to be the end result of these reports? As media, we should take responsibility in this matter.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. Sen. Ongeru. Proceed.

**Sen. Ong'era:** Thank you Mr. Temporary Speaker, Sir. I also rise to condemn very strongly what has happened in the last two days here in Kenya. We have witnessed excessive force and police brutality being meted on Hon. Members of Parliament. Sen. Muthama has been subjected to excessive erosion of his fundamental rights.

What we witnessed yesterday at the Criminal Investigation Department (CID) headquarters and in court where I was representing the six accused who are my colleagues in the CORD coalition was disgraceful. I want to condemn, in very strong terms the treatment of Hon. Members of Parliament whether in Jubilee or in CORD in such a manner. What we have now is that Hon. Members are being treated with indignity that does not behoove a Member of Parliament. The title "Honourable" or "Senator" is not just a title that we buy from the street. We do a lot of work as representatives of the people but what I witnessed yesterday and today does not behoove that police should treat Honorable Members in such indignity.

The fact that hate speech is one of the charges that has been raised, which is a misdemeanor, does not mean that they are criminals. The way Hon. Members were treated, including taking their finger prints, was like they were criminals. We know that in this country, the law is very clear that somebody is innocent until proven guilty. I condemn the stories that we are hearing in the grapevine that they have instructions from above. We want to know who the people 'above' are, who are making Hon. Members to be treated in such a manner.

Finally, I want to say that this country belongs to all of us. Kenya belongs to 42 tribes. Let us not trivialize these issues because they can escalate to something that we cannot be able to control.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): I see a lot of interest. I will reduce the time to two minutes. Sen. Mutula Kilonzo Jnr., please summarise quickly.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I will summarize. The Bible is clear that he who rules by the sword, will die by the same sword. The only right that is limited when you are in custody is the right to movement. Every other right is readily available to you. In fact, the people who have been exported to Guantanamo Bay are possibly treated better than the way we have treated our own legislators.

We need to remind the Inspector-General (IG) of Police, who was vetted through this Constitution, and the Government that this Constitution demands that the Government has the obligation to observe, respect, protect, promote and fulfill the rights under CAP 4. Therefore, this obligation is on the State. They should ensure that these leaders and all the persons who are innocent are given their right to medicine, television if they want, food among others. This is because I know the 'Muthaiga five' that is our colleagues who are in Muthaiga were treated like kings and queens when they were there. Therefore, we should not discriminate. There is no animal farm in Kenya. If it exists, it does not exist in this Constitution.

Thank you.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, as I stand, I yesterday witnessed when Hon. Junet was being arrested because he had been at the *Nation Television Network (NTV)* news room. I wondered whether it was appropriate for 60 to 70 police officers to arrest one Hon. Member. That is a very big number. You sensationalize issues that would have been dealt with in a proper way. I want to plead with the police that the more they engage in drama, the more they create a lot of tension in this country.

At the same time, even we as Members of Parliament and leaders of this country, if police summon you to a police station, why should you not go? I wish they went. This is because all these issues would not have come to what it is today. We are blaming the police but we have also provoked them.

Whether it is Hon. Moses Kuria or whoever, they must ask themselves where they leave the country after uttering those reckless words. I think that question is important and every leader must be very cautious. We should not allow ourselves to go back to what happened in 2007. It is the political class that took the country to post-election violence and it is the political class that is taking the country to a pre-election violence. Let us not allow that.

**Sen. Billow:** Thank you Mr. Temporary Speaker, Sir. I also want to criticize very strongly, the manner in which the police acted. I remember a couple of months ago when I was arrested for a similar thing.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Murkomen! You walked from the right side of the House, crossed to the other side of the House without bowing. I was watching you. Can you return back and bow before you leave the House?

*(Sen. Murkomen moved out of the Chamber)*

What is it Sen. (Dr.) Khalwale? He has disappeared.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, Sen. Murkomen can go. However, there is the need for us to uphold the dignity of the Senate. Where in the Standing Orders is it provided that a Member can stand and engage the Speaker in altercations? Some of us feel that we are in a very special institution and we do not like this.

**The Temporary Speaker** (Sen. (Dr.) Machage): He is completely out of order. Actually any Member of this House can name him. The mistake is so grave that any Member can stand but since I see none, we can continue.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I agree with my colleagues that this level of use of hate speech is unacceptable. Similarly, I do not think that gives the police the permission to break the law. The manner in which the police dramatize the arrest of hon. Members of Parliament (MPs) leaves a lot to be desired. A couple of months ago, I was arrested at the Wilson Airport when I was coming from Mandera. Imagine six flying squad police cars were waiting for me to escort me to the Criminal Investigation Department (CID) headquarters to record a statement. These are the same police who cannot deal with criminals in this country but can dramatize things to that level. I do not think that is acceptable. I think holding MPs incommunicado and without allowing the lawyers' contacts is unacceptable.

I represent a gentleman called Hon. Junet. He comes from Mandera County. Let me say it very clearly here, if anything happens to Hon. Junet, the Government of the Republic of Kenya will be held liable.

*(Applause)*

You cannot deny people medicine and water as if they are terrorists. Unfortunately, MPs are to blame for passing that kind of law in 2014. That is the law that is now being used; you can be held in detention without being charged in a court of law for up to 90 days. This is the problem when the legislators become subservient to the Executive. You pass laws without looking at them. At least today, they are paying the price.

Lastly, I think the Kenyan public also seems to favour politicians who are ethnic chauvinists. When you stand and speak like that, you kind of become a hero. From what I have seen recently ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order!

**Sen. Billow:** Mr. Temporary Speaker, Sir, my time was taken by that interruption.

**The Temporary Speaker** (Sen. (Dr.) Machage): Who said so? You have 30 seconds to make a full stop.

**Sen. Billow:** Mr. Temporary Speaker, Sir, last week, three FM stations voted 99 per cent for Hon. Moses Kuria. The public called into three radio stations. Where will Kenyans go if they want to support people who are simply calling for killings? That kind of mentality of Kenyans wanting to make a hero out of their ethnic chauvinists is not acceptable. This is what is driving politicians. This is wrong. We, as politicians, must rise above that. However, we must also equally condemn it.

**Sen. Nabwala:** Mr. Temporary Speaker, Sir, I also condemn the manner in which MPs were arrested and detained. The reason that the judge gave yesterday to deny the Hon. Members bail was that they would interfere with investigations. How could they do

so when their speeches were captured on video? So, I think there was some sinister motive in detaining these MPs. The way they are being treated is inhumane because ---

*(Sen. Wako approached the Chair without bowing)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wako!

*(Sen. Wako bowed to the Chair)*

**Sen. Nabwala:** Mr. Temporary Speaker, Sir, the manner in which these MPs are being treated is inhuman. This is because when you are arrested, you are entitled to see your spouse, family members and have access to medicine. It is not fair to deny Hon. Junet medicine. I, therefore, condemn this action. I ask the Jubilee Government to consider this issue seriously because the way things are moving, we might degenerate into more troubles as we move closer to the elections.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, maybe you will give me three or four minutes because ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Only two minutes, Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I am the one who has been detained in the highest number of police stations, not just in Nairobi, but other cities as well, as we were struggling for the second liberation.

There is a man called Donald Trump in USA who has spewed a lot of racist sentiments in his own country. I have never seen Mr. Trump being accosted by any policeman because they respect the rule of law in that country. A man or woman is innocent until proven guilty. As the Chief Justice said, Articles 159 and 51 should be taken into account when dealing with such issues. In any case, the policy of the police is *utumishi kwa wote*. I would like to suggest that the Inspector of Police who behaved dishonourably in Pangani Police Station be dismissed forthwith by the National Police Service Commission (NPSC). It is because he is known to have done something which is extremely unconstitutional. His staying in Pangani Police Station is a danger to all citizens who are detained there.

Further, the idea of denying Hon. Junet his medicine is not just unconstitutional but criminal. Somebody is denying him medicine with the intention of injuring his health or killing him. We should take this very seriously. I propose that as a result of what has been going on, not just yesterday, but since the demonstrations started, the kind of police killings that have gone on in Kisumu County, we as the Senate, should establish a select committee to inquire into these things. It is very important that we get the truth and the police who have done this are dully punished.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I join my colleagues in condemning the barbaric manner in which these legislators were arrested. These are people's representatives. They were mishandled. In fact, Hon. Junet was arrested as if he was a criminal number one. The number of policemen that we saw surrounding that building was higher than the number that you saw going to the Westgate Mall when there was a terrorist attack. We, as a nation have taken things too far. We should allow people



to express themselves, but within limits. Going to the extent of using force in such scenarios really is painting ourselves in bad light as a nation.

Secondly, our children watch television. The movies they watch were exhibited live yesterday. This is not a military State; therefore, whatever we saw yesterday would be abnormal. Last year, I was also taken through the same procedure, but not as worse as this one. You are supposed to be summoned and then you offer yourself. These MPs would not have disappeared. In the same vein, before we speak and make any utterances, let us carry the nation on board and not run into tribal enclaves whenever such incidences occur. Let us not wait when elections are around the corner and then we start knocking the door ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! There are three more contributors; Sen. M. Kajwang', Sen. Wako and Sen. Mositet. Please, if you can save on a little time, I will be happier. I will not allow any more contributions because we have some work to do.

**Sen. Wako:** Mr. Temporary Speaker, Sir, thank you because of what you have said. I hope that the Senate Majority Leader is here. You heard what your Deputy said and condemned the mistreatment that is being meted out to these MPs. It was brought to his attention that somebody could actually die tonight. I hope he is not here now because he has gone to make sure that the necessary instructions go to the people who are holding these MPs, that they must have access to medicine immediately. I hope that is why he is not here. If that is not the reason he is not here, then, please, ensure that happens on the rise of this House. This is what we call the minimum treatment of offenders in the international standards. You know this because you are a professor of international law.

However heinous a crime somebody has committed, he is still a human being with some inherent dignity and must be given treatment which is prescribed. Some of the most important rights include the right to medicine, the right to access either by an advocate, a relative or other people and the right to have a blanket and room to sleep in. Therefore, for them to be denied food, blankets, medicine is a complete contradiction of the national standards which show whether or not a country is civilized. I would like to believe that Kenya, as a society, is civilized. We cannot minimize the seriousness of hate speech, but it appears to me that the fault is not in the stars, but in ourselves.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, thank you for allowing me to contribute. Hate speech or incitement cannot be fought by breaking the law. This nation now knows about Article 251, because the President has told us to follow the Constitution in matters to do with the Independent Electoral and Boundaries Commission (IEBC). It is time we highlighted Article 51 as well because people in custody have rights. I hope that the Government will also parrot Article 51 the same way they have parroted Article 251 to the nation.

The thrust of my argument is that there is clear evidence that as a nation, we have not matured enough to police ourselves. We have a police force that we thought had been transformed, but we still see them killing people and taking actions that lead to bloodbath. Last night in Kibera the Nubians and the Luo communities were fighting and people were killed. Muslims and Christians were fighting and people were killed. This blood must be on someone's head. This is the more reason Kenya should not withdraw from the International Criminal Court (ICC).

One day, somebody will have to pay for this. We might not have the maturity to hold people to account today, but someday in future we will. As a young Senator, I long for that day when justice will be served on the people responsible for the deaths in Kisumu and Siaya in the hands of police and the 500 people who were killed by the police in post-election violence.

**Sen. Mositet:** Thank you, Mr. Temporary Speaker, Sir. I agree with my colleagues that the police should not have mishandled the Members of Parliament (MPs). On the other hand, I fully support the police for making sure that the hate speech mongers, whether they are MPs or members of the public are contained. If we continue to allow hate speech, this country will be ruined. I do not agree fully with what Sen. (Prof.) Anyang'-Nyong'o said. I will not compare the United States of America (USA) with Kenya. The presidential aspirant in America, Mr. Donald Trump, may be seen by some Americans as insane because of what he says but the situation is different here in Kenya.

We need to look at the history of this country. Whenever the incumbent Government has sought re-election; what is happening now keeps recurring. It is time for our security system to be tough. They must make sure that MPs and members of the public do not continue to break the law or preach hatred. This is the time to be united.

In 1992 and 1997, the former President at that time was seeking re-election, and we know what happened. We had clashes in Molo and in other parts of the country. In 2002---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The Senate has spoken. Hon. Junet Mohammed is a Member of Parliament from Migori County, and so, you can understand the predicament of your Speaker today. Be it the opposition or Government, let us not destroy our country.

*(Applause)*

I will not allow any Statement request because time has elapsed.

Next Order!

## MOTION

THANKS FOR THE ADDRESS BY THE HON. CHIEF JUSTICE

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, the thanks of the Senate be recorded for the address of the Chief Justice of the Republic of Kenya, the hon. (Dr.) Willy Mutunga, delivered on Wednesday 15<sup>th</sup> June, 2016.

I take this opportunity to say what an honour it has been for me this afternoon to sit and listen to the outgoing Chief Justice of our country, my colleague and senior in the profession, the Hon. (Dr.) Willy Mutunga. Allow me to say that this is the first time this House has used Standing Order No.25 which provides that the Speaker and the leadership of the House may allow a dignitary in our country to come and address this House.

Going forward, in my humble view, this is the Standing Order that we must use from time to time, because we have a number of eminent Kenyans who have served this country well in strategic positions. We end up losing them when time comes for them to

leave; with a lot of information that would have served this country well. Time has come for the country to learn to chronicle our journey as a nation. It is only by chronicling our past that we can plan about our future. I hope that the leadership of this House will utilize Standing Order No.25 to allow people who have retired as Presidents or leaders of arms of Government to address this house.

I feel honoured as a Senator because the outgoing Chief Justice of our country would have chosen to address any other institution. Particularly, when it comes to Parliament, he would have chosen to go to the National Assembly. I do not want to go into what I read somewhere about what the Chief Justice said when he was asked why he chose to come to the Senate. What I read said that he had the confidence that this is a mature House, which is not petty. He thinks that his thoughts will be given effect and will have an impact. He did not think as much of any other institution including within Parliament. He felt that the Senate is the right place for him to have his valedictory remarks.

I am, therefore, humbled and privileged to have been part of the audience to the Chief Justice, on behalf of the people of Kenya, particularly the people of Tharaka-Nithi whom I represent in this House.

The Chief Justice has appreciated the fact that institutional collaboration is important. I think that it is a high point. This country is hurting and struggling, and the bottom line around our country's problems is relationships. How we relate to each other as individuals, institutions, families and communities has not been so well. That is a point that I have carried home personally as a leader in the capacity that I serve. We need to encourage collaboration among and within institutions and at other levels.

Mr. Speaker, Sir, the retiring Chief Justice is a man I respect a lot not only for his academic prowess but also for his simplicity and his humility. He is a very accomplished Kenyan but you would mistake him to be an ordinary man if you met him on the streets of Nairobi. He looks like an average Kenyan yet he is well read but a man of immense humility and simplicity. In fact, many expected him to come in style as the leadership in this country has been known for. However, he walked in very simply. I remember asking an officer in my office to look out for the Chief Justice because he might walk in with his laptop unnoticed yet I wanted to be part of the entourage to receive him.

The Chief Justice has reminded us that it is expected and perhaps encouraged that there will be disagreements among our institutions yet we must have a way of resolving those issues. In his conclusion, he gave us a solution which I fully support. The way forward for this House is not to engage in juvenile attacks on other people or institutions that we may not be happy with, but through engagement.

He gave examples where even engagement between us and the Judiciary has yielded fruits. I know that we have had mixed success in our relationship with the Judiciary. For example, we have lost important cases especially on the matter of the impeachment of the Governor of Embu County. That was sad jurisprudence. Until now, I have not reconciled myself with the intellectual rationale behind that decision. I think that it is flawed. However, the Chief Justice has counseled that we must learn to live with the decisions of legitimate institutions that we might be unhappy with.

Mr. Speaker, Sir, we have lost in that front especially the painful injunction that this House suffered which in my view, I still believe is an illegal and unlawful affront on the sovereignty of the people who may exercise that sovereignty directly or through their

representatives. We must also celebrate a number of decisions that the Judiciary has made and have helped this House claim its space and become more visible. I would like to give two examples. One, the matter which reaffirmed the power of this House to hold governors accountable by summoning them before the Committee that was ably chaired by Sen. (Dr.) Khalwale and currently by Sen. (Prof.) Anyang'- Nyong'o.

Mr. Speaker, Sir, there was an injunction. Although I do not believe that the Judiciary can injunct a House of Parliament, it can only declare what Parliament has done constitutional or not. Be that as it may, the decision that eventually unlocked that impasse and said that Senators have power to summon governors and those governors must appear before the Senate is a landmark decision in our favour that correctly stated the law.

The second decision that reaffirmed our power in the Constitution is to be seized of and dispose the Division of Revenue Bill every year with a huge majority of six Judges against a minority of one dissenting Judge. The Supreme Court, where Chief Justice (Dr.) Willy Mutunga is president until midnight today said that there cannot be a Division of Revenue Bill that has not been processed through the Senate and claim that the law is valid. That was a fantastic decision.

Mr. Speaker, Sir, we have had an excellent relationship between us and the Judiciary but on the balance, we should continue respecting the autonomy and independence of individual judges and the Judicial arm of Government. I am calling upon the Judiciary as well as the Executive to respect our space and understand us even if we sometimes do things as an institution that according to the other arms of Government should not be done in the way that we do them. That is the kind of respect that we need in the arrangement of separation of powers. Going forward, the future of inter- relationships among the three arms of Government, in my view, looks very bright.

The Chief Justice has given very strong apologetic analysis in defense of the Judiciary and what he assumes to be his achievements. I agree with him largely when he says that there were fewer judicial officers when he took over four years ago than we have today and that the Judiciary had very little budget compared to what they have today and that there has been improvement in the infrastructure of courts compared to what prevailed four years ago and also when he says that gender parity is almost a reality as opposed to gender arithmetic that existed four years ago. I agree with him on those issues and I think that we should grant him that accolade because he deserves it.

Mr. Speaker, Sir, allow me to say two other things as I move this Motion. All is not lost for our country. With the kind of speech that we have listened to this afternoon from a person of the caliber of the Chief Justice (Dr.) Willy Mutunga, I believe that there is hope for our country. The future of this country lies in talking and listening to one another, learning and sometimes owning up to mistakes. I must say that I was waiting for Chief Justice (Dr.) Willy Mutunga, to also tell us the mistakes that he has made because leadership is not about getting everything right. When I see him next, because he has assured me that he is returning to the University of Nairobi, where I am also preparing to retire eventually, I would like him to tell me what his failures have been. He informed me that he is preparing his memoirs. I hope that through them, he will tell us what he did not do right.

Under the same Standing Order that we have used this afternoon to have Chief Justice (Dr.) Willy Mutunga, I hope that we can get somebody of the caliber of retired

President Daniel arap Moi, who was a Member of the Legislative Council (LEGCO) in 1957 in this very Chamber. If he can spend 30 minutes and tell us what he considers to be things that he did while he was in office for this country; the mistakes he thinks he made or the things that he would have done differently, this country would be the richer. That is why I ask myself why is it that nobody in this country visits museums, archives and other places of historical importance. We do not remember both the good and bad things that we have travelled through as a country as opposed to other countries where they treasure all their memories, sad and happy.

Mr. Speaker, Sir, going forward, I hope that this House for the record will accord the same privilege to retired President Mwai Kibaki because those are the two retired Presidents that we have in this country, to tell us his success, challenges and failure.

In terms of implementing some of the suggestions the outgoing Chief Justice has made, this House must choose the path of engagement and limit the approach of confrontation, whining and complaint. There is still room for us to assert ourselves using soft methodologies and constructive engagement rather than perhaps using the old tactics of confrontational engagement that has caused so much misery and division in our country.

Mr. Temporary Speaker, Sir, without saying more than I have done, I take this opportunity to thank the outgoing Chief Justice of the Republic of Kenya, Justice Mutunga for spending time with us this afternoon and for honouring this House. He had so many choices to make. I take this opportunity to wish him happiness and God's blessings into his years of retirement. I pray that God gives him and his family many more days even as he transits into his next service to this country from retirement.

With those remarks, I beg to move. I request the Senator for Kakamega County, Sen. (Dr.) Khalwale to second.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I would like to share most of the points that the Senate Majority Leader has made by way of comment on the speech by the retiring Chief Justice. I also thank him for allowing me to second him. This is a momentous Motion but not very surprising because after all Sen. Wetangula, the Senate Minority Leader is the national party leader of FORD Kenya while I am the deputy party leader. So, it is natural that I should discharge where I was expected to do.

I am so proud of the Chief Justice.

**The Temporary Speaker** (Sen. (Dr.) Machage): Is that hierarchy of leadership recorded in the Registrar of Political Parties' office?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, that is for another day.

**The Temporary Speaker** (Sen. (Dr.) Machage): This is a House of records.

**Sen. (Dr.) Khalwale:** Yes, Mr. Temporary Speaker, Sir. Let the records reflect.

**The Temporary Speaker** (Sen. (Dr.) Machage): So we have *de jure* and *de facto* leadership in parties.

**Sen. (Dr.) Khalwale:** Yes, Mr. Temporary Speaker, Sir I am referring to the *de facto*. I am the *de facto* deputy party leader of FORD Kenya. In due course, we will make it *de jure*.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale is in the Senate courtesy of the United Democratic Forum (UDF) which is a member of the Jubilee Coalition.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Billow?

**Sen. Billow:** Mr. Temporary Speaker, Sir, you heard the Senator say that he is the *de facto* and will be the *de jure*. Is he suggesting that in this political outfit called FORD Kenya, the leaders and deputy leaders are all from one village?

(Laughter)

**The Temporary Speaker** (Sen. (Dr.) Machage): You may not prevent a man or a woman from dreaming. It is not possible. You may also not prevent anybody from building castles in the air. In any case, the old saying goes: "If wishes were horses, beggars would ride." Anyway, that is for another day.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I really get very excited when I hear some of the things that people think about me and it reminds me about my early days. When I was a little boy in Musingu High School, nobody would ever have imagined that we would scale the heights that we have.

I am very proud of the Chief Justice because he has really fought for this country. This is a man who in 1997 many started thinking that he would be the compromise presidential candidate. I remember he led us in the National Convention Executive Council (NCEC) when we were fighting for the greater expanded democratic space in this country. I used to buy tickets in the Akamba Bus for Prof. Kivutha Kibwana and (Dr.) Willy Mutunga to come and address us in Kakamega when I was the coordinator of the NCEC in the former Western Province. It has been a very long journey.

Mr. Temporary Speaker, Sir, I am proud of his résumé. Indeed, if he chooses to pen his biography, it will be a must read for the children of this country. I am equally proud of his tenure as the Chief Justice of the Republic of Kenya. More importantly, he made me very proud today to the extent that Sen. Billow shared with me on a light moment that maybe we should continue pursuing our careers as Senators in view of the high stature that we apparently have not realised that we occupy in the echelons of power in this country.

In seconding the Senate Majority Leader, I would like to celebrate the following moments of the life of the Judiciary under Dr. Willy Mutunga. First is his advisory opinion on the role of the Senate in terms of Bills concerning the two Houses of Parliament. Had that advisory opinion not been given in the manner that it was, it was going to render this Senate completely useless. Secondly, I want to celebrate the ruling of last night on the retirement age where the Supreme Court was involved because it was not too clear to some of us who are not lawyers. He upheld the ruling by the Court of Appeal that the retirement age is 70 years. That is very important.

Mr. Temporary Speaker, Sir, you and I who were MPs at that time will remember that we momentarily lost our seats so as to quickly take a new oath. As soon as we did that, Members of the Cabinet rushed to State House to also take a new oath under the new Constitution in 2010. Similarly, all judges took that oath. It, therefore, meant that Justice Kalpana Rawal and Justice Philip Tunoi were taking an oath under the new Constitution,

vowing that they shall not only abide by the Constitution but they will also retire at 70 years.

Sometimes I look at a doctor like you and feel we are privileged because we are extremely factual and we are forced to make critical moments in the so-called the golden hour where if you make a decision just minutes or seconds later, a patient dies. If we had the luxury of the legal profession, we would be protracting things the way they do. A simple thing like this one of reading that the retirement age is 70 years has taken so much time and money. Those are resources of this country because seven judges cannot quickly agree that the Constitution reads 70 years. Anyway, thank God judges and lawyers are not doctors because all patients would die while they are waiting for a decision to be made.

Mr. Temporary Speaker, Sir, I am very proud and I want to celebrate the decision by the Judiciary under Justice (Dr.) Mutunga that compelled governors to come and answer questions of accountability in this House. That was the beginning of strengthening the oversight role of this House.

Mr. Temporary Speaker, Sir, I want to end by commending on the---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale, you will continue tomorrow.

#### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. Therefore, the Senate stands adjourned until tomorrow, Thursday, 16<sup>th</sup> June, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.