

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th September, 2017

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

ELECTION OF THE DEPUTY SPEAKER

The Speaker (Hon. Lusaka): Hon. Senators, I take this opportunity to welcome you to this sitting of the Senate today and remind you that the legislative agenda ahead of us is vast and heavy. However, I am confident that as we have just prayed a short while ago, the Almighty God will help us to treat and consider all matters that shall come under our deliberations in a manner that will advance the prosperity and welfare of those whose interests He has committed to our charge. I have no doubt that each one of you, hon. Senators, is equal to the noble task to which you have been called.

I would also like to bring to your attention that the election of the Deputy Speaker of the Senate shall be held tomorrow, 14th September 2017. This is following Gazette Notice No.8882 which was given by the Clerk of the Senate on 11th September, 2017 pursuant to Article 106 of the Constitution of Kenya and Standing Order No.13 of the Senate Standing Orders.

Hon. Senators, kindly note that interested candidates have up to 4.00 p.m. today, Wednesday, 13th September 2017, to collect nomination papers from the Office of the Clerk of the Senate. Additionally, as indicated in the Gazette Notice, completed nomination papers together with the Curriculum Vitae (CV) of each candidate should be returned to the Office of the Clerk of the Senate not later than 5.00 p.m. today.

Hon. Senators, as I conclude, regarding the business of the Senate today, we shall proceed as per the Order Paper. I now ask the Clerk of the Senate to read the next order.

I thank you.

PAPER LAID

THE PRESIDENT'S ADDRESS ON THE OPENING OF
THE TWELFTH PARLIAMENT

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I wish to lay on the Table of the Senate, The President's Address on the Opening of the Twelfth Parliament delivered on Tuesday, 12th September, 2017, during the Joint Sitting of Parliament.

(Sen. Murkomen laid document on the Table)

NOTICE OF MOTION

THANKS FOR THE PRESIDENTIAL ADDRESS

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, pursuant to the provisions of Standing Order 24 (6), the Thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President during the Opening of the Twelfth Parliament, delivered on Tuesday, 12th September, 2017.

PROCEDURAL MOTIONS

LIMITATION OF DEBATE ON MOTIONS

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to Standing Order No.100(1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

Mr. Speaker, Sir, before I contribute to the Procedural Motion, I take this opportunity to congratulate you for being elected the Speaker of the Senate with such an overwhelming majority. We are now back in business. The Twelfth Parliament is up and running. As a Member who was privileged and honoured, among other few colleagues who are here, to have served in the Eleventh Parliament, I would like to also welcome my colleagues who were elected, some of whom were in the National Assembly, to this important "upper" House.

(Applause)

Mr. Speaker. Sir, I would like to remind my friends, Sen. Linturi, Sen. Kang'ata and Sen. Sakaja that they must in the next two or three months, get used to the idea of being in the "upper" House.

(Laughter)

These friends of ours were in the other House before they were promoted. At that point in time, they did not have the benefit of sitting in this very august House. We believe that your election to be the Speaker of the Senate, that of your brother in the National Assembly, myself in the leadership of the majority and my colleagues; Sen. Dullo, Sen. Kihika and Sen. Kang'ata, among all the other leadership that are going to be elected, will help foster good relationship between both Houses.

Mr. Speaker, Sir, this Procedural Motion is necessary to facilitate debate in terms of allocation of time. This particular Motion is not sponsored by the majority or minority party or a Committee of this House. Therefore, in its consideration, we should at most take about three hours giving 20 minutes to the Mover, 20 minutes to the Senate Majority Leader and another 20 minutes to the Senate Minority Leader. Thereafter, everybody else will have 15 minutes so that we can have a fair share of debate and as many shades of opinion as possible and contributions from both sides of the political divide.

As you can see, one side of this House is already full. The Jubilee side, the majority side, is eager to represent their people, to push agendas related to devolution. We have no time to waste, but to ensure that we move forward together. Because this is just a Procedural Motion, let me not speak much because we will have time in the business which is in this Order Paper, Order No.11. I beg Sen. Moi to second.

The Senator for Baringo County (Sen. Moi): Mr. Speaker, Sir, I concur with my colleague, Sen. Murkomen. First and foremost, I take this opportunity to congratulate your good self for being elected as the Speaker of the Senate in the Twelfth Parliament. Secondly, I congratulate all the Members who were elected and nominated. Those of us who made it back from the Eleventh Parliament, I say *pongezi*.

We are looking forward to the Twelfth Parliament and conducting the business of this “upper” House in a robust manner. We have such heavy agendas as you have rightly put across to us. From the time we took oath, I realized we have very able Senators who are up to the task.

I second this Motion.

(Question proposed)

(Question put and agreed to)

LIMITATION OF DEBATE ON ADJOURNMENT MOTION

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 100 (4), the debate on any Motion for the adjournment of the Senate to a day other than the next normal sitting day in accordance with the calendar of the Senate shall be limited to a maximum of two hours with not more than 15 minutes for each Senator speaking, after which the Senate shall adjourn without question put;

Provided that when the period of recess proposed by any such Motion does not exceed nine calendar days, the debate shall be limited to a maximum of 30 minutes, and shall be confined to the question of adjournment.

Mr. Speaker, Sir, this is in the same line. I do not wish to say much. This is a Procedural Motion about the time when the House adjourns and about allocation of time for debate in this very important August House. I would like to ask Sen. Adan, who is the Deputy Majority Leader to second.

The Senator for Isiolo County (Sen. Adan Dullo Fatuma): Thank you, Mr. Speaker, Sir. I stand to second this Procedural Motion. I wish to congratulate my colleagues who were elected to this August House. Secondly, I wish to congratulate you for being elected to this House as the Speaker of the Senate.

I believe that we left a lot of pending Bills and matters in the last Session that we need to pick up in this particular Session. I hope and believe that Members are up to the task. We should be able to pick up the pending matters so that we facilitate our operations as Senators and also ensure that devolution is up and running.

Without much ado, I second.

(Question proposed)

(Question put and agreed to)

LIMITATION OF DEBATE ON MOTION ON
ADDRESS BY THE PRESIDENT

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Standing Order 100 (1), the Senate resolves that the debate on the Motion on the Presidential Address shall be limited to a maximum of three sitting days with not more than 15 minutes for each Senator speaking, excluding the Mover in moving and replying who shall be limited to 30 minutes in either case and that the Senate Majority Leader and the Senate Minority Leader shall be limited to 30 minutes each.

Mr. Speaker, Sir, again, this is a very important procedural Motion in terms of providing time for debate for hon. Senators. As I said earlier, this is basically a Procedural Motion and I do not wish to say much. In a short while we shall move and apply the same procedural motion, not just now but also in future when the President gives important address to this August House.

Therefore, I would like to ask Sen. Aaron Cheruyiot to second.

The Senator for Kericho County (Sen. Cheruyiot Aaron Kipkirui): Thank you, Mr. Speaker, Sir. Before I second, I join my colleagues who have taken the gracious opportunity to congratulate you upon being elected as our Speaker for this Session. I also take this chance to welcome our colleagues who have joined the Senate this Session and those who made it back. I welcome them to this great House.

I second.

(Question proposed)

(Question put and agreed to)

MOTION

THANKS FOR THE PRESIDENTIAL ADDRESS

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 24 (6), the Thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President during the Opening of the 12th Parliament delivered on Tuesday, 12th September, 2017.

Mr. Speaker, Sir, first of all, I would like to go back to my earlier comment that as a House, we have business to do. The Standing Order and the Constitution provides that the President may preside over the official opening of Parliament as he did yesterday.

If you listened carefully when the President was speaking to the country yesterday, he spoke as the Head of State. It is important to be reminded that the people of Kenya via the Constitution of Kenya, 2010 agreed that they would have a system of Government or a constitutional order that in the first place recognizes the supremacy of the almighty God and the sovereignty of the people of Kenya.

Article (1) which has been quoted largely and misquoted to suit people's personal interests at any given time provides that although the sovereign power belongs to the people of Kenya as provided in Article (1), in subsection (2), the people may exercise their sovereign power either directly or through their democratically elected representatives. This is a very important statement; that there are two important entities that must be recognized; the first is the people.

The Constitution was enacted because we believed that the people are supreme. It is the people who donate their powers to other entities. It is the people who exercise their sovereign power directly. There is no better way for people to exercise their sovereign power directly than by voting for leaders that they want. That is why the in the second part of Article (1) (2), there is a recognition of the sovereign power of the people and that the people can exercise the power directly or through their democratically elected representatives.

Other entities that are not democratically elected, for example, the Judiciary, the independent offices, the Public Service Commission (PSC) and so many organs exercise donated power which is delegated by the people. In the first instance, democracy and democratic elections are important in procuring the right people that will represent the interests of the people. That is why this side of the House is full today because these people were democratically elected by the people of Kenya and in their majority given the power to come and represent them in this House. That is why we have 39 Senators on this side and our colleagues on the other side have 28 Senators. It is not by accident, therefore, that the people of Kenya said that at this point in time, they would elect a coalition of parties or a party in the minority side that would represent their interests.

When the people conducted the elections as they did in Elgeyo-Marakwet County, Tharaka-Nithi County, Kericho County or any other county, including Lamu County represented by Sen. Loitytip, they sent their representatives with very clear message knowing that Article 96, that deals with matters of devolution, representation of the people and oversight of county assembly is very important.

Mr. Speaker, Sir, as you will realize, on this side of the divide, we do our job in over-sighting county governments robustly. I am sure that in one way or another, you have rubbed shoulders with Senators and the Senate in that very robust responsibility. We take this responsibility of the people seriously.

I would like to commend the President on his speech yesterday because it was like he was taking us back to the foundations of our constitution, that it is the people that are important. It is that democratic process of election that is important. It is that ballot paper that is casted by that old grandmother in Turkana - who perhaps does not have the benefit of going to any school - that is important. It is that ballot that is casted by that person in Mandera that made the decision.

Other countries do not have the benefit that we do as a nation; to spend Kshs30 billion that we used last time and another Kshs15 billion that we will use to achieve this very important process. Nevertheless, even where they use a plain paper or where they use a paper that has no security features, that intention of that voter, that democratic right, that sovereignty being exercised by that voter is so key that other institutions that were alluded to by the President yesterday that exercise delegated responsibility as State organs just like Parliament, the County Assembly, Judiciary or the Executive, must recognize that when the mandate is given by the people, this is what they mean and this is what they need.

That is why some of us have a quarrel with the decision of the Judiciary. That is why I have a quarrel with the decision of the Judiciary. We are not allowed to discuss the conduct of any judge as a House. However, we can expose and discuss any decision that has been rendered and made public as we have done so many times here. When certain decisions are made, like the one made by the Supreme Court that led to the nullification of the sovereign power of the people – the sovereignty exercised directly by the people through the ballot – which rarely happens because the people only get a chance to exercise this sovereign power either at the ballot when they are electing us or when we have a referendum, which we are yet to have under this new Constitution. We had a referendum before and it gave birth to this Constitution.

Therefore, as a country, I and my colleagues on this side and this Senate as a whole; taking the President's advice, believe that we must now sit down, in the aftermath of the decision of the Supreme Court, and ask ourselves; what are some of the legislations that this House must pass to clarify the foundation of our democracy, which is the importance of the voter?

Mr. Speaker, Sir, as I have said elsewhere – I also heard the Deputy President saying it elsewhere –that you cannot tell the voter that by marking a ballot paper, you will have spoken, made a decision and later through an entity that exercises donated or delegated responsibility without the benefit of having gone through this process, just wakes up by a simple majority of seven people and decides that you should have scrutinized your paper to ensure that it is laminated, had a serial number, has a stamp and that it has been transmitted electronically.

The truth must be clarified by this House, the National Assembly and Parliament as a whole as to whether you can rob a citizen of his right under Article 38 of the Constitution which is about Political Rights, by virtue of using technicalities. In any case, the Constitution itself says that when interpreting the Constitution, you must give it life and meaning; and that it must respond to the culture and lifestyle of the people. You cannot start telling people to behave as though they are in Singapore if they are still living in Mandera, where basic rights such as water and roads are not available. Then you start telling them that as a result of not having something called the Kenya Integrated Election Management System (KIEMS), a scanner and a 3G or a 4G network in your area, your right to vote was not successful.

These are the things that I hope this House, borrowing from the President's speech, can ask ourselves how we can better ensure that, in the near future under the Elections Act and laws, there is a clear provision as to when you can limit a right that citizens get to exercise only once every five years when the rest of us were exercising delegated responsibility and those of us who were indirectly representing the people here have a responsibility to do other things.

Secondly, there has been debate whether the President should have come to the House yesterday; and that is what the President also spoke about yesterday. This takes us back. I know scholars of law who will write many journal articles and books on the history of Kenya in 2017 and the decision of the Supreme Court in so far as the nullification of the presidential results is concerned. In doing so, they will follow up on the words of the Chief Justice and the majority of the court, who came out and said that the presidential elections have not only been invalidated, but in the words of the Chief Justice, they are "null and void". The simple division on null and void for legal practitioners, lawyers and scholars is that it is as though it never happened in the first place.

So if, for example, that definition will be taken seriously because the Constitution says that the Supreme Court can invalidate an election, if that invalidation goes to the extent of declaration of nullity in the elections itself, it will, therefore, mean that we must erase in our minds that an election of the President took place on 8th August, 2017. If that is the application of the definition of the decision of the Supreme Court, it will then mean that the President, at any given time, never exercised temporary incumbency. If he did, then that temporary incumbency was nullified by the Supreme Court by declaring the elections of the President null and void. If that is the case, therefore, President Uhuru Kenyatta is not at the moment, exercising a period of temporary incumbency. This will have different definitions. If you read Article 134 of the Constitution, it says:-

(1) A person who holds the office of President or who is authorised in terms of this Constitution to exercise the powers of the President—

(a) during the period commencing on the date of the first vote in a presidential election, and ending when the newly elected President assumes office;

(b) while the President is absent or incapacitated, or at other times contemplated in Article 147 (3),

may not exercise the powers of the President specified in clause (2)."

So, the first vote which would have been the vote of 8th August, 2017, would have created a situation of temporary incumbency of the President. But what happens when that vote was declared null and void? What does that mean in terms of definition of nullity of an

election? If the meaning is therefore as though the first vote under Article 134, never existed in the first place; which means there was no elections of the President, it therefore, means that the temporary incumbency of President Kenyatta was also nullified by the Supreme Court. If it was, then he is exercising the constitutional powers donated to him since 2013. That is argument no.1.

Argument No.2 is that; assuming that President Kenyatta was, therefore, a temporary President exercising a period of temporary incumbency. This can easily be tested if President Kenyatta, for example, wakes up tomorrow and appoints someone – for example a Cabinet Secretary (CS) – and forwards to the House for approval. Of course, someone will rush to court to seek interpretation of whether he has that power. But assuming that he was exercising temporary incumbency, the Constitution itself sets out the powers that are limited by the Constitution during the period of temporary incumbency as follows:-

(2) The powers referred to in clause (1) are—

- (a) the nomination or appointment of the judges of the superior courts;
- (b) the nomination or appointment of any other public officer whom this Constitution or legislation requires the President to appoint;
- (c) the nomination or appointment or dismissal of Cabinet Secretaries and other State or Public officers;
- (d) the nomination or appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
- (e) the power of mercy; and
- (f) the authority to confer honours in the name of the people and the Republic.

You can see very clearly that our friends, who erroneously boycotted the official opening of Parliament yesterday and who, I hope, are not in extension--- I congratulate the honourable Senator for urkana County for taking his representative responsibilities seriously and stoically representing the other side with a lot of confidence and passion. I believe we will demonstrate that later when he makes his contribution in the House. Such men must be honoured for the seriousness with which they take their responsibly to their citizens.

Mr. Speaker, Sir, if you read these sections, there are no provisions here that say that the President cannot open and address Parliament. Neither are there provisions that say that the President cannot have a Cabinet meeting or build roads; there is no provision that says that work should stop in this country; there is no provision that says the President cannot order policemen or the armed forces to perform their security responsibility. So, what the President told us yesterday, despite whatever other interpretations other people may have over Article 134, is that the country is running; the Executive and the Legislature are working as you can see. Similarly, the Judiciary is also working, as you can see what they did towards our elections.

So, it is important for every citizen to have this confidence; and us, as leaders, to give the confidence to the public that we have the President of Kenya. We chose, via our Constitution, that when we have the President, we will have him or her from the time the one has been sworn into office until a new one has been elected, because the founding fathers of this Constitution – many of whom are still alive – all of us here played a role in one way or another in the establishment of this Constitution - and we knew that there will never be a vacuum in this country.

Mr. Speaker, Sir, that brings me to the next question. If, therefore, we are exercising sovereign power of the people; we have been given certain responsibilities; we have been told that there is separation of powers between the Executive, the Legislature and the Judiciary; but again Article 6 of the Constitution says that we must work together through consultation and cooperation. Many people make this assumption; that when we say that the Judiciary, the Legislature or the Executive is independent, we do not mean that they are independent for the purpose of frustrating the services that they must offer to the people of Kenya.

That brings me to the next question on what happened yesterday in the gallery of Parliament, which is unacceptable. For the first time since I came to Parliament and, perhaps, since the history of Parliament, the Judiciary was absent when the Executive was having a serious engagement. The Chief Justice, the Deputy Chief Justice and representatives of the Judicial Service Commission (JSC) were not there. Permit me to ask this question; is it that the Judiciary decided to follow in the decision of one side of the political divide in the country, to say that they were not coming to the House? Did they consult our colleagues in the National Super Alliance (NASA) on this action? Did they believe that they are aiding the cause of NASA by this action? That is a very disturbing question.

When the President comes to open Parliament and the two Speakers are present, it is one of those rare opportunities that we can demonstrate to the people of Kenya that the three arms of Government can work together and support each other. That is why when the Chief Justice is being sworn in, the President is there and he has a role in the appointment of the Chief Justice, despite the fact that it is opposite.

Mr. Speaker, Sir, we have held so many consultation meetings with the Judiciary and the Speakers of Parliament have availed themselves. So, the question which bothers me is this; where was the Chief Justice? Is it possible that the Chief Justice and his Deputy would have missed such an important event without the decision of the Supreme Court in the recent presidential nullification coming into the mind of any Kenyan? Is it possible that, that absence was choreographed, agreed upon and designed to try and create an impression that the President was not the President as defined by the Constitution? I am asking these questions because some people said that the Chief Justice is on holiday or is attending some meetings in Lithuania with one member of the Supreme Court. But I am asking myself, at such a critical moment after rendering such a serious decision, the Judiciary should have demonstrated leadership by being available where they ought to be, even if it is not a matter of law, but as a matter of tradition.

For the first time when the history of this country will be written, it will be noted – I like the way media houses noted the same last night and even today – that there was a period in time that we had an emotional Judiciary or a Judiciary led by an emotional person and they made a decision that they are not coming here. I do not want to discuss the conduct of the Chief Justice as a person; I just want to leave it to the point of an institution of the Judiciary. I would not have a problem if they had sent clerks, staff or the Registrar of the Judiciary.

We should have had a representation of an important arm of Government called the Judiciary in such an important function that we had yesterday.

Mr. Speaker, Sir, some will say that we have criticized the Judiciary so vehemently that perhaps it made it impossible for them to come here. There is no one

who gets criticized more than us, elected leaders. Every Senator who sits here has gone through the worst times of various kinds of accusations. Names of many Senators here are found in the gutter press with all manner of allegations.

(Laughter)

The new Senators must be ready to face all kinds of accusations. They must grow thick skin that will give them strength to overcome many accusations. I urge the Senators at their own time at the lounge to have a chat with Sen. Moi to assist them not to find themselves in certain situations.

Mr. Speaker, Sir, we are criticized, insulted on social media and get text messages that say weird things from people whom we have never met but when we come to this House, we do not legislate against those who hate us. We do not say for instance, "I will be a Senator for Elgeyo-Marakwet for only those who voted for me and not for those who did not." When we go back home we have a responsibility to listen to and represent every shade of idea from every citizen of our constituency, which is the county for this matter.

We must separate the criticism we get from the public and the constitutional responsibility because we do not have a choice. Therefore, I believe that when the Chief Justice, as a leader of the Supreme Court sits down and reflects, he will realise that it was a big mistake to abscond a very important function of the Legislature that brings together all the arms of Government.

Mr. Speaker, Sir, I congratulate the President for recognising the importance of these elections for the Republic of Kenya. For the first time, we have three elected women Senators. I am extremely proud that those three elected women Senators come from the side of the House that I represent: Sen. Kihika, the Majority Whip; Sen. Dullo, the Deputy Majority Leader and Sen. Kamar, a very respectable former Cabinet Minister who shall also make serious contribution and service in this House as you will see soon or later. The three women are trailblazers. They are the first women Senators ever since 1963. We had the first Senate which did not have a single woman. We have the first Senate of the Republic of Kenya having three elected women Senators by an overwhelming number of voters. They are here in their own right. It gives me great encouragement that Sen. Dullo was elected. It gives hope to the 18 nominated women Senators here that it is not enough to be nominated. It gives you a way to come back as an elected Member.

Sen. Dullo comes from a pastoralist area with great marginalization. She has broken the ceiling. This is an encouragement for all women Senators that they can go for any seat in this House - except mine.

(Laughter)

That is on a light note. When the history of the legislature will be written, definitely the three women will have their names up there as the women who opened doors for many other women.

Mr. Speaker, Sir, without mentioning names, I am proud of Senators who are here. Sen. Moi knows that we had about four Senators who left this House to the National Assembly. If time allowed, I would have mentioned their names. They too are trailblazers

because they were nominated Senators but now they are Members of the National Assembly. I must note that it is on both sides of the political divide that we were lucky to have former nominated women Senators to serve in the National Assembly.

Again, for the first time in the Republic of Kenya we have three elected women governors: Governor Joyce Laboso, Governor Anne Waiguru and the most experienced woman politician, Hon. Charity Ngilu. The three are also trailblazers in terms of showing our women and children, including my young daughter that they can dream to rise to positions of leadership.

His Excellency the President has been on the forefront in encouraging growth in terms of having women in leadership positions. No wonder, out of the three governors, two are from the Jubilee side and all the three Senators are from the Jubilee side; 100 per cent. It shows that the President is not just talking; he exercises that commitment. If you speak to these ladies in person, they will tell you that they must have got moral support from the political party they come from because the party takes its responsibility seriously.

Mr. Speaker, Sir, as I conclude, there is something I would have liked the President to speak about but I believe we are going there. It is about this House. I urge Senators in this House to listen to me. If you have come to this House for the first time, you must understand that you came to a House that will need your commitment, passion and thoughts in performing our functions. The other day there was a debate about salaries and remuneration. That one does not concern us much as Senators. What concerns us is that we have been given serious constitutional responsibilities in Article 96 yet there is no commensurate provision of structures and resources for running that office.

We tried in the last four and half years to fight for a Senate that has structures, offices and resources to deliver on its mandate. You cannot elect people, put them in a particular place and hope that they should fail. We will not accept Senators to come and hang our political careers in this House because the State could not support the function that has been provided in this Constitution.

You find yourself in a situation like Sen. Linturi; you are elected by 700,000 people and then you arrive here and there is another person who was elected by 4,000 people and has resources to serve them, and you go to the county and the people are wondering what was the point of electing such a person who cannot reach a ward and does not even have an officer in the ward whom people can take their concerns to. Sen. Sakaja was elected by almost a million people; representing 17 constituencies. How will he reach that person in Kayole or Dandora? How will that person in Kangemi present his or her issue? Although the President did not discuss this issue, this matter will come from this House.

As the Majority Leader of this House, I will not sleep or tire until the Senate becomes the Senate we always dream of. We will tell our children and the children of our children that when we served in the Senate, we played a role in ensuring that the Senate is an admirable institution that can deliver on its mandate. You can give us vehicles and beautiful offices in Nairobi but how will that be useful if we cannot reach that common mwananchi; that person who speaks the Marakwet language; that Keiyo somewhere in Kocholwa is waiting for his representation on fluorspar mining to reach his Senator. How will it reach him if he does not have an officer working in the office of the Senator who can be reached by the people?

Mr. Speaker, Sir, when we shall send the next batch of Senators to serve in the Parliamentary Service Commission, I will sit with the Executive on behalf of the Majority side and I hope when the Minority side would have elected their leaders, we will have a meeting and intercourse of minds to ensure that this House becomes the House that when you say you are the Speaker of the Senate, the nation knows that it is that Senate that has Senators who can reach the people and undertake oversight.

There are six passionate Senators who left this House; Sen. Stephen Sang, Sen. (Prof.) Lonyangapuo, Sen. (Prof.) Anyang'- Nyong'o, Sen. Kiraitu Murungi, Sen. (Dr.) Mohamed Kuti and Sen. Mike Sonko of Nairobi. They fought for the strength of the Senate to carry out oversight. Sen. (Prof.) Lonyangapuo was the Vice Chairperson of the County Public Accounts and Investment Committee (CPAIC). I want to give a message from the Floor of the House to all former Senators who are now governors; that we are coming for you. You better do the job you are doing with the dedication and commitment you expected the governors that you replaced to do. I believe they will also be trailblazers in county governments to ensure that the work they will do in the county will respect what the President said; the sovereign power of the people. We will not laze around here and say that because they are our friends, we will not carry out our oversight responsibility. We will do it with passion and commitment, so that the people of this country can remember the Second Senate of Kenya under the new Constitution as a serious Senate.

Mr. Speaker, Sir, with those many remarks, I beg to move and ask the Senate Deputy Majority Leader, Sen. Fatuma Dullo, to second this Motion.

Sen. Dullo: Thank you Mr. Speaker, Sir. I wish to second this Motion on the Presidential Speech. The Speech was very good and on point, especially with regard to matters that affect us as a country. As the President said, we conducted peaceful elections on the 8th of August and did not expect what happened at the Supreme Court. However, as a country and people who abide by the rule of law, we have accepted the outcome. As the Jubilee Party, we are ready to go for a repeat of the election peacefully.

In the Presidential Speech, we were told that there is no vacuum in this country. No matter how much our brothers and sisters on the other side go round saying that we have a caretaker President, that is not applicable in this country. The President is active in the office. The same applies to the Executive, Legislature and Judiciary. It is business as usual and we should continue working. In as much as we are waiting for the elections on the 17th of October, it does mean that we should hold this country at ransom. I would urge my colleagues who are absent that they were elected by voters who expect service delivery from them. They need to come back to this House and deliver services to the people of Kenya, in as much as they want to prepare for a repeat of the elections scheduled for 17th October.

In the President's Speech, he actually reiterated separation of powers and a harmonious working relationship with all other arms of the Government. That is our position as the Jubilee Government. We should respect each other and work together as a country. Peace is also paramount, as the President said in his Speech. Without peace and sobriety, we cannot work as a country and forge development in our country.

As the President mentioned in his Speech, devolution has worked in this country. Even if we did not do much in the last Parliament, we learnt a lot from the last four and a half years of devolution. We need to build on what we did in the last Parliament. Given

that you served as a governor during the last Parliament and now you are the Speaker of the Senate, you know both sides of the coin.

(Sen. Olekina walked into the Chamber)

I welcome my brother from Narok County. That is a good spirit. You should work for your people; politics aside. *Karibu*.

Mr. Speaker, Sir, you have a lot of experience in the field. I know we had a lot of fighting in the last Parliament between the Senate and the governors because of certain issues. We thought that we could deliver on our mandate, but unfortunately there was a tug of war between the governors and the Senators. For us to work as a country, we need to be responsible and make sure that devolution works. You will guide us as the Speaker of this House, since you have experience on both sides. When governors are summoned by Senators, they should oblige. The supremacy of the Constitution is also paramount and it is important for everyone to abide by it.

Let me congratulate my sisters who were elected to this House because it was not easy, as the President mentioned in his Speech. He also congratulated the three women who were elected as governors in the country. The victory was not gotten on a silver platter, but through hard work. It was not easy even for the Senators who were re-elected to this House. In the last Parliament, some of us were actually teased and told by some of our colleagues - I do not want to mention names - that we were just voting machines. That was very wrong. We are elected and nominated to this House because of our capacity to be in this House.

Let me urge my sisters who were nominated to this House that they should not seek to be nominated for a second time. As the Senate Majority Leader has said parties hold your hand once. You should not wait to be nominated to this House for a second time. I was given the position of Vice Chairperson of the Committee on National Security and I defended the position of the Government on security matters on a daily basis on this Floor. You need to decide whether or not you want to come back to Parliament as a politician in 2022. The work should start today; do not wait for anybody. You should be committed to your work.

I know that you will be pushed left, right and center, but those of us who were elected we will hold your hands. You should work hard and make sure that you change the mindset of some Kenyans; that women belong to the kitchen. Those times are gone. We do not belong to those kitchens; we are leaders in our own right. We should deliver services the same way men are doing.

Secondly, there are youth who were elected to the two Houses. I believe they were elected in their own right. Of course there are some counties, for example where I come from, where women were not elected as Members of County Assembly (MCAs). We need to change the mindset of our Kenyans and ensure that women are acceptable within our communities.

I believe the Presidential Address was very good and positive in the sense of what we are planning to do. In as much as we want to run the country on daily basis and deliver on our mandate, I believe that as Jubilee Party, we are ready to win the election on 17th October, 2017 with 70 per cent plus margin whether our brothers on the other side want it or not. We are prepared to go to the ground to campaign and those threats are not

good at this time. We need peace in our country. Whoever wants to go for election can go peacefully.

Kenyans need delivery of services, not threats. There are Kenyans who do not even have a plate of *ugali* on their table today or tomorrow or every day. They need delivery of services. However, some of us who have been elected to these Houses are just running around and wasting our time. This is not necessary.

I thank Jubilee Government for giving women leadership positions in both Houses because it clearly shows that it wants to encourage, support and build women leadership in this country.

I beg to second.

The Speaker (Hon. Lusaka): Thank you very much, Hon. Senator. Let me also congratulate the Senate Leader of Majority for that eloquent exposition and for the good support that you have given. I will now propose the question.

(Question proposed)

The Nominated Senator (Sen. Mwaura Isaack): Mr. Speaker, Sir, I rise to speak to the Address of His Excellency the President of the Republic of Kenya. This is also my maiden speech in this august House, having come from the National Assembly.

It is a very unfamiliar territory because some of us used to be involved in the contestation as to which is the Upper and the Lower House. I honestly did not have any intention of coming to this House but I have found myself here. Sometimes, it is also very good to be measured when you are directing certain epithets because you may end up in that same position.

In the same vein, I would like to ask based on the Address that the President gave that we need to respect the institution of the presidency because it is the national symbol of unity. It is not about the person of the President. This is such that if the Constitution and our statutes provide that the President shall address a joint sitting of Parliament at its first sitting, then we are supposed to respect that provision of the Constitution. We cannot therefore anticipate a situation where we selectively apply the Constitution, if at all, to show that it serves our interest at that point in time. If the Party Leader of the Coalition of the Minority side was the one occupying the position of the Presidency, they too would expect to get respect even when there is a political contestation.

Mr. Speaker, Sir, at this point, I thank Kenyans because as the President said in his Address, we have maintained peace and continue to work side by side. After the declaration of the results, which, we, in the Majority side in the Jubilee Party believe were credible and our President won, people had accepted and started to move on.

Mr. Speaker, Sir, our much enabled Judiciary has been allocated a lot of resources by Parliament every time they appear before our Budget Committees. However, as was witnessed yesterday, it begs very many questions when we see the same Judiciary which also believes in the separation of powers and interdependence of the three arms of government would not honour an invitation, a constitutional obligation to attend the first sitting of Parliament.

Politics is about perception and what people think about you. Knowing very well that the decision they made - which those of us in the majority do not agree with but respect - they were expected to ensure that they do not accept the aspersions that they

would be partial. However, going forward, I think this is something that needs to be put into perspective. I think we would have loved to see the representation of the Judiciary as has been the case before in Parliament.

Mr. Speaker, Sir, the President's Address dwelt a lot on the need to ensure that the country is steered into the right direction. I concur with him when he espouses the fact that there is no lacuna in law or crises. All the three arms of Government are performing their constitutional mandate. However, at the same time, we know that there are elements in this country whose only role is to sabotage that which seems to be working. I call upon Kenyans to be more patriotic and to love their country beyond their political divides and look more at what unites us, as a people, so that we can build a prosperous future and secure the present for all Kenyans who are here and those who will be born in the future.

I was nominated to this House to represent the interests of Persons Living with Disabilities (PLWDs). When we were crafting the Constitution, we envisaged a situation where PLWDs due to the systemic marginalisation that they would have, at least, two guaranteed representatives in the Senate - a man and a woman. I am very privileged to be the person occupying that slot, the second only in the history of this Republic. A lot remains to be done on matters devolution.

Mr. Speaker, Sir, seventy-nine per cent of PLWDs live in the rural areas in the counties. Therefore, I believe when the President noted, for example, in his Address that at least one woman with disability was elected competitively as the women representative for Kajiado County, it shows that we are making progress. It goes to demonstrate that the positions that have been created to represent special interest are achieving their purpose. I have come to the national limelight through such provisions. This august House, therefore, should ensure that we build capacity and increase the operationalization of such positions to ensure that the mandate as envisaged in the Constitution individually for us Senators and the various interest groups but also wholly as the House of Senate are achieved.

Mr. Speaker, Sir, I also note that when one group makes progress, other groups also make progress. Our women are slowly showing that it is possible for them to go out there, compete with fellow men and be elected. I particularly note my good friend, Sen. Dullo, with whom we have known each other for quite some time now. It was quite a pleasure to see her elected the Senator for Isiolo County. I believe these strong women are sending strong messages to young girls; that it is possible for them to contest any position in the country and be elected.

Some of us came to Parliament when we were very young and we were wondering whether this profession or career was only meant for older people. There is always that danger when a young person commits himself to public service, especially politics because it is highly competitive, resource intensive and a risky endeavour with no guarantees. In fact, as it is always said, in politics, there is no number two.

Mr. Speaker, Sir, every time young people are elected to political positions as the President said, Kenyans have high expectations that they would participate in the execution of public policy, oversight of public resources and be involved in job creation. Hon. Senators will agree with me that we are inundated with very many requests for job opportunities from the people we represent here. It is incumbent upon us to use this opportunity to serve in the second Senate and ensure that we put in place measures to

achieve the same for our people. Indeed, there exist a lot of opportunities in devolution that will open up markets for our people to sell their produce and fight poverty.

Mr. Speaker, Sir, at this point in time, we stand at the helm of history. The second Senate is expected to be more assertive and to have a better relationship with the National Assembly. As fate would have it and we can call it an exchange programme because a number of Senators who were serving in the first Senate are now in the National Assembly. Some of us have come to the Senate from the National Assembly. As the President said in his speech, we will use this opportunity to ensure that we prioritise the needs and aspirations of Kenyans. We will be able to pass legislation that speaks to the common needs of *Wanjiku* down there in the village.

In my capacity as a Senator representing Persons with Disabilities (PWDs) under the Jubilee party, first, I envisioned a situation where counties will pass legislations which will cater for PWDs. Secondly, they will demonstrate how far they have implemented Article 54 of the Constitution on 5 per cent quota of employment for PWDs. Thirdly, they will be able to set aside funds in their budgets specifically for PWDs. We will also do the same when considering the County Allocation of Revenue Bills in this House.

Finally, they will come up with robust programmes that reach out to PWDs to ensure these marginalized groups of people are fully included in society so that they can exercise their rights and mandates as Kenyans.

Mr. Speaker, Sir, we are going into fresh elections. I believe that we will be called upon to interrogate electoral laws that will ensure that the saboteurs of credible elections, especially those who would want to bungle elections for their own selfish ends, do not have their leeway and risk this country. We must rise to the occasion as leaders and be driven by service above self. Many times it has been demonstrated that good leadership has capacity to transform society.

Mr. Speaker, Sir, I support and concur with the wonderful speech the President delivered in this House. I call upon all of us Kenyans to stand up for the country and to put it first before all our ambitions.

I thank you.

The Senator for Kiambu County (Sen. Wamatangi Kimani Paul): Thank you, Mr. Speaker, Sir. I wish to join my colleagues to congratulate you on being elected the speaker of the second Senate of the Republic of Kenya. I want to confirm that I have no doubt that you will not only have the capacity, but you have the wherewithal to be able to lead this House and guide us through this session of the Second Senate.

I also want to congratulate my colleagues who have been elected alongside with myself. We now find ourselves with the responsibility of carrying out the duties expected of us by Kenyans. May I also congratulate Kenyans because from when the campaigns started for nominations last year in September, continuing all way up to the month of May and now the general elections that were held in August, they conducted themselves in a unique and unexpected way. We know there were not only naysayers, but there were the negativists who expected this country to slide into chaos because of elections. However, Kenyans have proven a second time since the General Elections of 2007/2008, that neither our destiny nor our country should be defined by the events of that time.

As I support this Motion, I want to begin by acknowledging yesterday as the President gave his speech, the Parliament comprising Members of the National Assembly

and the Senate, there was one common denominator and one common title shared by all of us in that House. All of us including the President himself and us Members of the Senate and the National Assembly, shared the title of a leader. Therefore, the question that should be going through our minds right now is: Have we lived and acted this time as leaders in fulfilment of the oath that we took when we swore to be truthful and uphold the Constitution? This is where the challenge begins and the definition of what we intend to do and be in this House starts.

From the languages that we speak from our different communities and ethnic backgrounds, the word and definition of a “leader” is the same. A leader is expected to be ahead of others, a principal, a chief or person who show the way forward to those who elected him. This question has got many answers. We who are the majority and are present and a few of our colleagues who are present from the minority side, the question is, what are Kenyans seeing? What do we want to show our people?

I know as a Senate - with the responsibilities we have been given under Article 96 of the Constitution - as my two predecessors said, this time we have to cut a different path for the Senate. I say this in full acknowledgement that at this particular time we are facing a big challenge as a country because, on the 8th August, 2017 Kenyans came out, as it has been eloquently put by my colleagues, to express their will by going to the ballot. They elected Members who are sitting here. In the same election, they elected Members of the National Assembly, Members of the County Assemblies, Governors and the President.

Mr. Speaker, Sir, because we have a Constitution, I am cognizant of the constitutional requirement in Article 3 of the Constitution which obligates all of us to uphold and defend the Constitution. So, in recognition of that defense, we Jubilee Members as the majority in the Senate decided to obey the Constitution and respect the institution of the Judiciary in its decision that we will have a repeat presidential election.

It is in that breadth that I say, indeed, we are at a time that we must demonstrate leadership which we have done. That notwithstanding, as it has been said, this county is not at a standstill. We are in full motion, we are in session and so is the National Assembly. Our county assemblies are transacting business. If you go to the counties, you will find the governors are in their offices doing what they are required to do by the Constitution. It is in that light that I would want to say to all and sundry, including minority group Members, that we have an obligation to be true to that definition of a leader. We have an obligation to defend and uphold the Constitution. Part of upholding the constitutional requirement of a leader called, Member of Parliament of the Senate, is to represent the people in this House. That is how we get elected.

Therefore, I want to urge all my colleagues from the minority side to come to the House and debate issues that affect people. Let us move this country forward and shun being divided or partisan over small issues that can be dealt with, adjudicated and defined by going to the ballot to decide who will be our leader. On that breadth, I confirm that I am not only a Kiambu Senator, but a Kenyan alongside other Kenyans that I have spoken to and I know what their will is on 17th October, 2017.

We are ready and prepared to line up one more time and express our will as we did in exercising our sovereign power to decide who will occupy the position of the President of the Republic of Kenya. It is not lost on me and I have not forgotten as well as many Kenyans, that on the 8th August, 2017 they passed that judgment and our choice

has not changed. We are still of the decision that the person we shall elect is still Hon. Uhuru Muigai Kenyatta who will be the President of this Republic.

Mr. Speaker, Sir, as it has been said by most of my colleagues here, this Senate is a first in many ways. It is a first because we have elected representatives of the female gender of various counties. Let me, alongside my colleagues congratulate them. Earlier on, it was thought that this House would not have women elected as Members of the Senate but they have broken that barrier. I want to say to them: “you are trail blazers” as the Leader of the majority party said, and indeed, this should be an indication to the rest of us in this House as women, that in the next Senate we should have more of you.

We also have young people in this House as it was said by the President in his speech yesterday. I am reminded that in the last session, we were popularly defined as “*Nyumba ya wazee.*” I can now say emphatically that, that definition will have no place in political talk and conduct of business of this House. This is not and it has never been *Nyumba ya wazee.* This is the Senate of the Republic of Kenya. We are going to conduct our business vibrantly and with youthfulness.

I want to urge the Members of the National Assembly who have been elected in the 12th Parliament that we should not find ourselves in a similar scenario like it was in the 11th Parliament. I speak as one of the Senators who brought several Bills to this House for debate that were referred to the National Assembly desiring concurrence. Up to today they are still stuck there. I want to take this opportunity to say to the National Assembly Members that a repeat of that scenario would be a disaster to devolution. We faltered and failed in as far as that responsibility is concerned.

May I, Mr. Speaker, Sir - with a lot of respect - request you and your office to redefine the relationship between the Speaker of the Senate and the Speaker of the National Assembly so that this time we not only find it easy but also follow the Constitution and ensure that there is consultation, agreement and quick disposal of business. Also, as you sit there, please, all the time remember that you are the Speaker of the “Upper House.” At no one time are you expected to play second fiddle. You are supposed to negotiate the place of this House all the time with bravery, knowing that you sit there with the authority of the Speaker.

I want to recognise that the devolution process that was initiated upon getting our new Constitution is not in limbo and it has not slowed down or stopped. The people in the counties are expecting what they voted us to do on 8th August, 2017. Our children are still in school, teachers are still teaching and *matatu* operators are still doing their business. Every business that we are expected to promote through our legislative duties in this House is still ongoing in the counties. So, what excuse do we have as Members of Parliament not to do our work?

I want to finalise by asking all of us to ensure that we uphold, as required, the supremacy of our Constitution and ensure that in doing so this time, this House will legislate laws that will not only make devolution the pride of this country as we intended when it started, but also an area which our countrymen can look and have hope in our country.

I wish all the Members of this House all the best, let us be who we intended to be, true to our oath and true to our country and the Constitution.

Thank you.

The Speaker (Hon. Lusaka): Thank you, Sen. Wamatangi. I can assure you that we are already in very serious discussions with the Speaker of the National Assembly. I will also narrow the gap between the Senate and the governors without compromising our oversight roles.

Let me then invite Sen. (Prof.) Imana Malachy from this other side to also make his contribution.

The Senator for Turkana County (Sen. (Prof.) Ekal Imana Malachy Charles): Mr. Speaker, Sir, this is my maiden speech, being the first time to talk in this House. I would like to congratulate the Speaker for having been elected the Speaker. Being somebody that I have known outside the House, I feel comfortable seeing you there. I also congratulate the rest of you for having been elected into the current offices that you hold.

I am a teacher by profession and this is the first time to be in politics. Being in a place like this, it feels like being in a different world because I am used to the classroom and I do not know the traditions of the political institution that I am in now.

I note that all the speakers that spoke before me redundantly repeated “Mr. Speaker.” I do not know if that is the way it is supposed to be or people just like calling Mr. Speaker. When I speak, I will be addressing the House but with respect to the Speaker. So, I will make a lot of mistakes but when I make them, you need to understand that I am doing this for the first time. I am a physics teacher and that is what I understand best.

I would like to let you know that my being here is not by choice. As I told you, being new in the whole process, I am groping around. I know that there is some disconnect in the information process such that I do not get information right so that I know when to go and when not to go. I literally asked people and they told me that we have a session at 2.30 p.m. That is when I came in. I did not know that I was supposed to be boycotting. I understood that we were to boycott yesterday. Sen. Olekina is here. I diligently boycotted yesterday and I thought the boycott was over today. That is why you are seeing me here.

(Laughter)

I am happy to see these two gentlemen here. That means that if I am in trouble, they are in trouble too.

Mr. Speaker, Sir, while we are talking about Kenya, I would like to refer to Sen. Mwaura’s statement that politics is about perception. So, my perception of Kenya is not the same as the one you have. In my view, Kenya is like the rainbow. All of us see a different rainbow depending on where we are or the angle at which we look at it. So, in my view, there are 47 “Kenyas” and I come from the 23rd Kenya. My perception of that Kenya is totally different from that perception all of you have from whatever Kenya you come from.

We are discussing yesterday’s speech made by the President which we boycotted. You have said that that was a great speech from a great president and so on and so forth. However, my view about the speech which I read through is not exactly what you are saying. The President chose some words that are good and somehow resonate with what I would support. For example, looking at Point No.2 here, he said that, “I thank Kenyans

for expressing in their mature and patient manner their sovereign will during the elections.” Mark the word “sovereign.” He continued to say that “millions of voters stood in long queues in the sun and rain, hungry and thirsty in the quest to express their democratic choice.” I like some of those words.

The people of Turkana who are in the 23rd Kenya did exactly that. They voted and wanted to demonstrate their choice of a president. However, unfortunately, that was not the case. What you call “the sovereignty of the people” was not observed in the sense that people were forced to elect or select somebody they did not want. We spend a lot of time convincing our people that we want a change of government. We have not been happy with the Government that is in place today because that Government has not been delivering what they promised to deliver to us as we expected. So, we wanted a change of government and we were expecting that somebody new, in this case, Raila Amolo Odinga, will come with a better government that will give us better services.

Even though our people stood in the sun, rain or wind to cast their votes, they still wanted to express their God-given right to choose or elect a president they wanted. Unfortunately, what we call politics in Kenya is not really what you would describe as democratic choice because that is not the case. I am just surprised that all of you learned Hon. Members call this a democratic choice and even the President called it so. I have been in countries in the world where boxes are placed and people come and vote and they go away. That is not exactly the way it is in Kenya. In Kenya, people are cajoled, bribed, forced and pushed and so on to eventually elect somebody. That is not democratic but mock democracy.

Those of us who got elected in Turkana believe we were simply elected because God wanted us elected. We faced insurmountable odds during the previous election. I am saying this because maize which was not available was brought in big containers to entice our people to vote. We felt that that was shameful in the sense that when people are hungry, they should be given food by the Government and that food should not be used to cajole them to vote for somebody. That is what happened and we did not have food to give to the people to vote for the National Super Alliance (NASA). That is one thing that was unfair and we should not link it to democracy.

Billions and billions of shillings were poured there to encourage people to vote for a particular government. The opposition did not have that money. So, that cannot be called democratic choice. There were choppers flying around taking the people who were opposing us to different places to talk to people and so on and so forth but we in the opposition did not have choppers. We were simply going by road and you know how bad roads in Turkana are. So, we were competing when actually we could not compete. There was every manner of force brought to the opposition to try to elect “the government” that you are talking about now.

To add on that, the police took sides. They were telling people that they must vote for the Government. In our view, Jubilee is not the Government but a party. The Government of Kenya is for all of us and the police should be for all of us but that was not the case in Turkana. We had the police pushing us around because they said that we were opposing the Government. We disagreed with that.

The chiefs were also told that they must campaign for the Government. In fact, some chiefs in Turkana lost their jobs because they refused that and wanted to have a democratic choice made by the people. They refused to be forced to elect or campaign for

somebody they did not want. They simply refused and ended up getting letters telling them that their jobs had been taken away because they did not do what they were told to do. That in itself is not democratic choice.

While you, fellow Senators, are talking about democratic choice, great and peaceful elections and so on, I beg to differ. I say that, in my view, where I was, those elections were not fair. They were just forced by the different items that the Government put in place to get the elections going. I also see something about continued peace. I want to say that Turkana County is not a peaceful place. It has never been. We happen to border Ethiopia, Sudan and Uganda. These countries have hostile neighbours that are killing Turkana people on a daily basis and especially during this election; there was a lot of hostility between our side, that is, the opposition and the other side. Even today, some of us are still being hunted for like wild animals to be killed because we supported National Super Alliance (NASA).

I do not know if you read in the newspapers that my house was shot at. I sleep with my gun every day because I expect that somebody is going to climb into my compound to come and look for my life. Therefore, that kind of thing cannot be called peaceful. Turkana being what it is, it is not really peaceful because the government that you are promoting has not been able to put in place those structures that enable the people of Turkana to live in peace. The Turkana people have been forced to defend Kenya at the borders of Kenya and Ethiopia and Kenya and Sudan. That cannot be called a democratic and peaceful process. Therefore, in my view, we want a change of government.

Hon. Members, I also want to mention to you that; the fact that these Members are not here today does not mean that they are less Kenyans that you are. They simply have a different view that we want a different government and not the one that you are supporting. They are simply Kenyans like us except that they have a varied view and that should be respected. If we talk about the sovereignty of the people; people should be left to think the way they want to. Of course, we can convince them but we cannot force them or we cannot for example, demonise them by saying that they must be bad Kenyans or they do not want to work for their people. It is not that way. It is just that they have a different view and that is why they are not here today.

If we are going to have elections again for the president, I hope that we are going to have fair elections where Kenyans are going to be allowed to vote willingly for whoever they want to vote for; not cajoled, not forced and not bribed to vote for anybody. All of us and Kenya will be better off than if we just put somebody in that position that many other people do not want to be. That is the reason why the country is divided. We think that there is something wrong in the current Government and we want that to be corrected. We cannot be forced to agree by saying that we all have to vote in the same way. That is the meaning of democracy.

Mr. Speaker, I do not know if erred by not saying “Mr. Speaker, Mr. Speaker...”. That is what I wanted to say. I may have forgotten a few other things, but I still have time in future to say what I want to say.

The Speaker (Hon. Lusaka): Thank you for your maiden speech. We said that in this House everybody is entitled to his opinion. You know everybody goes to an election hoping to win, but the winner is normally declared by the returning officer. There are very many situations that obtained in the various areas but we are free to express our different political opinions. Thank you, Sen. (Prof.) Ekal.

The Senator for Meru County (Sen. Linturi): Thank you, Mr. Speaker, Sir for giving me this opportunity to comment on the Presidential Speech. Before I do that, kindly allow me with humility and respect to congratulate you for your election as speaker of the Senate and also take this opportunity to thank the great people of Meru County for having found it fit to elect me as their Senator. I want to commit that I will serve them with a lot of diligence and I will do what I am required by the Constitution to do in the execution of my mandate as the senator for Meru County. It was not an easy contest but I thank them for overwhelmingly voting for me.

I would want to respond to some claims that have been made before and attributed to me, for referring to this House as *nyumba ya wazee*.

(Laughter)

It is only necessary for Hon. Members of this House to understand the context in which I referred to this House as *nyumba ya wazee* because I am happy to be here. Fortunately, it is not by default that I am here. I made a decision to vie as a Senator for Meru County and I knew what I was coming for. The literal meaning, for purposes of understanding the term “*nyumba ya wazee*” - for anyone who probably thinks that it refers to House of the elderly; that is not what I meant. Even if that was to be for anybody that had that limitation in terms of interpretation, then I will also say, *mimi ni mzee sasa*. Therefore, I am in the right place.

This House has the enormous task of managing the resources allocated to our counties and overseeing the management of these resources. On a daily basis, they have to try to interact and work with the *mwananchi* in transforming their lives because when you look at the Fourth Schedule of the Constitution of this Republic on the functions of the devolved governments, matters to do with water, health and agriculture are core to the lives of the people of our country.

When you look at this House, the people that get to the Senate are people that have experience from all spheres of life. These are people that have a lot of wisdom and capacity to endure any turbulence. There is a Kiswahili saying that says that “*panapo wazee hapaharibiki neno*”. In this context, that I was trying to explain that the National Assembly could have very young vibrant people that may be carried away by emotions to the extent that in terms of managing affairs of a country, we cannot just leave the country to them and hence the Senate was the right place to address issues and those matters that required a lot of wisdom and sobriety. It is in that context that I said the Senate *ni nyumba ya wazee*. I want to be understood in that extent.

(Applause)

Secondly, I am happy to be here to contribute on the Presidential Address. I have never thought before that President Uhuru Kenyatta was such a humble president who demonstrated a lot of humility, respect of the law and constitutional order. I had an opportunity to visit him when the election was nullified. He was quite composed and he said that we may disagree with the decision of the Supreme Court but as a country, we must demonstrate that we have respect for institutions and we must demonstrate to the

country that we have taken oath to protect, defend and uphold the constitution of the Republic of Kenya”.

If the law and the Constitution has delegated authority and power to the judges to make determination of election petitions in regard to the presidential election and they have ruled in a certain way despite the fact that you may not agree, then you must be bound by that decision. The President was as candid as that and he said that we can now prepare ourselves to go back to the people and reaffirm our win. That is President Uhuru Kenyatta. You cannot compare him with his opponents. History has it that they will never agree that an election can be won. There is always the idea or cloud in their minds that for one to be declared a winner they must steal. That is not the case with our President. My brother, the Senator for Turkana County, there is a picture of our President that you may not have.

I am so happy that this afternoon, I have heard the first confession of voter bribery and intimidation from Turkana. The hon. Senator had to move around or sleep with his gun. He further confessed that there was exchange of money. I am saying this because the Senator comes from the other political divide and has the audacity to say that they were moving around with guns and money. You know how frightening guns can be. This means that he is a beneficiary of intimidation and bribery of voters; that is how he managed to get here. Sen. (Prof.) Malachy has said it and it is on record. Even as we try to establish where the irregularities were, I believe that this is a clear manifestation that the NASA team is clearly aware of what they did and how some of them got to this House.

We have a country and duty as citizens of this country. As Senators who have taken oath of office, we must be bound by Article 3 of the Constitution. Parliament is an institution where Senators or Members of Parliament deliberate on issues that touch on their people and amicably get solutions to those problems. You have a duty to abide by what the law provides. The Senator tried to explain to us that he got here by default because they are on a boycott. I must encourage and tell him that he is on the right course, whether by default or design. He is here to undertake his constitutional role of representing the people of Turkana. This is where you can say what you agree and not agree with. I ask him to encourage his friends too.

Parliament should not be managed by common *raia* who have lost elections out there through remote control. They should not take control of you like robots. That is why these chairs are empty. When an election is over and people have lost, they should admit that an election has been lost and prepare themselves for another election.

Let me straightaway go to what I wanted to say. I may have taken a lot of time trying to address Sen. (Prof.) Malachy. The Senate has a duty to establish a working relation with the National Assembly. I would want to encourage those who have come from the National Assembly to bridge the gap, if there is any. We should make sure that the two Houses work very closely to make sure that the Government’s legislative agenda runs smoothly and with the speed that is required. In so doing, we will be facilitating the President by giving him the necessary laws to run or manage the affairs of this country. This is because I have no doubt that when the election is repeated Hon. Uhuru Kenyatta will be our President.

We shall be exercising the oversight role over the Governors who are out there. As the Senate Majority Leader has said, we expect nothing else from the Governors in

this country than the proper utilization or application of funds for the wellbeing of the people that we represent here. For the last four and a half years most of our people have gone without water or basic health facilities required in the hospitals. I am sure that with proper management of the counties, the problem of food security in this country can be solved. Agriculture is a devolved function and with proper arrangement by the governors to manage food production, we can assist the Government and end over-reliance on government for food security.

17th October, 2017 is at the corner and I want to make my statement clear. God has given us another opportunity to liberate this country, especially those people whose brains are at times carried by the others. We should get out on 17th October, 2017 and vote again. We should vote for President Uhuru Kenyatta and take *Mzee wa kitendawili kule kwake nyumbani*. When we take him there, we will have designated him to a place where I believe he belongs. That is when the people of those other parts of the country will actually have been liberated once and for all.

Thank you Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you Sen. Linturi. Being mindful of gender, I will give an opportunity to Sen. Mary Yiane to make her presentation.

The Nominated Senator (Sen. Mary Yiane Seneta): Mr. Speaker, Sir, before I comment on the President's Speech, I want to take this opportunity to congratulate you and my colleagues for being elected to represent the people of Kenya in this House. I would also want to take this opportunity to thank the people of Kenya from different counties for giving us an opportunity to represent them. I would also want to thank them for giving us an opportunity, through our parties, to represent them through the special seats. I want to thank the people of Kajiado County for voting for Jubilee party in large numbers. That has given me a chance, through the Jubilee party and the President, to represent the people Kajiado County. For my other colleagues who have been given a chance by their parties, through nominations, if it were not for Kenyans we could not have gotten a chance to represent the special interest groups.

Let me also take this opportunity to thank the people of Kenya for developing faith in women leadership. They elected three women governors and three Senators. I would like to urge them to show the best leadership, so that the number of elected women may increase in the general election of 2022.

Mr. Speaker, Sir, Kenyans are expecting more from our women Governors. I want to request them to perform to their best with the help of the Senate and other institutions so that they can also encourage more women to be elected so as to get the numbers in both the National Assembly and the Senate.

I want to commend His Excellency the President for assuring Kenyans that there is a Government in place. The people out there may think that there is no Government in place because of the way we talk as politicians. I thank the President for defending the Constitution because it is very clear that we do not have a vacuum in the office of the President. The President came to address Parliament so that it can continue its business just like the other three arms of Government. This is a very big step towards assuring Kenyans that we are continuing with our business even if we have a repeat of the presidential election.

Mr. Speaker, Sir, the President also took a step to assure Kenyans that there is security in the country. I thank him for reminding our political leaders that they must

perform and assure Kenyans that there is security. Apart from a few of the areas like what I have heard the Senator from Turkana saying, there might be some issues which the government is going to address. We have security in Kenya. The President did well to assure Kenyans that there is security.

Secondly, I was impressed that the President assured Kenyans that we are ready to defend the Constitution. Kenyans struggled to pass this Constitution and it is good for all of us in the political divide to know that there is a Constitution that most Kenyans voted for and we must protect it.

I urge the National Super Alliance (NASA) Coalition to always remember that there is a Constitution in Kenya that is unifying us. We are the ones who passed this Constitution and we must protect it whether you are in power or not. Whether this Constitution today favors my party or not, it is meant to protect all Kenyans.

Thirdly, I was impressed that the President urged all other institutions to perform their duties well and take care of the needs of Kenyans. In our political gatherings, he always reminded us that we were elected by Kenyans to defend their interest.

This was a timely Address and it has given a greenlight to that common mwananchi who maybe have been thinking that it is time to politic again and, therefore, there is nothing else that is going on in Kenya. It is high time, as Kenyans, to also differentiate that there is that particular day where you go to the ballot and elect leaders and there is time to go back and do other development so that we can develop as a country.

I also want to appreciate Kenyans this time round because we have shown maturity in our democracy. This is because after the general election, they went back to their businesses. I think they are ready to come out and elect their President on 17th October 2017 and then go back to their businesses. The President's Address was encouraging, mostly to all Kenyans and even our investors because they have been assured about their security and that of their businesses.

Thank you, Mr. Speaker, Sir, for giving me this opportunity to also contribute to the Motion on the Presidential Address.

The Speaker (Hon. Lusaka): Thank you so much, Sen. Mary Yiane,

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also contribute to the Address made by the President during the Joint Sitting of Parliament.

I had earlier on congratulated you, and fellow Senators for being elected and nominated to this House. It will be a great mistake if I forgot to thank the people of Kericho County because without their votes, I would not be here. I thank them for re-electing me to this House for a second term. It is a great honor and I look forward to serving them with great distinction and dedication and each day to strive to represent their interests in this House and that of the greater nation of Kenya.

Mr. Speaker, Sir, I agree with the President in his opening remarks when he said that indeed God blessed us with a great country. I concur with him with full knowledge having had the chance to fairly travel across this globe. I agree with him and say that indeed Kenya is a blessed country. When you compare us with many African nations, many of the freedoms that we enjoy and the abundance of grace that God has given us is not something that we should take for granted.

As leaders, it is incumbent upon us to always serve and remember that even as we do our politics to always remember that what we have today we may not have it tomorrow and therefore to handle it with care and great caution.

Secondly, I want to also join the President in congratulating and perhaps looking at it as a great mark of honor to the women of this country that three of them were elected into this House.

I congratulate each of my colleagues who are in the House this afternoon; Sen. Susan Kihika of Nakuru, Sen. Fatuma Dullo of Isiolo and Sen. (Prof.) Kamar from my neighboring County of Uasin Gichu. I wish them well as they perform their duties as Senators. I think they are a great inspiration to the women of Kenya and as many of them are growing up, I know these trail blazing women will set a good example and achieve great things. I particularly reserve special space for my colleague, Sen. Fatuma Dullo, who was a nominated Senator in the 11th Parliament but this time, she has come back as an elected Senator for Isiolo County.

I do so because I saw the kind of dedication and zeal she served with, especially during her tenure as Vice Chairperson of the Committee on National Security, Defence and Foreign Relations. I know many of our colleagues perhaps the new ones will get to realize that it is one of the most challenging committees to chair because almost on every afternoon, there is a question that touches on things to do with security. Without failure, each afternoon, the Senator was in the House to respond to statements made to the Committee by other Senators and served with great dedication. That is worth noting for many of our colleagues who have been given the chance to serve in this House, courtesy of nomination. If you follow in her footsteps, only a bright future awaits you.

On point No.10, the President had a special place of mention to the young men and women who have been elected to Parliament and other offices. He went ahead to remind us that we have a special responsibility to represent the aspirations of our fellow young people. I say this bearing in mind that just before the last elections we were reminded that 50 per cent of the 19 million voters are below the age of 35 years. I urge those of you in this House who happen to be in that age bracket to carry on with the words that the President shared with us yesterday.

This is our singular chance and opportunity to represent the hopes and aspirations of many young people of Kenya. They look up to us in a special way to be bipartisan and speak, bearing in mind that if we make Kenya great, we will enjoy the greatness of this country for longer than any other people in this House. Unfortunately, the reverse is also true.

Therefore, it is upon us to work extremely hard in legislation that we bring to this House. As we represent different counties and special interest groups, the things that we speak and care about most should be guided by the principle of knowing that there is a critical mass of the population that has its special interest that we need to take care of in a very special way.

Mr. Speaker, Sir, I also agree with the President's remarks. He said:-

“We still have to undertake a fresh presidential election following the verdict of the Supreme Court. Even though I strongly disagree with that decision, I accept it because it is my duty to respect our Constitution.”

I could not have put this any better. As a legislator who greatly disagrees with the decision that was taken by the Supreme Court, I know that the place of the voter is sacred

and sovereign as per the dictate of our Constitution. Many of us are still struggling to come to terms with what may have been in the mind of these Judges as they made this decision.

As other Senators have observed earlier on, the Supreme Court is not on trial in the House this afternoon but nothing gags us from raising critiques about the judgement that will in many years be a sad day when the history of this country is written. Article 159 of our Constitution says that judicial authority belongs to the people. Therefore, something that I am yet to understand is; if the people are supreme, at what point and to what extent did the four judges of the Supreme Court feel that there was interference to a point of overruling the decision of the people whom they are supposed to be representing or enjoying powers from?

We will debate this for many days to come. As has been observed by the coalition that I represent, after the presidential election, it will be a decision that we will be looking forward to. I have special concern for the Independent Electoral and Boundaries Commission (IEBC). They have to draw up a programme for fresh elections on 17th October, 2017. They are yet to understand and get reasons why the job they did earlier on, which in their opinion and of the majority of Kenyans, was quite a stellar job. As they prepare, they keep wondering where they may have missed the point. Be it as it may, it is important to agree with the President that democratic or independent institutions have to be respected. Their place is guaranteed in our Constitution. It is clearly spelt out that they are supposed to operate without undue influence or guidance from any other person or body.

Therefore, at this time, when we are staring at a political situation – I would not wish to call it a crisis because it is only a crisis in the minds of those who are trying to push it through – we find ourselves in this political quagmire because in the first place, we allowed ourselves as a House to discuss and be forced into what was then a political narrative, that we needed to change the IEBC before proceeding to the August 8th elections. We fell into that trap and here again we find ourselves going through the same journey all over again. It will be a great mistake if Jubilee falls into the same trap the second time. As they say, “fool me once, shame on you, fool me twice, shame on me; and shame on us all.” We cannot accept this. We should let IEBC do its job independently. Let them determine what the job is.

Mr. Speaker, Sir, one writer observed that we have got to a time where as politicians; we are the only people that happen to take ourselves seriously. If we do not take care as Kenyan politicians, we will fall into that trap soon. We have become so obsessed with interfering, having an opinion and carrying ourselves with so much seriousness that we do not treat other Kenyans with the kind of dignity that they deserve. Many are the times when you are unwell and you go to a hospital, if you are checked you do not ask what tribe or political orientation that the doctor ascribes to.

If you are driving from Nakuru to Nairobi, for example, and your car breaks down, when you call a mechanic to assist you, on many occasions you do not question his or her tribe but as politicians, the minute fellow Kenyans are placed before us and you are told that they are supposed to adjudicate a certain political situation, so many things fall on the table. It is my hope that we will soon learn to respect independent institutions and let them have their place.

On No.23, the President said:-

“In this regard, I urge all political leaders to avoid engaging in divisive and destructive politics that have no place in modern Kenya.”

I agree with the President. More so in the recent past I have noted with great concern that - and this perhaps falls on both sides of the political divide – The campaigns have become about personalities. It is no longer about issues as we observed up to the lead up to the August 8th elections. It is a very sad state of affairs. I hope that this will be rectified. We shall soon be discussing values and ideals as opposed to abusing each other and setting a very bad precedence.

I also noted that many of our colleagues were congratulated regarding the work that they did in the Senate. For those of us who were in the House in the previous term, we may have forgotten Sen. Godliver Omondi who decided to vie for the position of Member of County Assembly (MCA). She is now serving as a Member of Kakamega County Assembly. This speaks to all of us, as leaders, that it is not so much about the positions, but the willingness to serve and the desire to do good for our people.

Finally, I look forward to when we shall legislate and determine the place of this great animal called “the doctrine of the separation of powers.” Yesterday, it was unfortunate to see the Judiciary staying away from the official opening of Parliament. Many things clouded my mind because even we, as Senators, have our own quarrels to pick with the Judiciary. For example, the ruling in the case of Governor Oparanya of Kakamega County who defied summons by this Senate has made some governors not take this House seriously. With that ruling, no governor will ever show up in the Senate.

Those are things that we look forward to discussing in this House. How can we be expected to perform in this House if the people that we are supposed to oversight keep away from us? If governors themselves are enjoying the fruits of devolution, then they must be ready to account and explain how they are spending billions of shillings allocated to them by us through the Division of Revenue Bill.

I wish the country well as we go to the second round of election. I know it will be quite intense. I look forward to continue sitting on this side of the House. I have seen in the social media that our colleagues from the other side have been instructed, so to speak, by their party leadership not to show up in this House. However, I congratulate my friend Sen. M. Kajwang’ who is always a sane man for deciding to follow through with his own mind and not allow his party leaders to think for him.

The Speaker (Hon. Lusaka): Thank you, Sen. Cheruiyot for your contribution. To observe gender, Sen. Waqo Naomi

The Nominated Senator (Sen. (Rev.) Naomi Waqo): Thank you, Mr. Speaker Sir. I want to join the others in congratulating you and also all the leaders who have been elected, especially the women. They are our role models. We congratulate those who are in this House and those who have been elected to the position of governors and any other important position to serve our country. I also take this opportunity to thank God for giving each one of us opportunity to serve Kenya; our beloved country. I would like also to congratulate both men and women who struggled very hard and became Senators. It is because of your numbers that many of us are here as nominated Senators.

As I acknowledge and commend the great speech that we received from our President, it was my first time to attend official opening of Parliament. I was greatly touched by the soberness and the way the President was well composed and the great speech that he offered. His speech was all inclusive in terms of gender, regional balance

and even going further in mentioning the different representation that we have in this country. It was a speech that really encouraged me as I join this House.

One thing that I picked is paragraph 23 that has already been quoted. It says:

“In this regard, I urge all political leaders to avoid engaging in divisive and destructive politics that have no place in modern Kenya.”

Mr. Speaker, Sir, this really encouraged me because we know how much we have suffered in the past. Many of us know what Kenya went through in 2007/2008. None of us would want us to go back to that route. We, as politicians, are the people who guide others on the ground.

Somebody said that politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies. That is what many of our politicians, especially our colleagues on the other side are doing. Our attention is taken to different things. Every day we have a new thing or trouble to deal with. It is high time Kenyans focused on what is ahead of us. My request to all politicians, especially the respectable Members in this House, is to take our positions seriously and serve our country in the best possible way.

Finally, 17th October 2017 is not far. As we go on the ground to campaign and do other things, we must guide our people. As you know, our people are very sensitive and they need guidance. Let us guide them and be their stewards. If we pass the wrong message, it is very easy for us to set this country on fire. We cannot afford to do so. We need to vote wisely. My request to Kenyans at this time is; let us vote wisely. As you can see, on 8th August, 2017, we elected leaders. On this side of the House, you can see the seriousness in their job. Yesterday we were in the National Assembly for the official opening of Parliament. Today we are here debating this speech. We are not wasting our resources. Kenyans have trusted us with the responsibility to deliver.

As a Christian and a strong believer, I cannot sit home, waste people's time and expect to be paid. It is good for us all to know that we are stewards. We are stewards of all the resources that God has given us and of the people that God have put in our hands. So, let us earn even the salaries that we will earn in the right way. Let us work for it. Let us give Kenya what it deserves. Let us think of the counties that we represent here. As the common *mwananchi*, that poor woman who voted for you is waiting for you to deliberate. You are the voice of the voiceless. Let us not waste our time in hotels discussing things, but come here and make decisions that will help Kenya to prosper.

The Speaker (Hon. Lusaka): Thank you so much, Sen. Naomi. I now call upon Sen. Sakaja.

The Senator for Nairobi City County (Sen. Sakaja Johnson Arthur): Thank you, Mr. Speaker Sir. At the very onset, I am inspired by the words of Sen. Waqo. I shall begin by quoting a verse from the Bible, Romans 13:1 which says that all leadership comes from God. In fact, if I quote it word for word, it says:

“Let everyone be subject to the governing authority for there is no authority except that which God has established”.

Mr. Speaker, Sir, I would like to, first of all, thank God that we are all here. We have been elected by the great people of this country to represent them in this House. It is not just to represent by legislating, but also by giving direction and hope to this country.

Mr. Speaker, Sir, I am also pleased and take great pleasure in congratulating you and calling you Mr. Speaker, Sir, on your election as the speaker of the Senate. I am confident that you will be able to discharge your duties in a dedicated way to uphold the Constitution in a very objective manner.

I would also like to thank and congratulate my colleagues for being elected and take this opportunity to officially welcome them to Nairobi County. As the Senator of the county and host Senator of the senate, I would like to welcome you all to this great city. As I remember the close to one million Nairobians who elected me to be their Senator, I am humbled and grateful for this opportunity. True to the words of our national anthem, may, “service be our earnest endeavour” and service to the people of this country.

I am also very pleased to see the great number of women and young people elected, just as the President noted in his Speech. I would like to encourage the ladies and gentlemen, like my friend Sen. Mwaura who served as nominated Members, that even nomination is a great path. We have very many great leaders who have been elected to this House. We have His Excellency the President of Kenya who began as a nominated Member of Parliament, the Leader of Minority; I am not sure whether he still is Sen. Wetangula who was nominated to parliament, the Senator of Nairobi who was a nominated Member of Parliament in the last Parliament. It is a path to leadership.

We also have the indomitable Sen. Mugo who was nominated proudly by Jubilee but who I was pleased to vote for before in 2007 in Dagorretti Constituency. She was first elected in 1997 and so all of us are elected.

If you read the Constitution properly, whether elected through universal suffrage or through party lists, all of us are equal and we should be able to discharge our duties with that realisation.

I will also join my colleagues who have come here via the National Assembly in the last term in qualifying some statements that have been made previously.

Mr. Speaker, Sir, ‘*Nyumba ya Wazee*’ is a term of respect. If anybody called it such, I remember it was Sen. Linturi who christened this House such. There is a young musician called Nyashinski, these are our modern day poets, who has a song called *Mungu pekee* where he says, “*Nipe nguvu na uwezo wa kijana na akili za mzee*”.

“*Nyumba ya wazee*” is a House of sobriety, measured, has wisdom and many of us who came from there with the exception of Sen. Mwaura deliberately chose to come to this House where, amongst the many advantages, is the ability to speak every day. The other House is like a triple streamed school with more than 350 Members and you will be lucky to get five minutes on the microphone.

However, we can come to a House where we can look across the aisle to our colleagues and even Hon. Nyamunga who I served with in the Committee on Finance in the last House. I think we will enjoy being in this House. This is the pinnacle of our legislative arrangement in this country and we hope - I am sure - that we will infuse it with energy that has come from the National Assembly and, with hindsight, wisdom as to what the institutional arrangements between the Houses ought to be as we interact.

(Sen. (Eng.) Mahamud walked in)

As my *Mheshimiwa Mzee* Sen. (Eng.) Mahamud walks in, we were also with him in the National Assembly.

Mr. Speaker, Sir, I thank the President for his exposition yesterday and in support of this Motion that the thanks of the House be recorded, I would like to touch on a few things that he has said. As I do that, I would like to note and express my disappointment with the Judiciary for failing to attend such an important aspect of our democracy; the official opening of Parliament.

I think in this country we need to get to a place where we can be able to separate issues. Number one, we must be able to separate individuals and the offices and institutions where they serve. In as much as we in Jubilee are not happy at all with the ruling and findings of the Supreme Court, we respect it as an institution and we expect reciprocity in that respect; that they too should respect the presidency and Parliament.

I am not sure in as much as Justice Maraga has made history twice, first in the Supreme Court landmark ruling which is a beautiful part of our democracy that not only in Kenya and Africa where a court can sit and nullify an election of a President. That in itself is history. He has also made history by being the first Chief Justice and members of the Judiciary to abscond a National function recognizing the official opening of Parliament that has people elected directly by Kenyans.

If there was a legal question as to whether or not the President should have opened Parliament, it would be answered by provisions of our Constitution. The first is that if the president is deemed to be coming as a result of a nullified election, it means then that no presidential election was held on 8th August, 2017 and, therefore, the President is still exercising powers of presidency and not those of temporary incumbency. Those powers include the official address to Parliament.

However, even if you argue that the President is exercising the powers of a President-elect, reserved for a President during the period of temporary incumbency, then Article 134(2) is clear that the person may not exercise the powers that include:

- (a) The nomination or appointment of the judges of the superior courts;
- (b) The nomination or appointment of any other public officer whom this Constitution or legislation requires the President to appoint;
- (c) The nomination or appointment or dismissal of Cabinet Secretaries and other State or Public officers;
- (d) The nomination or appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
- (e) The power of mercy; and
- (f) The authority to confer honours in the name of the people and the Republic.

Even during the period of temporary incumbency, the President still has powers and the mandate to address the official opening of Parliament. Therefore, there is no legal question as to the legality of yesterday's function and if our colleagues on the other side who boycotted the opening would wish to boycott, we are only too happy to continue serving the Kenyans who stood in long lines and expressed their will.

I will not go deep into the contents of the ruling by the Supreme Court and the situation we are in right now, but I believe that even as we start this Session of Parliament, several questions that are foundational to our democracy must be asked and answered.

The foundation of our democracy was hard-fought for, where our forefathers, the Kenyattas, Odingas and Tom Mboya shuttling between Kenya and the United Kingdom, the first sittings of the Lancaster House, the Littleton Constitution, the Lenox Boyd deal;

all sought just one thing; that the ordinary African Kenyan should be able to have an opportunity to determine his destiny through the ballot by choosing his representatives at the national and local level.

Mr. Speaker, Sir, people have died for Kenyans to have that right; families have been destroyed, people have been maimed. The fundamental question of democracy that we must ask is whether this right – the sovereign expression of the will of the Kenyan – can then be subservient to a decision that does not look at whether the will of the people when they went to the ballot was discernible, visible or clear as to what they wanted, but just looks at technicalities, stamps or watermarks. That is one thing that the Senate must deal with.

Mr. Speaker, Sir, I will move further and quickly to say that not only do we want a Supreme Court that is able to uphold the Constitution, because it is Article 1 that talks about the sovereign will of the people. But we also want an electoral management body that does not also pander to the whims of political parties – that they will do what the party that speaks loudest or that causes chaos or that has the biggest press conferences wants them to do – but what the laws asks them to do.

As I conclude, I would like to thank the President for speaking about what I believe in and what Jubilee stands for; what was the mantra in my campaign: '*siasa safi.*' That though Kenyans may have great diversity in their origins, we have a common goal in destiny. I am glad that he was able to speak against hate speech and to condemn remarks from both sides of the divide. Even as we campaign in this sensitive time, we must remember that after the 17th of October, we will have one Kenya and we must keep that country together. Some of us may not have the luxury to have been elected in counties of political homogeneity where everybody is of the same opinion. For instance, in Nairobi if everybody in Jubilee voted only for Jubilee candidates; and everybody in National Super Alliance (NASA) voted only for NASA candidates, I would not be in this House.

With that realization; that close to 200,000 of the votes I got were from people of different political persuasions in terms of political parties, I know that the politics that I must play must be politics that brings people together as opposed to politics that seeks to divide. I am glad that the many young people who were elected in this Parliament and the great Senators in this Parliament would be able to stand for that kind of politics.

Finally, I hope that we shall have a Senate based on the words of *Cicero* that "politics indeed is the art of the possible, not the battleground of absolute." That, in most cases we should be able to look across the aisle and agree; once we have been elected our work then is to serve the interest of the people. We will stand for what we believe in, in Jubilee, and we hope they stand for what they believe in. But many times we will have opportunities to close ranks and to agree for the betterment of this country; to stand for devolution and to ensure that the institutional arrangements we have are not always about fighting other arms of Government.

For a bird to fly, it cannot ask whether it needs the right wing or the left wing. Unfortunately, the last Senate and the National Assembly wasted too much time in fights between each other. We wasted too much time as an institution fighting the Judiciary and the Judiciary fighting us. I hope we can realise that separation of powers also asks us all to cooperate and to work together for the benefit of the Kenyans who have elected us into this House.

I look forward to a bold and accountable House that will protect and defend devolution, not necessarily by fighting governors, but by holding them accountable to their promises and to the dictates of the Constitution.

Thank you.

The Senator for Nakuru County (Sen. Kihika Susan Wakarura): Thank you, Mr. Speaker, Sir. Before I make my comments as far as the President's Speech yesterday, let me first of all begin by congratulating you for being elected the Speaker of the Senate. I also want to congratulate my colleagues who have been elected to the Senate. I also take this opportunity, being my maiden speech, to congratulate the people of Kenya for getting out there to exercise their civic duty, their democratic rights and for voting on August 8th, 2017. I also take this opportunity to thank the wonderful people of Nakuru County for their overwhelming support in voting me in as their Senator. I take this opportunity to let them know that as long as I am the Senator for Nakuru, I will work very hard to make sure that their voices and indeed the voices of Kenyans are heard, loud and clear.

As I now make my brief comments on the speech by His Excellency the President that he presented yesterday, first I thank him for that wonderful speech. When I watched him speak and also as I very diligently go through the speech, I am amazed by his level of soberness in the sense that given what he is facing; given what he has just gone through in the last two weeks. I am speaking about a sitting President who was voted for overwhelmingly, defeating his closest rival by more than 1.4 million votes, yet his win was taken away, not because it was ruled that there was fraud, corruption or that he did not indeed get those votes, but because of some technicality. I was amazed by the humility that was shown by my President.

Mr. Speaker, Sir, I would also wish to comment as well on the fact that as we look across to the other side of the aisle, I notice that our other colleagues have decided to boycott the sitting, claiming that the opening was an illegality. I would wish to very briefly respond to that and draw their attention to Article 142(1) of the Constitution of Kenya, on the term of office of the President, which states:-

“That the President shall hold office for a term beginning on the date on which the President was sworn in and ending when the person next elected President in accordance with Article 136 (2)(a) is sworn in.”

They cannot talk from both sides of their mouths; they cannot have their cake and eat it. They cannot celebrate the ruling of the Supreme Court which nullified the Presidential election, therefore ruling that the election never happened as far as the Presidency is concerned, and then coming in here to say that he is, indeed not sitting as President, given the powers he was given in 2013. So, if the election as far as the Presidency was cancelled, then he is in office because of the election of 2013. That is why he was legally able to come and open Parliament, which is within his rights. You also cannot claim under Article 134 that he is just in the Presidency temporarily, because as I stated earlier, that election was nullified.

Mr. Speaker, Sir, having said all that, I also believe that it is within their rights to continue to boycott; we would hope at some point they can join us so that they can represent their people and those that voted for them. But, ultimately, if they feel the need to stay out as long as they need to, then that is okay too. We do have the numbers; we do have the quorum and we will continue to represent those that elected us. We will continue

to work for them because we know and we believe that it is immoral to continue drawing salaries and benefits while you do not put it in a day's work.

Mr. Speaker, Sir, I would also wish to register my great disappointment with the Judiciary arm of Government in our country. I was very disappointed that the Judiciary – and let us talk here about the Supreme Court – were absent during the opening of Parliament. If the Chief Justice was away, then his Deputy could not have been too busy to make time to come in and be part of such a great event that only comes around once every five years. It makes one wonder whether they are reading from the same script as the NASA coalition. If they stayed away because they did not believe that it was a legal opening or there was an illegality like the folks across the aisle believe, then we are in trouble.

I would hate to infer much, but it is disheartening that at that level, even though the Chief Justice was away, the Deputy Chief Justice and the other judges could not find time to be present during such an important function in the country.

I thank the President for his Speech which talked about peace and unifying this country. That is why I am in awe of his humility. I cringe to think what would have happened had it been his opponent in office when the presidential results were nullified. We saw what happened during some of their nominations; when they did not go right. We have seen some parts of the country burn up. The President was able to come out immediately the Supreme Court gave its ruling and asked Kenyans to be peaceful, patient and wait to reconfirm them in office on 17th October, 2017.

I also take this opportunity to thank Kenyans for being peace-loving people. As much as they voted on the morning of 8th August, 2017 to elect their leaders - they elected President Uhuru Muigai Kenyatta as the President - their democratic right has been taken away on a technicality. They are still ready to brave the heat, rain and whatever conditions including hunger, on 17th October, 2017 and reaffirm that what they exercised on the 8th August, 2017 has not changed; it will not change. They will vote back President Uhuru as the President.

Mr. Speaker, Sir, I take this opportunity to ask the other coalition that as we speak about being patriotic Kenyans, we must exercise that not just in word but our actions. We have respected the Supreme Court ruling even though we have vehemently disagreed with it. So, I ask our colleagues on the other side that as we continue to respect that ruling of the Supreme Court and prepare for the repeat elections on 17th October, 2017 they need to stop moving goalposts. They need to stop demanding that if some commissioners are not removed from office the IEBC will not conduct elections or there will be no elections. I ask that we become patriotic and respect the will of the people this time round. We should stop moving goalposts and accept whatever the outcome of October, 2017 election will be.

I also want to thank His Excellency President Uhuru Muigai Kenyatta for always walking his talk. The Jubilee party was committed to make sure that more women are elected to leadership positions. Because they walked the talk, they were able to get three women elected as governors. My two colleagues and I were elected as Senators and many other women were elected as Members of the National Assembly and Members of the County Assemblies. That would not have been possible without the support that the party gave us.

As much that we have been able to get here - there were no elected women governors and Senators - we still have a long way to go as the President stated, but we appreciate the party and his leadership for this far that we have come. We appreciate the President and his deputy for believing in women leadership and giving us leadership positions in this House. I take this opportunity to thank them for believing and allowing me to become the Senate Majority Chief Whip and my sister, Sen. Fatuma, to become the Deputy Senate Majority Leader. I also thank them for what is coming to Sen. (Prof.) Kamar. I thank the party for walking the talk.

I am also excited to see the youthful Members of parliament and Members of County Assembly (MCAs) who have been elected from our party. I am grateful that as a country, we are moving forward and believing in women leadership and youth. We have also seen how well nominations have worked and that is why I hope in this term we will come up with legislation regarding the two-thirds gender rule. In my county, for example the current elected Woman Representative was a nominated Senator in this House in the last Parliament. The current elected Member of the National Assembly for Gilgil was also a nominated Senator in this House in the last Parliament. We also have our sisters here who have been nominated as Senators. I want to encourage you that following that path, the sky is the limit. So, as we continue to ensure that we get the gains for women, I hope this time we will realise the necessary legislation for the two-thirds gender rule to be achieved.

I also want to take note of the legislation that was done by the previous Senate. The Senate accomplished a lot. Having served as the former Speaker of Nakuru County Assembly, I saw how much the Senate supported the counties in protecting and promoting devolved governments. So, I am hopeful that in this current Senate, we shall work very hard to strengthen devolution frameworks for effective and efficient service delivery to our people in the counties. I am excited to be in this Senate and hopeful that it will be a more vibrant House. The tag of '*nyumba ya wazee*' was a bit hard to overcome as we campaigned to get elected to the Senate. Everybody wondered why we would want to go to '*nyumba ya wazee*,' but I am glad to hear that it is in a very positive way. I look forward to working very hard and I am sure everybody does and become the House that will provide very good and effective leadership in this country.

Again, I take this opportunity to thank the President for his wonderful speech.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you, Sen. Susan.

Sen. Hargura Godana.

The Senator for Marsabit County (Sen. (Eng.) Hargura Godana): Thank you, Mr. Speaker, Sir. I would like to first congratulate all of us, the Senators, for having been elected to this House to serve the great people of Kenya. I say 'elected' because even those said to be nominated are actually elected, because the constitution says they are elected from the party lists.

Mr. Speaker, Sir, I also want to thank you for having been elected as the Speaker of the Senate. It is my sincere hope that having been a governor and a part of the executive at the county, I am sure you come with a lot of experience that will enable us to strengthen devolution because what we are doing here is to make sure that the county governments take off smoothly, they provide the necessary legislation and resources. I hope your experience will come in handy for us.

I also want to humbly thank the great people of Marsabit County for giving me this opportunity to serve them for a second term in the Senate of Kenya. It is not lost on me the confidence they have in me. I will do to the best of my ability in serving them to make sure that I meet their aspirations. It is also my sincere hope that the second Marsabit County Government will go a long way in meeting the needs of the people of Marsabit County especially in terms of water, health and livestock. I hope this one will be better off in service delivery.

I would like to let my fellow Senators to know that we have a lot to do especially for this Senate because Article 96 states that we need to represent, legislate and oversight the counties. From the experience I had in the previous Senate, we need to do a lot of legislation to strengthen our oversight role and establish the necessary legislation which connects the Senate directly to the counties and county assemblies so that we perform the oversight role in an orderly manner, better than we used to. We had to summon governors some of whom went to court to resist the summonses. That needs to be streamlined in legislations which will enable the direct connection between the Senate and the counties.

We also had a problem of facilitation of Senators to perform the oversight role. I hope this Senate will put its mind to that and make sure that the necessary framework is developed so that we do not just sit here. We need to be facilitated to have offices and the necessary staff to go to the counties and see what is being done there instead of just waiting for the auditors' reports here. We also need to enhance devolution by making sure that we improve resource allocation to the counties because that is one area we need to fight for the counties.

Mr. Speaker, Sir, coming to the President's Speech, as my colleagues have said, it is very clear; Article 132(1)(a) of the Constitution requires the President should address the opening of a new Parliament and that is exactly what he did yesterday. My colleagues have argued that the President is in office serving the previous term because the 2017 elections were declared null and void. Even if, for arguments sake, it was temporary incumbency, still the opening of Parliament does not fall under powers which are restricted. He still has powers under the Constitution to open the Parliament. Our colleagues might have been misadvised not to attend the opening session.

I think the Speech made by the President was candid. He clearly thanked Kenyans for having expressed their will in a mature and patient manner while exercising their sovereign will during the elections. Kenyans did that and to my understanding, it was one of the most peaceful elections. He also reminded us leaders that we practice that sovereign will of Kenyans who have an urgent need for governance, service delivery, peace and security and prosperity.

The President also clearly indicated that Kenyans voted and they expect better livelihoods, access to good health, a more promising future for the children, decent jobs for all those willing to work and security. We need to take that will which we are exercising on their behalf very seriously and make sure that we meet the aspirations of the Kenyans.

I would like to agree with the President that Kenyans are making progress democratically especially in the way they elect their leaders. For the first time, we have women leaders as governors. I am sure they will have to prove themselves by service delivery to Kenyans. We also have elected women and youth in the Senate, the National Assembly, and county assemblies. These are groups that need to fully participate in

leadership of this country. The progress shows that Kenyans have faith in all sectors of the population and they just need to be given time and election conducted in a peaceful manner so that all people participate.

There is also the issue of peace and stability which is paramount for any country to progress. The President was very clear that we cannot allow our hard-won peace and stability to be disturbed. That is something which I think is in the heart of each and every Kenyan. For us to progress, we must jealously protect our hard-won peace and stability.

The President also talked about respect for the rule of law which is expected from every Kenyan. When the Supreme Court ruling was made, people were quick to say that it was the first court ruling in Africa to reverse the election of a sitting president. However, I did not hear people coming out and saying that it was the first time in Africa for a sitting president who won the election to accept the ruling of the court. That was the first time because it takes a humble person like the President to accept that. That is something that the President needs to be congratulated for but many people did not see.

We will have another presidential election on 17th October. The will of Kenyans will still carry the day and people will vote the way they voted. This time round, the Independent Electoral and Boundaries Commission (IEBC) should put its house in order so that the will of Kenya is not subverted because of somebody not following some procedures and processes because that will not be in the interest of this country, which is progress or stability. So, the IEBC should put its house in order and also all the parties should be reasonable when we go to elections. They should not come up with unnecessary bottlenecks so that it becomes difficult for the Kenyans to practice their sovereign will of carrying out the election to determine who they want to be their president.

Mine is to urge all Kenyans to participate in the coming elections. I also urge those who have been given the responsibility to conduct the election to do it in a manner that will reflect the will of Kenyans and not create unnecessary sideshows. That is what caused us to go for a re-election yet Kenyans expressed their will.

The Speaker (Hon. Lusaka): Thank you Sen. (Eng.) Hargura. Let us now have Sen. Cherargei Samson.

The Senator for Nandi County (Sen. Cherargei Samson Kiprotich): Mr. Speaker, Sir, from the outset, I congratulate you for being elected the Speaker of the Senate. I know that you will be looking forward to ensure that all of us deliver on our mandate.

Secondly, I thank both elected and nominated Senators. We look forward to working together well and ensuring that we deliver what we came to do here. I also commend the President for his speech. Before I talk about one or two issues that the President spoke about, let me take this opportunity to thank the great people of Nandi County for giving me the opportunity to be their Senator. I promise to work hard and deliver the best I can to ensure they get their rightful share of leadership in the Senate.

Thirdly, Mr. Speaker, Sir, I want to take this opportunity to thank the President for the Address he made to the Joint Sitting of Parliament yesterday and some of the issues that he raised are very important going forward because this is a progressive country. I want to singularly point out a few issues more so on the youth. I am proud today that being young as I am and I can see quite a number of us from the Jubilee Party that we are very young. It means that our President and the Jubilee Party is very

progressive and therefore, all other political entities as per Article 55(b), other than creating employment and other opportunities, is also providing a good environment of leadership.

I therefore want to thank the President because he has always made sure that the youth is the cornerstone of his Government and even going forward. We will renew his mandate on 17th October, 2017, to continue leading this country for his second and final term. We are very proud as young people.

I also want to say that there have been many people who have been saying this House is *nyumba ya wazee*. I also had to defend myself very seriously when I was running for the Senatorial post in Nandi County; that the Senate does not belong to *nyumba ya wazee*. The Senate is one of the Houses that have a lot of solomonic wisdom and secondly, the Senate also has all the age groups; both the young and the old. Therefore, this is the melting point of all necessary directions that can be given to this country. I look forward to that.

Mr. Speaker, Sir, there are many issues affecting the youth although he did not singularly mention them in terms of empowering the youth especially in creating opportunities. I want to call upon the governors at this point that since the President has shown the goodwill to the young people, we expect them also to look at the issues of 30 per cent in terms of youth access to opportunities. We should also stop this culture of giving tenders to young people like supplying water, flowers and toilet papers. This is a clarion call to our governors. As the president is pushing to ensure that youth are becoming the corner stone of transforming this country, I want to also call upon our governors to ensure there is 30 per cent access to opportunities by the young people so that they can be empowered.

Another issue in the President's Address was devolution. In accordance to Chapter 11 Article 174, some of these objects of devolution are to ensure that devolution works for all of us. I look forward as we begin this session of Twelfth Parliament that devolution will no longer work for the governors. I beg your indulgence because, Mr. Speaker, Sir, you have been a governor, therefore, you understand that expectations are high in terms of the expectations that we have. Therefore, I want to agree with the Senator for Meru County, Sen. Linturi that our people need to work. Since the governors have been sworn in and our county assemblies are functioning, I want to call upon them to continue discharging their duties. As a Senator, I want to call upon my colleagues to continue protecting devolution jealously and be dedicated religiously so that we ensure devolution works for our people.

Mr. Speaker, Sir, Sen. Dullo might remember during the last Senate, I presented many petitions at that time that to the Committee that was being chaired her and Sen. Haji. I can see Sen. Kang'ata; there was also immediate former senator, Kembi Gitura who was the Deputy Speaker, Sen. Mutula Kilonzo Jnr and many other Senators; they were members of that Committee. I appeared before them and presented that petition to the Committee.

I am looking forward also that as we grow devolution, we also create public participation and we let the people understand the role of the Senate going forward so that as we expound on Article 96 of the Constitution, we ensure that the Senate is open to the people and in the spirit of Article 10 on National Values and Principles of good Governance. We should also ensure that there is public participation on what we do, as

Senators, so that our people on the ground understand and ensure that we are going forward.

I want to thank the President because as somebody has noted in this House that this is the first time that at least most of the functions of devolution have been devolved. When you look at some of the jurisdictions like the federal government which borrows some similar attributes or characteristics from Nigeria, it took quite some time for some of these things to function. Therefore, we want to thank the Jubilee Government and the President for ensuring that devolution works.

I want to call upon the governors to ensure that devolution works for all of us and especially the *wanjikus* of this world. They should also prioritise development and also ensure they arrest the issues of corruption so that as we, Senators, work hard to ensure that we bring resources to the ground, they are not mismanaged and to ensure that they are utilized in the right way.

Finally, there is this independence of public institutions. In as much as the Jubilee Party side led by the President accepted the ruling of the Supreme Court, I want to salute him because it is hard for an incumbent president in this part of the world to agree with a decision of nullifying his election. When you read about “The State of Africa” by Martin Meredith and you look at African leaders or African despots, they would not agree to some of these issues. Therefore, in as much as we say the Supreme Court is the first of many, we want to also applaud our President for respecting that independence of public institutions.

It is key that when you look at the objects of setting up independent institutions under Article 249 of the Constitution, one of the objects is constitutionalism. If I am right, I was taught by Prof. Mutakha Kangu whom I have seen with part of NASA Coalition who said that every arm of government must have limitations and when you look at the principle of John Locke, one of the reasons governments had limitations was to ensure that we check excesses. Therefore, the Supreme Court particularly should not be allowed to be rogue. We must criticise them in a constructive and in a positive way so that we protect the constitutionalism that is provided for independence of all public institutions. Therefore, in as much as all of us agree with what the Supreme Court did, we have a right to criticise them.

I want to call upon our colleagues from the other political side; the reason why we were elected was to represent the interest of the people. The interest of the people is not to be represented by organising press conferences, taking tea and *mandazis* in hotels and ethnically profiling some of the officials in some of these independent institutions. I wish we could allow and ensure, just as the President called upon us, that we should have independence of public institutions. They are very critical and the moment we intimidate or coerce them, that is the moment they lose their independence. Therefore, this country needs to move forward.

We are headed to a very critical phase which is less than 35 days before we have the repeat of the presidential election on 17th October, 2017. I want to singularly thank the President because he condemned anybody who is a hatemonger or who is inciting Kenyans to violence. I therefore want to call upon all political leaders across the divide to be very careful and sensitive especially with what we post on social media, what we discuss in public *barazas* and even what we discuss with our spouses in our bedrooms so that we do not incite some of these things out of control. I thank the president for

condemning hate speech and we wish him well. On behalf of Nandi County, I want to assure him that 99.9 per cent of the electorate will vote for Jubilee Party.

The Speaker (Hon. Lusaka): Thank you Sen. Charagei. Sen. Olekina you can carry on.

The Senator for Narok County (Sen. Ledama Olekina): Thank you, Mr. Speaker, Sir. Let me first begin by congratulating you for being elected the Speaker. It can be an exciting period of time working with you, having been a governor before.

Secondly, I would like to thank the Maasai of Narok for having overwhelmingly voted for me. I was actually one of the few people who were voted by the Maasai people. It is quite sad that in this country we are so tribal. We talk about security yet we all know by referring back to the President's Address that most of the Maasai children in Laikipia County are not going to school.

We know that the people of Narok County have a lot of issues to deal with. We have a lot of problems on the issue of Mau Forest. I want to assure my colleagues that those things are dear to me. I will try and make sure that I advance them.

As I speak here today, I am so privileged. I am from a very small ethnic group. We are only 5,000 of us. However, the people of Narok County, especially the Masai people, decided not to look at the small number of votes that we, as the Eldamat Community, have. They voted for me with over 122,000 votes that enabled me to defeat the Jubilee candidate by over 40,000 votes. That is something that is very good.

I look up to a period in this country where we will steer away from these two issues that I have---

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

The Senator for Narok County (Sen. Ledama Olekina): Mr. Speaker, Sir, this is my maiden speech. It is not time for Sen. Murkomen's point of order. I am sorry.

Mr. Speaker, Sir, we are divided in this country. When I sit here, I can hear the hon. Senators. I thank my brother from Nandi County for having commended his President's speech. Looking at the speech, I find a lot of problems with it. Therefore, I am not going to say that it was a great speech. This is because we can write things, but what is practically happening on the ground to our people, is on the contrary.

The Masai people, particularly those from Laikipia, are suffering. Their cows are being killed every single day. I have witnessed and seen it on videos. I have spoken to my brothers and sisters on the other side talking about what devolution means to them. They say since they got this devolution, the Masai are more marginalized. I have seen cows being shot and a calf getting off. Cows that we heavily depend on have been left pouring milk. This is a sad state in this country.

I know that my colleagues on the other side of Jubilee party, think that we had a free, fair and credible election. I hold a contrary view. We talk about the importance of respecting the three arms of Government. In his speech, the President talks about making sure that they are respected. However, in this country, we do not do so. We talk about it in writing, but when we are out there - this goes to the President and the members of the Jubilee party - we attack the Judiciary. I want to request and urge the hon. Members to respect the three arms of Government and give them the respect they deserve.

I was encouraged when the Senate Majority Leader talked about this Senate taking its upper position. I look forward to a period where we, the Senators, can work

hand in hand to ensure that this is, indeed, the upper House. Devolution will not work if this Senate will not have the original jurisdiction on legislation. We are enslaved and held hostage by the fact that any legislation that we come up with has to go back to the National Assembly. During this period, I commit to working in a bipartisan way to ensure that we have a true upper House.

As someone from Narok County, we complained a lot about the issue of fiduciary duty in the face of the Governor. We are here castigating and talking a lot about the Auditor General yet we forget about the governors who we are supposed to check.

Mr. Speaker, you will agree with me that you had a free hand in creating budgets. There was no way for the Auditor General to audit the governor's secretariat budget. I hope that we will come up with legislation in this House that will look back at the transitioning era. We lost a lot of revenue during the transitioning period. You will forgive me for this, but that is why you could afford to use a helicopter when you were the governor. Nobody would ask you where you were getting all that money.

We, as Senators, must look forward to a period where there will be respect for the rule of law. I feel that the Jubilee administration has selective amnesia when it comes to respecting the rule of law. As we advance further in this Senate, I hope that we will not forget that we are here to represent the interest of Kenyans who have sent us here.

With regard to devolution, I look forward to a period where, we, as Senators, will be facilitated enough to enable us promote public participation. There is no point of us being in this House, rubberstamping things that we do not agree with yet our people are suffering on the ground.

Before I make my comments on the President's speech, it behooves us, as the Senators, to look at what the framers of the Constitution had in mind when they came up with the six elective positions. We need to understand why we have the position of the President, Senator, Governor, Member of the County Assembly, Women Representative and the Member of National Assembly. In my view, the framers of this Constitution wanted Wanjiku to feel the power of these leaders. It will be pointless for us to sit in this House and put rubberstamps claiming that we are doing it as prescribed by Article 96 of the Constitution. That is playing the role of oversight, yet we have limited powers.

We must fight to get original jurisdictions on legislation. I hope you will work hand in hand with the Speaker of the National Assembly such that the laws that we pass here do not have to go back to the National Assembly. I know some of this might require the amendment of the Constitution. This is supposed to be a House of union. In Narok County, we have 341,000 voters. In Nairobi, there are several million voters, yet we only have one Senator representing them. In my view, the Senate was meant to be a House of union because it brings us all together. I look forward to a period where we will develop legislation that will recognize all the 43 ethnic groups in this country. The issue of dominance and exclusion is what will divide this country further.

Mr. Speaker, Sir, this issue of dominance and exclusion is what will divide this county further. As I stand here, it behooves us as Senators, whichever side we are, to ensure that this independent institution like the Independent Electoral and Boundaries Commission (IEBC) does its job as required.

It is very sad when we talk about the independence of institutions yet those institutions do not respect the rule of law. IEBC has a court order and it does not respect court orders in terms of what the order said specifically. So, for us to have an election we

on this side of National Super Alliance or the opposition are looking forward to having an election and we strongly believe that Raila Amollo Odinga will become the next President of this country; but that aside, I want to challenge all Members here to ask IEBC to respect court orders.

Mr. Speaker, Sir, it is sad that every single time we have to go to court to get orders for things to be effected. That is the only time we will surely appreciate the check and balance system which is envisioned in our Constitution.

As I sit, I want to remind all Members here that this country is more important than an individual and whether or not we argue about the 17th October, 2017 being a day that we will hold our elections, from where I stand, I think it is important for the independent institution, the IEBC, to fulfill at least some of the requirements that the court gave orders to.

Finally, I want to remind my brothers and sisters from Jubilee that it is very sad that in this country instead of thinking about how to include everyone in Government, all we are thinking about is how to widen the gap between the rich and the poor. It should not be forgotten that the last election that we came from - people might say what they want to say but the truth will always remain the truth - Jubilee spent millions of shillings of public money to carry out the campaigns. These are things that once the audits are done, they can actually be seen out there.

Let us level the playing field and let us go out there and let Kenyans elect the person they feel will represent their interest. Do not forget that if we neglect our environment because of selfish interests, our ecosystem will die. The Mau forest is something so important that we must come up with legislation to ensure that we protect it. With regard to the revenue that comes from Maasai Mara, we must look back at the Public Finance Management Act (PFMA) because right now the Auditor General has no mechanism to audit the revenue collected. The only thing he can do is to audit what is indicated there as having been collected.

It behooves us as Members whose mandate is clearly to protect the interests of our counties to come up with legislation. For instance, the Governor to have a line item budget that can be audited effectively by the Auditor General.

Lastly, it is very important that we all pray for this country because whether or not the Orange Democratic Movement or Jubilee wins, we have forty five million people in this country who depend on us and we must always remember that chest thumping will not give us results. Most importantly, let us be there as agents of the 45 million people.

God bless you.

The Speaker (Hon. Lusaka): Thank you Sen. Olekina, yes Sen. Nyamunga

The Nominated Senator (Sen. Nyamunga): Thank you Mr. Speaker, Sir, for giving me this opportunity.

First of all, I want to thank the lord God almighty for giving us this opportunity to be in this House. It is the doing of God that we are here today.

Secondly, I would like to thank the people of Kisumu County. In the last Parliament, I had an opportunity to serve as a Women Rep for Kisumu County but this time I am a nominated Senator. I want to thank the people of Kisumu and the ODM party.

Thirdly, I would like to congratulate our Speaker. He has been given a very good and heavy responsibility to be the Speaker of this House. It is my prayer that the Speaker

knows and will make sure all of us belong to him. We are his and he is going to be non-partisan in carrying out the responsibility in this House.

It is good that in this House we are not very many like the National Assembly and so it gives us opportunity to deliberate and to debate on different issues that are affecting Kenya. It is very important that we note that we are here to protect devolution. For a long time, many parts of the country have been left out in terms of development. All of us know that, previously, if you were not politically correct, you would not get any development coming to your area.

Since most people from NASA or ODM we have been the watch dogs of Kenyans to make sure that things are done well, we did not have a lot of opportunity to have our areas developed but with devolution, the sky is the limit.

It is important to know how we carry out our responsibility as Members of the Senate. Senate is not a House of “*Wazees*” as simply put. It is a place where we should make sure that the country is run in a proper way and proper manner. We should make sure that devolution works. Devolution is one of the products of the new Constitution and I want to thank all the people who took part in making sure that we have a new Constitution because without the new Constitution, we would not be here today and we would not be representing our county governments.

Our Speaker happens to be a former Governor, he knows the challenges at the county levels and he knows many things that should be corrected so that the county governments can run well.

In the first Senate - I am sorry to say - most Senators were very sorry that they were Senators. Most of them wished that they were Governors and that made the work difficult for Governors because a lot of times, they were just witch hunting.

Now that we are here, I believe all of us came here wanting to be Senators and not Governors so that we have the opportunity to help the Governors for devolution to be realized. If devolution works the way it should, I do not think we will care who the President of Kenya is because we would have devolved a lot of resources for people at the county level and made sure that all the citizens are taken care of. People should get water, good health and proper infrastructure that is needed at the county levels. Therefore, it will not matter who the President is.

It is unfortunate that two things have not been fought in this nation. First of all, the issue of corruption. If we take corruption from the national government and take it to the counties, I am telling you, my brothers and sisters, we will not achieve anything. Sitting here, our priority is to make sure that we kill tribalism and corruption. Those two; we must kill them and I wish I could be the President of this country. I do not think it would take me much time to kill tribalism and corruption.

When the President was coming on board, people thought that this was a young government coming from the State House that is the best person to deal with tribalism and corruption. But in the last Government, that is where we saw corruption live. If you are going to continue like this in the 12th Parliament or Government, we are not serious as Kenyans. We must make sure that what is for the people is for the people and what is ours is ours. The national and county governments must work properly for us to achieve our purpose.

I have heard many comments on the just concluded elections. I am surprised that people speak as if they do not know the truth. You know how bungled the last election

was; from the sub county, that is MCAs to the Presidency. There was a figure of 54 per cent running across to over 170 Members of Parliament (MPs). That alone should signal to Kenyans that something went wrong. The vote difference between the two major presidential candidates was 1.4 million votes. That was a second pointer that something went wrong.

It is unfortunate that we can sit here and pretend that nothing went wrong: That, elections were done well and that IEBC did what they were supposed to do. There was a lot of manipulation. We all know that. If we want to take Kenya forward, let us be very serious with what we are doing. We will have a repeat of the elections but we cannot have it with the same IEBC officials who participated in the anomalies that we witnessed. We will not take that. I believe Kenyans know that we must do the right thing. We will give the Government or Jubilee time to make sure that they do not interfere with elections and the IEBC. They are the same people who said that the IEBC should be independent yet they are the same people who are manipulating it. It is known. We are not pretending.

If you look at the way the President reacted on Saturday after the court ruled on Friday, it was such a shame that a Head of State of a country like Kenya, in the 21st Century can speak and be very abusive to an independent institution like the Judiciary. You want to tell us that it was right; that, the President is trying to unite Kenya? Let us stop pretending and be very serious. If the IEBC remains the way it is, there will be no elections. We must make corrections. There are people who should not be there. We all know them. In their presence, it will be a challenge for anybody to go to the elections because we will come out with the same results.

Last time, the Jubilee Government was going round saying that they will have a big gap at 54 per cent. That is exactly what we saw. This time, they are saying it will be 62 per cent. We want to see if that 62 per cent is what they are planning to attain.

(An hon. Senator spoke off record)

You are saying 70 per cent. Please; address the Chair. You are also saying 62 per cent. So, you have come with 62 per cent. The other time it was 54 per cent yet you want us to go to the elections again? We cannot! It is not possible. You know it and we know it, too. We will be serious with whatever we do. Kenya is bigger than all of us. We should love each other as members of the same nation. If you go outside and meet a Kenyan, you do not even ask them where he or she comes from, you tell them, “you are from Kenya, wow that is great” and you start speaking to them. We do not want a situation where we are enemies amongst ourselves. We must develop Kenya and make sure that institutions work well. We must make sure that the three independent arms of Government work well.

Mr. Speaker, Sir, I urge you to ensure that the two Houses work harmoniously. It will depend on the two of you, especially you, to move this House forward. We want to get the rightful position. Whatever we deliberate upon should be taken seriously. If it is a money Bill, as they put it, they say it must go to the National Assembly. I was a Member of that House. However, you should not gag most of the Bills that will be coming forward. We should be serious so that we give Kenyans the best. As we sit in this House and deliberate on various issues, let us remember that we are Kenyans. We may differ on principle but most importantly, we should remain one people and one nation.

Finally, Mr. Speaker, Sir, I thank you for this opportunity to make my maiden speech.

The Speaker (Hon. Lusaka): Thank you, Sen. Nyamunga. Let us hear from Sen. Kang'ata

The Senator for Murang'a County (Sen. Kang'ata): Thank you, Mr. Speaker, Sir for giving me this opportunity. My attention is drawn to Paragraph 16 of the Address by His Excellency the President yesterday. In that paragraph, the President said that he does not agree with the decision of the Supreme Court. However, he respects it. The President did not give details why he disagrees with it. Allow me to give my reasons on why that decision was a step backwards, jurisprudentially.

I draw your attention to Article 49 1(f)(i). With your kind indulgence, let me read it. It states as follows:

“An arrested person has the right-
(f) to be brought before a court as soon as reasonably possible, but
not later than-

(i) twenty-four hours after being arrested.”

When this Constitution was enacted in 2010, several litigants went to court seeking an interpretation of this Article and arguing that they should be released on the basis that they had been detained for more than a 24-hour period. The jurisprudence that was set during that period provided that whenever a suspect is arrested and he or she is detained beyond 24 hours, notwithstanding the gravity of the offence, any trial subsequent to such an arrest was rendered a nullity.

Mr. Speaker, Sir, I refer you to the decision of *Albanas Mutua Mwasia*. In that case, the accused had been charged with the offense of murder and he was released notwithstanding that there was a person who had died and there was grave commission of a major act. Several other authorities followed that case including the so-called case of Godfrey.

In a nutshell, many people were released as a result of the court interpretation of this Article. However, after a period of time, a new jurisprudence was set out which tended to overthrow that original jurisprudence. Somebody argued before the Court of Appeal that it is very unfair for courts to be releasing suspects who have been detained for more than 24 hours, notwithstanding that they have done major wrongs in the society. Why?

First, this is because the courts were not taking into account the rights of the victims of the crime. Secondly, you may have a situation where people who have done such grave and bad things may conspire with the police and cause to be arrested to stay for longer than 24 hours. Therefore, you vitiate justice through a simple technicality. The courts proceeded to say that if you are arrested for more than 24 hours, your case will still proceed, you will be arraigned in court and the case will not be rendered a nullity. However you may get other reliefs like compensation.

My point is, that was an era which was brought about by this verdict where you find a situation where yes, the Independent Electoral and Boundaries Commission (IEBC) may have breached the Constitution and the electoral laws, but you must take into account the right of the innocent voter and other participants like, for example, His Excellency President Uhuru Kenyatta, who was not a party to that breach of the

Constitution and law by the IEBC. The so-called breach of the Constitution or Elections Act should also take into account the rights of innocent parties in that process.

In this instance, President Uhuru Kenyatta was an innocent party. In fact, the Supreme Court made a finding to that effect. Therefore, it was very unfair for the Supreme Court to nullify the election and fail to take into account the rights of President Uhuru Kenyatta. The best relief would have been either to offer compensation to Rt. Hon. Raila Odinga, as per the jurisprudence that was settled by the Court of Appeal when interpreting Article 49(1) (f), in that case, where accused persons were held for more than 24 hours.

Based on that, I think the standard that was set by this case may be very dangerous. We may find a situation where people will conspire with the officials of the Independent Electoral and Boundaries Commission (IEBC) in subsequent elections. We will have cases where forms are not signed or stamped and then people go to court and nullify that election. The best standard was the one that was established by the Supreme Court in 2013. The jurisprudence by the 2013 Supreme Court was very simple. You may find a breach of the Constitution or law, but you must demonstrate how those breaches materially affect the results.

That is a very good principle. However, the one that has been set out by the Supreme Court now will open a Pandora's box. Innocent people who campaigned are now being exposed to nullification of elections notwithstanding the fact that they were not party to those irregularities.

I pray that one day we will have a more progressive Supreme Court that will apply its mind to the correct jurisprudence of elections. This is because we are referring to the rights of voters and President Uhuru Kenyatta who the court has clearly said is an innocent party. The Executive should also have foresight when it comes to some of the appointments. I was a Member of the Justice and Legal Affairs Committee in the National Assembly and raised an objection to the appointment of one of the senior persons who sits in that Supreme Court. My warning was not taken into account, but I wish it was. Most likely, we would not be encountering the problems we have now.

When you look at how other democracies appoint Supreme Court judges, they are usually very strategic. In the United States of America (USA), for example, candidates are interviewed or analysed to determine their philosophical foundations. If you are a democrat you may find a judge who is conservative on issues of abortion or gay rights. If you are in government, you will not appoint that kind of judge. If you are a republican and believe very strongly in family values, like I do, you will not appoint a judge who believes in abortion. If that is happening in advanced societies like America, why did we not take that into account when we were appointing the Chief Justice and the Deputy Chief Justice?

We should have interrogated these people to know their political leanings and history when it comes to determining matters. I foresee a situation where they are going to act like the civil society, going forward. They will arrogate themselves powers even to legislate. We know of judges who legislate from the bench. They start taking away powers that are bestowed by the Constitution on the Senate and National assembly. I, therefore, urge Members to be circumspect on appointments.

Mr. Speaker, Sir, may I end by thanking you for the good job you have done today. I think this is your maiden appearance here, sitting substantively. On behalf of the

people of Murang'a County, who you once served as a District Commissioner (DC) when I was a councillor, we want to congratulate you. We feel like you are one of our own.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, it is now 6.30 p.m. and time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday 14th September, 2017, at 2.30 p.m.

The Senate rose at 6.30 p.m.