

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Thursday, 28<sup>th</sup> September, 2017**

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

*[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]*

### PRAYER

### PAPER LAID

BUSINESS FOR THE WEEK COMMENCING TUESDAY,  
10<sup>TH</sup> OCTOBER, 2017

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, pursuant to the provision of Standing Order No. 46, I beg to lay the following Paper on the Table of the House, today, 28<sup>th</sup> September, 2017:-

Business of the senate for the coming week.

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

**The Temporary Speaker** (Sen.) (Prof.) Kamar): Thank you, Senate Majority Leader. Hon. Senators, can we now switch from the Order Paper that is written 'Order Paper' to the Supplementary Order Paper? That is what we will follow from now.

Next Order.

### NOTICES OF MOTIONS

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to give notice of the following Motions:

ESTABLISHMENT OF SELECT COMMITTEE ON  
THE ELECTION LAWS, 2017

THAT, aware that the country is still in an election cycle, arising out of the requirement for a fresh Presidential Election in October, 2017; further aware that there is need to legislate on and address certain legal lacunas and in compliance with judicial decisions asking Parliament to legislate on certain matters to ensure that the elections conform with the

provisions of Article 81 of the Constitution on general principles for the electoral system; noting that such election-related matters would ordinarily require consideration by the relevant Committee of the House which is yet to be established; further noting the limited period of time before the date of the said fresh election; cognizant of the urgent need to consider and conclude with all matters relating to the elections to allow the Independent Electoral and Boundaries Commission ample time to implement any changes related to the review of the election-related laws;

NOW THEREFORE, pursuant to the provisions of Standing Order No.134 (3), (4), (5) and Standing Order No.136 of the Senate, this House resolves -

(a) to establish a Select Committee to be known as the **Select Committee on the Election Laws, 2017** comprising of not more than nine Senators, to examine and undertake public participation on the Election Laws (Amendment) Bill, (Senate Bill No. 3 of 2017) ;

(a) that, the Committee comprise the following Members-

1. Sen. Fatuma Adan Dullo;
2. Sen. Paul Kimani Wamatangi;
3. Sen. Johnson Arthur Sakaja;
4. Sen. Naomi Jilo Waqo; and
5. Sen. Aaron Cheruiyot.

(c) that, the quorum of the Committee be the Chairperson and two other Senators; and,

(d) that, the Committee considers the Bill and reports to the House on or before **Tuesday, October 10<sup>th</sup>, 2017**.

#### ESTABLISHMENT OF SPECIAL NHIF FUND FOR PLWD

AWARE that about 15 per cent of the Kenyan population are persons living with disabilities;

APPRECIATING that the Government has taken several measures to avail certain privileges through the National Council for Persons with Disabilities (NCPD) to registered persons living with disabilities;

NOTING that the National Hospital Insurance Fund (NHIF) is a contributory health insurance cover and the remittance of contributions for persons living with disabilities by Government for the cover, is not among the privileges extended to persons living with disabilities;

CONCERNED that most persons living with disabilities have difficulties engaging in gainful income generating activities that would enable them pay the contributions to NHIF, hence are without any medical cover;

FURTHER CONCERNED that many persons with disabilities are unable to access medical services leading to high mortality rate;

NOW THEREFORE, the Senate urges the National Government to put in place the following measures through the Ministry of Health and the Ministry of East African Community, Labour and Social Protection-

(1) Undertake vetting of all persons living with disabilities in Kenya to ascertain those who are unable to afford payment of contributions to the NHIF; and

(2) Set aside a special fund for remittance of contributions to NHIF for those persons who are living with disabilities and cannot afford to pay the contributions.

### STATEMENTS

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Hon. Senators, we will allow Statements to be requested first. Hon. Senators, whoever would like to request for Statement can go ahead. We will then reply to the Statements afterwards.

#### ALLEGED DUMPING OF ASBESTOS IN NGULU- KIKUMBULYU, MAKUENI COUNTY

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. I rise to request for a Statement from the Senate Majority Leader on the dumping of asbestos in Ngulu-Kikumbulyu in Makueni County. In the Statement, the Senate Majority Leader should state the following:-

(a) Whether the National Environment Management Authority (NEMA) is aware of the dumping of asbestos in Makueni County by West Africa (Kenya) Limited;

(b) Whether NEMA has approved the dumping of the said substance at the site;

(c) Whether an Environmental Impact Assessment (EIA) Report on the matter has been submitted and published as required by Section 58(1)(2) and 59 of the National Environment Management and Coordination Act;

(d) Whether the necessary safety regulations have been complied with in accordance with the Act;

(e) Whether any immediate measures have been taken to inform the community living in the area on the hazards of the same dumping site, and; lastly,

(f) Whether there are any adverse effects of asbestos to the general public and explain if there are any mitigation measures the company has put in place to safeguard the community against the said effects.

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Thank you, Senator. May I request the Senate Majority Leader to tell us when he will issue the Statement?

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, first of all, this is a very serious Statement; it touches on a serious issue both towards the environment and health. Therefore, I request Sen. Mutula Kilonzo Jnr. to give us three weeks so that we bring a comprehensive Statement.

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Which day of the third week?

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, the Thursday of the third week from now. I have seen Sen. Mutula Kilonzo Jnr. nod because he understands the difficulties when we do not yet have the Chairperson of the Committee. However, I undertake to bring the Statement the third Thursday from next week.

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Hon. Member, are you okay with that?

**Sen. Mutula Kilonzo Jnr.:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Senate Majority Leader, do you have another Statement to issue today?

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 10<sup>TH</sup> OCTOBER, 2017

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, pursuant to the provisions of Standing Order No.46, I would like to issue a Statement on the business of the Senate for the coming week.

Pursuant to Standing Order Nos. 28 and 29, I will, at the appropriate time, and as listed in today's Order Paper, move a Motion of Adjournment for the Senate to proceed on recess this Friday 29<sup>th</sup> September, 2017 as per the Senate Calendar that the House approved yesterday. We shall resume sittings on Tuesday 10<sup>th</sup> October, 2017.

As Senators will note in the Supplementary Order Paper, The Elections Laws Amendment Bill (Senate Bill No.3 of 2017) is scheduled for First Reading. The main aim is to address some of the challenges identified during the last elections held on 8<sup>th</sup> August, 2017. Subsequently, there is a proposal as listed in the Order Paper, to constitute a Committee to review the Bill and engage the public and other stakeholders during the recess period.

We hope that the Committee will assist to take the process forward. I take this opportunity to appeal to the Members of the Committee to demonstrate patriotism and selflessness in considering the Bill.

Hon. Senators, allow me to thank and commend you all for the good work done so far since the commencement of this session. I am certain that we shall continue in the same spirit when we resume.

Hon. Senators, I now take this opportunity to wish you a peaceful recess and successful campaigns.

I thank you and hereby lay the Statement on the Table.

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

**The Temporary Speaker** (Sen.) (Prof.) Kamar: Thank you, Senator. Next Order.

**PROCEDURAL MOTION**

REDUCTION OF PUBLICATION PERIOD FOR THE  
ELECTION LAWS (AMENDMENT) BILL, 2017

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to move the following Motion:

THAT, pursuant to Standing Order 128, this House resolves to reduce the publication period of the Election Laws (Amendment) Bill, (Senate Bills No. 3 of 2017), from fourteen (14) days to one (1) day.

Madam Temporary Speaker, as I have already indicated, we shall substantially debate this when we come to the formation of the Committee which is hereby provided for under Order No.10.

This House has again been called upon in such a very historic moment to be the midwife of good order and rule of law. Sen. Fatuma Dullo has brought to this House a very important Bill. It has been certified by your office as an urgent Bill. Considering that elections will be held in the country in 28 days from today, this House has a responsibility to accommodate any Bill brought by any Member to this House and particularly when it is of such enormous impact in so far as the elections are concerned.

Madam Temporary Speaker, there is a lot of debate about this proposed Bill out there but it should be known that this is a House of rules and debate. It is an august House and a House of honour and representation that gives every Kenyan an opportunity to say what they want to say through democratically elected representatives and to have an opportunity to appear before the democratically elected representatives and make their case.

Madam Temporary Speaker, our Standing Orders provide for flexibility to enable this House, when there is an urgent matter that needs to be considered, to give room for publication to be shortened from the 14 days required by the Standing Orders. That room is only given by leave of the House. This House must vote by majority to allow this Bill to be published in such a short time.

First of all, there are many issues that people would like to say about this Bill to the public. However, since we will have a Motion in Order No.10, I encourage Members to take the shortest time possible to pass the Procedural Motion and then come back and ventilate on the formation of that Committee in Order No.10.

Madam Temporary Speaker, this House must rise to the occasion. I have heard objections by Members of this House in the public about why they do not like this Bill and why they would not like us to publish it. That is welcome. However, there is a procedure in this House of expressing dislike, changing law and providing alternative suggestions. This is a great opportunity for us to do so. Even if we are going on recess, we have an opportunity to use these few days to make sure that the elections of 26<sup>th</sup> October, 2017, are free, fair and credible. We want to see this county move forward.

I do not know any person who is happy to see Kenya in the situation that we are. The Constitution contemplated that there would be such a situation, but the political environment and the social fabric of this country cannot continue holding a situation of suspense of political crisis or economic sabotage for too long. Therefore, this Senate has a great opportunity through the formation of this Committee to look at this legislation and come up with ways and mechanisms of making the elections of 26<sup>th</sup> October, 2017 even better.

I will later on congratulate Sen. Dullo for her great suggestions. It was the late Hon. Wamalwa Kijana who said that a good idea can give way to a better idea. This is an opportunity for us to take the good laws that we already have and make them even more perfect as we seek to make the union and unity of this country to be more perfect.

With those many remarks, I move this Motion. I request Sen. (Eng.) Mahamud of Mandera County to second this Motion.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): I do not see requests here for anybody to contribute.

*(Question put and agreed to)*

## **BILL**

### *First Reading*

THE ELECTION LAWS (AMENDMENT)  
BILL (SENATE BILLS NO.3 OF 2017)

*(Order for First Reading read – Read the First  
Time and ordered to be referred to the relevant  
Departmental Committee)*

Next Order.

## **POINT OF ORDER**

CONCURRENCE OF SPEAKERS ON TABLING OF  
THE ELECTION LAWS (AMENDMENT) BILLS

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Madam Temporary Speaker. I am seeking your direction on this particular Bill. I have noticed that the Senate Majority Leader has already gone to other Motions before certain things are resolved. This morning, I came across a similar Bill, Supplement No.148 - National Assembly Bill No.39 of 2017 titled “Election Laws (Amendment) Bill 2017”. The said Bill has been proposed by Hon. William Cheptumo. It is dated 22<sup>nd</sup> September, 2017. The Bill published by Sen. Dullo, in my view after reading, appears to be the same Bill that is currently before the National Assembly.

My objection is as follows and I beg of you to issue directions. There is a reason. In the Security Laws (Amendment) Bill 2014, your predecessor, Hon. Ethuro, was asked to confirm whether he had given his concurrence for tabling of the election of Security Laws (Amendment) Bill 2014 before it was tabled before the Senate. That matter ended up in the court. It transpired that there was no such concurrence. However, under Article 110 of the Constitution, you are required to have given consent for this Bill to be tabled either at the Senate or the National Assembly.

Madam Temporary Speaker, now we have a situation which I am not sure is the practice in Parliaments anywhere in the world, where a Bill is published and tabled in the National Assembly and a similar one is published and tabled in the Senate.

Sen. Murkomen has mentioned there will be election on 26<sup>th</sup> October, 2017. However, that does not mean that we take shortcuts for purposes of expediency. My concerns and the reason I am seeking for those directions is that this is a matter that might even end up in court. The Bill tabled in the National Assembly says it does not concern counties. It is the same Bill as the one published by Sen. Dullo. The one tabled before the Senate says it concerns counties. We cannot have it both ways.

Madam Temporary Speaker, to me, what is more important is not the fact that somebody appears to be in a hurry to pass laws for purposes of the elections that are coming. My concern is, on what basis do we have a National Assembly Bill and a Senate Bill moving concurrently for purposes of elections and yet these are matters that concern the jurisdiction of the Senate?

At the point where we will pass or reject this Bill, how are you going to transmit this Bill to the National Assembly? How will they transmit it to the Senate? Even before we form the Committee, you need to inform the country how you allowed this anomaly to come to the Floor of the Senate when it appears that under Article 110 of the Constitution, there should have been either concurrence so that this Bill either originates from the National Assembly and ends in the Senate or begins here and ends up in the National Assembly, for purposes of ensuring we do not have a contradiction in law.

Lastly, it is absolutely important that you give those directions because the next Procedural Motion is a Committee which you have approved as a Motion which consists only of Members of the majority side and not the minority side.

We need your directions so that as this Motion proceeds and as you reduce the time to whatever time – whether an hour or a day – those are directions that must be given so that we know whether there has been violation of the law. It concerns me that the amendments that have been tabled in the National Assembly might even proceed for assent by His Excellency the President before you complete the work that you are doing in the Senate. Are you engaging us in an academic exercise? Is this something that you are doing to fill in the gaps of finding something to do for the Senate?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. I have got your point. I was listening to you very keenly because I was looking for where you are going. That is why I was very liberal in giving you time to discuss. This Bill is before us for the First Reading. We are all aware that when a Bill comes for the First Reading, there is no debate. It is just read and committed to the relevant departmental committee.

Secondly, the matters or business of the National Assembly are independent of our business and they are not before us. So, we do not want to assume that whatever is before them must come here.

Let me also put it clearly for all Senators that it is true that I have done due diligence on this Bill as the Temporary Speaker, as required by the Standing Orders. That is why I have allowed it to be introduced in the House. The Motion on this Bill has been moved and seconded. So, that has been done.

I was not clear if you were asking whether I did the due diligence or whether we have had concurrence or not. I want to give you an assurance as a House that we have done due diligence and this Bill is properly before the House.

Next Order.

## MOTION

### ESTABLISHMENT OF SELECT COMMITTEE ON THE ELECTION LAWS, 2017

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to move the following Motion:-

THAT, aware that the country is still in an election cycle, arising out of the requirement for a fresh Presidential Election in October, 2017; further aware that there is need to legislate on and address certain legal lacunas and in compliance with judicial decisions asking Parliament to legislate on certain matters to ensure that the elections conform with the provisions of Article 81 of the Constitution on general principles for the electoral system; noting that such election-related matters would ordinarily require consideration by the relevant Standing Committee of the House which is yet to be established; further noting the limited period of time before the date of the said fresh election; cognizant of the urgent need to consider and conclude with all matters relating to the elections to allow the Independent Electoral and Boundaries Commission ample time to implement any changes related to the review of the election-related laws;

NOW THEREFORE, pursuant to the provisions of Standing Order 134 (3), (4), (5) and Standing Order 136 of the Senate, this House resolves:-

- (a) to establish a Select Committee be known as the **Select Committee on the Election Laws, 2017**, comprising of not more than nine Senators to examine and undertake public participation on the Election Laws (Amendment) Bill (Senate Bill No. 3 of 2017);
- (b) that, the Committee comprise the following Members-
  1. Sen. Fatuma Adan Dullo;
  2. Sen. Paul Kimani Wamatangi;
  3. Sen. Johnson Arthur Sakaja;
  4. Sen. (Rev.) Naomi Jilo Waqo; and
  5. Sen. Aaron Cheruiyot;
- (c) that, the quorum of the Committee be the Chairperson and two other Senators; and,
- (e) that, the Committee considers the Bill and reports to the House on or before **Tuesday, October 10<sup>th</sup>, 2017**.

Madam Temporary Speaker, I alluded earlier that this is a very important Bill. Sen. Mutula Kilonzo Jnr. has raised important issues and I concede that they are. You have also said that they are important only that he raised them early. This House recognises and respects Members when they become diligent and hardworking to come up with such Bills in the House.

It must be remembered that this is a private Member's Bill which has been brought here by Sen. Fatuma Adan Dullo. She is a distinguished lawyer, the elected



Senator for Isiolo County and also, with great respect, the Deputy Majority Leader in this House.

Madam Temporary Speaker, I have perused through the Bill – there will come a time when we will debate this Bill – and there are a lot of stories out there about this Bill which I want to clarify. First, I want to make it abundantly clear that we are disabled in this House in the manner in which we can consult with the Minority. Unfortunately, the Minority side does not have leadership, because we do not know who is the Minority or Deputy Minority Leader; neither do we know who is the Minority or Deputy Minority Whip. We assume or, as it is said in the corridors, that the Minority side are in such a fight over the leadership of their side to the extent that they are completely unable to agree on who will lead them. I have quipped elsewhere that if the Minority cannot even agree on the positions of House Leadership, what if they were in the Majority side? What if they had an opportunity to lead this country?

Madam Temporary Speaker, I want to urge the Minority, especially Sen. Mutula Kilonzo (Jnr.), who is seated here; that instead of them lamenting over the absence of committee members in these Select Committees, they should meet urgently and agree on their leadership or, by way of consultation, write to us to add four Senators from the Minority side as required by law to make this Committee a nine-member committee. At any given time when they give us those names, we shall approve them and we can even amend the Motion today as it is still being debated.

A Member can move an amendment to that Motion to add four Members from the Minority side. In fact, I dare say that if the four Senators who are seated in the House right now are interested in serving and making great contributions to their Republic, they can caucus quickly and come up with an amendment for us to include the four names of the Senators of the Minority side. This is because we want to have nine Senators sitting here to discuss this very important legislation. Unfortunately, sometimes the work of this House is disabled by persons sitting out there who have no role in this House. They are making it impossible for these hon. Members on the Minority side to represent their people from the counties they come from by sitting in these committees to make great contributions.

Second, Madam Temporary Speaker, we must understand the seriousness of the fresh elections ordered by the Supreme Court of Kenya by a decision of the majority. Forget about the dissenting opinions of Justice (Prof.) J.B. Ojwang and Justice Njoki Ndung'u, which were well reasoned. These dissenting opinions do not form part of the decision of the Supreme Court of Kenya. On the decision of the majority of Judges of the Supreme Court of Kenya, there are so many things that confused the judges.

I have had occasion not just to read the judgment, but to also sit in the Supreme Court of Kenya for 12 hours, listening to every judgment that was read. The judges were struggling to find where to place the complementary system of transmitting election results. The judges fell short of saying “had we been given a complementary system---.” In fact, they ordered that the Independent Electoral and Boundaries Commission (IEBC) should go back and put in place a complementary system.

When we say that the IEBC should put in place a complementary system, we are actually saying that there is absence of proper guidance to the IEBC on how they are going to have a complementary system of transmitting results. That is why I congratulate the initiator of this Bill because it is a very brilliant Bill that retains the electronic

transmission of results while at the same time providing the manual system of transmitting results.

For the record and for purposes of informing the public, people must know that when we went to vote on the 8<sup>th</sup> of August, 2017, and all Senators seated in this House, including Sen. Orengo – who was in another meeting with me earlier this morning – all of them were elected by citizens by casting a manual vote in a polling station, which vote was then counted manually. Actually, when you go to the polling station, you are identified, you are given a manual paper, you walk manually, you sit down manually and you mark the ballot paper manually. From that manual marking, you then go manually and drop the ballot paper in a box manually, not electronically.

When the Election Day is over, you recall the manual box, open it and you put all the papers on a table at the polling station and they are then counted manually; one, two, three, four. Ultimately, even the calculation is manual. In rare cases do people use a calculator. After the elections are announced, the votes are recorded in a form, which is filled manually. It is only at that point in time that you retain the original manual form and transmit a copy electronically to the National Tallying Center (NTC) and the Constituency Tallying Center (CTC).

Therefore, Madam Temporary Speaker, in an election process which is 80 to 90 per cent manual, this Bill is trying to say that we should preserve the original documents which were used to procure the results. That is the first point. The second point is that there has been confusion as to where can we have fresh elections; who seats to determine fresh elections and how fresh elections are going to be done. The Supreme Court of Kenya gave its opinion in 2013. What this Bill does is to reduce that opinion into law so that there is no doubt as to who can participate, at what stage and at what instance.

Madam Temporary Speaker, another very important provision in this Bill is with regard to the management of the IEBC. There are people who are saying that Jubilee or maybe Sen. Dullo, who has come up with this Bill, wants to chase away the Chairman of the Commission; far from it! We are human beings; we are not creatures or machines. Sometimes, even machines fail. Sometimes, you may get flu on a day that you are required to announce the results. So, it is important to put contingency measures such that if the Chairperson is not there, the Vice-Chairperson should be able to announce the results. If two or three commissioners are sick, the Commission must continue because the exercise they are engaging in is very serious for the country and the time limits provided by the Constitution cannot be postponed.

Kenyans must remember that we are going back to an election and we are spending billions of money. We are spending over Kshs10 billion to repeat elections that should have been completed on 8<sup>th</sup> August. But be it as it may, as we obey the decision of the Supreme Court of Kenya, we must provide the requisite infrastructure. How is it possible for our colleagues from the National Super Alliance (NASA) side to say that we cannot change law to make the IEBC succeed, yet we need the money through a Supplementary Budget, which is law, to give the IEBC money to do the elections?

It is only Parliament – and we thank God that Parliament is sitting – that can do this. The National Assembly is sitting to pass the Supplementary Bill. Assuming that there was no Parliament and that the National Assembly was not sitting, who would have given money to the IEBC to carry out the elections? We would be having a crisis. So, we

should be celebrating the fact we have Parliament in place, it is making laws and it is making decisions that are going to assist this House to move forward.

So, Madam Temporary Speaker, I want to assure the nation that the law which has been proposed does not, in any way, change even a single procedure of voting in the Republic. It does not change in any way the printing of ballot papers or the procedures. The procedures will remain exactly the same as those used by the IEBC on 8<sup>th</sup> August. If anything, this Bill is making it clearer and protecting it in law. In fact, one of the celebrated amendments as provided for here is the one in Section 83 of the Act, which makes it clear that when you have an election and when there are procedures which are supposed to be followed in that election, the courts and anybody who is challenging the elections must not look at the form alone; but they must look at the form and substance.

This is to ensure that there is a combination of what are the qualitative mechanisms that you are looking at and what is the quantity of the votes that is affected by that qualitative process. Therefore, this is a Bill that just makes it more succinctly clear for the Supreme Court of Kenya to avoid situations where Justice Mwilu read in court that the Chairman of the IEBC wrote a letter and addressed the nation that he was unable to verify the results; or that he was unable to do that.

*[The Temporary Speaker (Sen. (Prof.) Kamar left the Chair]*

*[The Temporary Speaker (Sen. Kang'ata) in the Chair]*

That process now need not be left to guess-work because we are providing a clearer procedure of law that will accommodate this process. Therefore, it is surprising to have senior legislators – men and women who have been in this House or the “lower” House – to oppose such a great initiative.

Mr. Temporary Speaker, Sir, what we have done today is actually to give credibility and meaning to the chorus by our friends that: “No elections without reforms.” Although our friends are talking about no elections without reforms, it is only we in the Jubilee side who are saying; let us do reforms and provide the infrastructure through law, here in Parliament, for us to have a forum to debate and find out what laws we should amend so as to move forward.

Thirdly, Mr. Temporary Speaker, Sir, we have seen concerns by members of the public, the clergy and civil society about all these amendments. We welcome those concerns and I ask the committee which is being formed today to accommodate those concerns that have been raised by the people of the public. We want to see the clergy, the civil society and political parties appearing before the Committee. We want to see robust proposals being provided through this forum. I have sat in similar committees before; I sat in the committee that came up with the amendments to this law.

It must be remembered that in 2012, when this law was being made, very few of us had the opportunity to be in Parliament. In fact, I dare say that apart from Sen. (Prof.) Kamar, who was on the Chair earlier; and Sen. Haji, there are not more than two or three people who sat in 2012 to pass the elections law as it is. Yet some people are telling us that we should have sat down together to do the law; and that we should not propose any amendments to the law. All these amendments that are provided for in this House are done by Members like Sen. Fatuma Dullo or sometimes also by the political parties. We

now have an opportunity, through public participation under Article 118 of the Constitution and in our Standing Orders, to robustly engage in terms of making sure that this legislation makes sense for the Republic.

Therefore, Madam Temporary Speaker---

I am Sorry, Mr. Temporary Speaker, Sir. I am used to Madam Temporary Speaker, who was on the Chair earlier. I do not know why she sat very briefly, because--- I am not saying that she was not doing a good job; I am just saying that she was there when I started the debate and, therefore, my tongue is still used to referring to her. I am not undermining your ability to continue from where she left.

Mr. Temporary Speaker, Sir, all I am saying is that this is important. We have established a Committee with five Members being proposed by the Majority side. Before the end of this Motion, I will be happy to add the Senators for Turkana, Migori, Taita-Taveta and Kwale Counties; or even the distinguished nominated Senator representing persons with disabilities, who is also here. They can quickly caucus and give us four names so that we can amend this Motion to include their names for robust engagement. There is nothing that stops us from doing that here so that we can accommodate the Minority side. That shows the kind of goodwill and commitment that we have on our side.

Mr. Temporary Speaker, Sir, I have faith in Sen. Fatuma Dullo, who is a distinguished Senator serving her second term; I have faith in Sen. Paul Kimani Wamatangi, a distinguished Senator who is not here at the moment. I also have faith in Sen. Johnson Sakaja, who is also serving his second term, having come from the "lower" House. Sen. (Rev.) Naomi Jillo Waqo will not only be there to make robust contribution as a Senator, but also with her religious background, she will come with that network and appreciation of the religious issues and positions that have been held by many religious leaders from across the country.

Sen. Aaron Cheruiyot, a distinguished Senator who is serving his second term and Sen. Sakaja are part of the youth that serve in this Senate. They not only serve in this House, they were elected by an overwhelming majority to serve in this Senate.

Mr. Temporary Speaker, Sir, as I move this Bill, I want to request Members to debate robustly by giving an opportunity to everyone then ultimately pass this Motion so that Members can go and engage members of the public then we have a Bill that will move this country forward.

I recognize the contribution of Sen. Mutula Kilonzo Jnr. A concern was raised earlier of the presence of a similar Bill in the National Assembly. I want to request the Committee that once they have elected their Chairperson, they explore ways of finding out whether the Bill in the National Assembly is Similar to the Bill that is in this House and the discussions between the two speakers and through the permission of the two Speakers, explore mechanisms under our standing orders of having a joint sitting so that we can collate and take advantage of the synergy that comes with looking at ideas from different perspectives.

They can jointly engage in structured public participation and project to the nation that the two Houses can work together as a team. They will come back with a Report that will have been robustly checked by legislators from both Houses sitting in this Committee. If I may borrow what somebody said of the Supreme Court judgement; each judge must write their own judgements and each Committee must write their own Report.

Those opportunities are provided in the Standing Orders. If there is a possibility that there will be duplication of public participation and other engagements that are related to the Bill, this Committee once formed can explore a mechanism through the Speakers of holding joint committees of the House and come up with a process that can take this country forward.

I want to repeat for the umpteenth time that I request the minority coalition, especially Sen. Orengo and Sen. Wetangula, that in the same way they make stories in the media, going there like ordinary citizens who are not elected and giving press statements, come ye to the House, give us four Members, let them settle in this Committee and bring your concerns here to be ventilated by this House. At the end of this legislative period, let us see whether your concerns were accommodated in the manner you wanted and whether you reasonably proposed a mechanism of making this law better.

With those many remarks, I move the Motion and request the Senior Senator Yusuf Haji to second.

**Sen. Haji:** Thank you, Mr. Temporary Speaker, Sir, I stand to second this Motion. This is a good Bill, it is addressing the mistakes that happened in 2012 when this kind of a Bill was debated and passed. I do not see any good reason for our colleagues in the minority coalition to lament about the proposal that is being made in this Bill. As the Majority Leader said, instead of our colleagues addressing the press and the public, it would have been more useful if they were in the House to give their suggestions and contribute towards improving on what went wrong in 2012.

It is not possible to have one chairperson without a backup since we are human beings and the chairperson can be sick. Therefore, to suggest that there should be a vice chairperson and in the absence of a vice chairperson, the majority should choose another chairperson, is in order. For any organization, even in a company, you cannot have one person running it without the support of other staff.

Mr. Temporary Speaker, Sir, from the Supreme Court judgement, it is not clear how the Presidential elections were annulled because there was lack of proper evidence. We all know that voting in any jurisdiction is done by physically counting and knowing who got what number of votes. The question of forms 34A and 34B does not arise as far as I am concerned. If the manual procedure was being followed and these forms were not available at that time, the best thing would have been to count the votes and decide who won the seat. This Bill is trying to address that lacuna that has occurred. The majority of the Supreme Court judges struggled with it in making their judgement.

I second.

*(Sen. Cherargei, walked to the Dispatch Box.)*

**The Temporary Speaker** (Sen. Kang'ata): Order Senator! You cannot walk when the Temporary Speaker is on his feet. Freeze where you are.

*(Question proposed)*

Let us Have Sen. Isaac Mwaura.

**Sen. Mwaura:** Mr. Temporary Speaker, Sir, I rise to support the appointment of Members to the select committee. As the Motion by the Senate Majority Leader has

elucidated, it is clear that based on the Supreme Court ruling, we in Parliament have a responsibility to remove any ambiguities that would occasion a misinterpretation of the laws where we have been given responsibilities to legislate. Indeed, as a country, we are facing very extraordinary times because never before have we had a situation where our country has had to conduct a fresh election after we have just had one. If the challenges that have been witnesses in this country have been as a result of the law, it then follows that those provisions of the laws can only be rectified through amendments such as the ones that have been sponsored through this Bill by the distinguished Sen. Dullo.

Mr. Temporary Speaker, Sir, there have been so many contestations regarding the ruling of the majority for and of course the dissenting opinions and that is on record. Even the majority of the judges of the Supreme Court pointed out that the word “or” is very contentious. Going by what he said, Chief Justice Maraga said that there has never been a history in this republic where the word “or” had such important meaning as is the case.

We have to agree as a country that our election system is first and foremost a manual process. There is a lot of misunderstanding that our elections system is electronic. Nothing can be further from the truth. You can even go way back in history and you will see that in many jurisdictions, what counts at the end is the ballot. The questions we should be asking are whether Kenyans woke up on 8<sup>th</sup> August to go and vote; whether Kenyans voted for the six candidates using ballot papers; and whether those ballot papers were counted and the answers are “yes”.

If you go ahead to ask whether they were well stored as per the statutory provisions for three years, again the answer is “yes”. That is exactly what happened and it is for that reason that the counsel for the first and second respondents for the case required that the plastic ballot boxes be used for fresh elections. The court simply asked whether those were the elections materials. I sat there for more than 10 hours following the proceedings.

So, Mr. Temporary Speaker, Sir, it is very important to ensure that we do not find excuse in the submission of the fact that we have an electronic system of transmission of results. That should not be an excuse to do away with the will of the people. The provisions contained in this law require that the select committee looks at putting squarely on the presiding officers, the responsibility of ensuring that the sanctity of even the forms that will carry results. It provides that any presiding officer who refuses to sign a form or tampers with it will face a penalty of serving a jail term of up to five years.

That is very important because it seeks to cure the situation that we found ourselves in, where a whole presidential election was nullified on account of lack of signatures. Nevertheless, even when that was not a statutory provision, there was no provision in law that forms 34(a), (b) or (c) should have certain security features.

I think the Supreme Court, in the zeal to be seen rather not in conformity, still went ahead to nullify the elections. In my opinion, this law is very timely because we were treated to charades about opening of servers. We were treated to situations where we were told that somebody had certain passwords. When the National Super Alliance (NASA) was asked to provide evidence of hacking of the system, they went ahead to provide us with some software which was not used by the Independent Electoral and Boundaries Commission (IEBC).

Because Kenyans sometimes do not understand, you leave them at the mercy of conjecture. You want them to speculate yet they are not Information Technology (IT) savvy. Kenyans know what they did on 8<sup>th</sup> August. They went and ticked or put a mark against names of candidates of their choice and that must always be supreme in our electoral process.

Mr. Temporary Speaker, Sir, countries that have advanced in democracy such as Germany continue to use a manual system because they know that there is no perfect technology. They understand that in the current situation, an electronic system cannot be the first point of call. That is a complementary mechanism but what is most important is to count the ballot papers. Angela Merkel has been elected for the fourth time using a manual system and they are very comfortable with it. So, I do not know why we want to imagine ourselves in our own level of democracy that we would want to go the electronic way.

Mr. Temporary Speaker, Sir, I support that the men and women that have been selected to the committee are people of integrity. I urge our boycotting Members of the Senate to join in this noble endeavour to fulfill the duty which they were elected to perform. I think they should not even be paid because they just come and log in and go away. By doing that, they are failing their own people. You will start hearing that there was no consultation or that was one-sided kind of decision yet they have an opportunity to present their issues on the Floor of the House so that we discuss them objectively for the benefit of this country.

Mr. Temporary Speaker, Sir, as parliamentarians and Members of this Senate, we cannot abdicate our role. We will listen to various divergent opinions but you must do what you must do. It is quite interesting to hear Members of the other side of the political divide arguing, for example, that we cannot change the rules of the game 26 days or thereabout before the next general election. Let us just be honest here. In 2007, the Kriegler Commission recommended that we should have a commission at least 24 months before the next general election.

Who are the people who went to the streets to ensure that we had a commission only seven months before the next general election? The people who are saying that we should have a due process of law are the same ones who have taken some certain staffers of an independent commission to court, while at the same time want to demonstrate. I now hear they have a calendar for Mondays and Fridays to eject officers who, according to their party leader, have ascertained that these are the people who are culpable, yet even the Supreme Court has not made such a finding.

Article 99 of the Constitution is very clear that we must exhaust all means of appeal even if we are found guilty at the lower courts. We have even seen attempts by the Judiciary, for example, to try and block the investigation of the Registrar of the Supreme Court. Let us be honest and sincere. We want to ensure that we do not predicate the future of our county on the fortunes of individuals. That is why this law is proposing that in the absence of the Chair of the Commission, because they can fall sick or as well decide to abdicate their duties, there should be an alternative.

Do we want to end up in a crisis because of individuals? We have to always provide for an alternative. There is a manual back up. If the electronic system fails we should go back to the papers. If the Chair of the Commission by any chance is not able to

deliver on their mandate, then the vice chair is there to assist. That is why for every commission there is a vice chair.

Therefore, I want to fully support the establishment of this Committee. I believe that these are patriotic Kenyans who will put the interests of Kenyans first and ensure that we do not end up having a constitutional crisis. This is basically the end game for our competitors who actually want a caretaker Government, so that they get into Government through the back door using unconstitutional means.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. (Eng.) Mahamud:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Motion. There is no denying that we are still in an election cycle. We held elections on 8<sup>th</sup> August, 2017, but we are not yet done because of the petition which led to nullification of the presidential election by the Supreme Court. From that Supreme Court judgement, it is very clear that there are a lot of difficulties in the election laws that are in place today. Unless they are simplified, it would be difficult to carry out elections any further. The same court did actually recognise the fact that there could be some difficulties and Parliament should legislate to ensure that the elections conform to the provision of Article 81 of the Constitution.

What we are discussing now is not the Bill itself. It is actually a Select Committee to look at that Bill and make a report to the Senate before we actually start discussing it. It is true that normally this matter is referred to a committee which deals with such matters when the committees are constituted. However, since we have not constituted the committees up to now because our friends on the other side are not here, it is only fair that the activities of this House continue.

Procedures and systems should be put in place so that the functions of this House continue. This Motion is before us so that we form an *Ad hoc* Committee, so that this matter can be dealt with. It is true that the Members are from only one side of the House because Members of the other side decided to go on holiday and do other things which are more important to them than doing the legislative work which they have been elected to do.

The Motion before us seeks to appoint five Senators to the Select Committee to consider the Election Laws (Amendment) Bill. Sen. Dullo, Sen. Wamatangi, Sen. Sakaja, Sen. (Rev.) Waqo and Sen. Cheruiyot, are proposed to be Members of that select committee. I support that they should be Members of the Committee. They are people of great calibre and I know all of them for the short time I have been here. Three of them were in the last Parliament, that is, Sen. Dullo, Sen. Wamatangi, Sen. Cheruiyot and Sen. Sakaja who was with me in the other House. Therefore, I support the formation of this Committee.

Having seen the Bill just briefly, the amendments that are proposed are very clear. They will simplify the elections system. The amendments will not actually change many things, but make the process simple, accurate, transparent and verifiable. The amendments to the Bill seek to clear the confusion that we saw through the petition which was adjudicated on by the Supreme Court. Therefore, this Select Committee should be put in place, so that the Bill can be brought before the House.

There is no harm in the two Houses having their own Bills. We are a House and can initiate our own laws. The other House can do the same, but at a given stage, through



the process that is between the two Houses, they can be harmonised so that there is no variance in terms of the laws which are being enacted.

Our friends on the other side should come back sooner so that this House can continue with its mandate. We do not have committees in place and we cannot sit and wait for them. Life must go on. I thank the leadership of this side for initiating the process. First, I thank Sen. Dullo for bringing the Bill and secondly, the Motion that this select Committee be put in place so that this matter goes on. We will actually keep talking about how we disagree with our colleagues regarding going to the streets and creating uncertainty and confusion in the country on a matter which is otherwise very simple.

We held elections and Kenyans made their decision. It was challenged and the Supreme Court invalidated the results and we are supposed to go back for election on 26<sup>th</sup> October, 2017. Please let us go back to that election. The Bill before us is to make the election process simpler. Today I heard some people arguing that these laws were actually through some negotiations. I was in the Joint Select Committee which came up with the process of the removal of the former Commission of the Independent Electoral and Boundary Commission (IEBC) and what laws need to be put in place. When the laws were brought the House was deprived of its right even to change one word, comma or full stop. The law was passed the way it was and that is why we have this confusion today.

Parliament has now decided to look at the laws and see what is in the best interest of the country or what can be done in terms of the election laws. It is time for us to go through the laws and amend where necessary. The two Houses were not able to amend then because it was agreed so by some quarters, but let us now exercise our mandate as legislators, which is to make laws. No other institution makes laws for us; we make laws for this country. Therefore, let us amend the laws and see if they are actually workable.

There is no doubt that Kenyans went to the polls and elected their leaders manually. What went wrong was the transmission which was very confusing in terms of even workability. Where I come from connectivity is very poor. You cannot get 3G or 4G connectivity. We may not get very accurate transmission, but let us make something which is workable. The important thing to note is that what the *mwananchi* decides must be verified in a manner that is workable, so that the people's will can be announced.

Mr. Temporary Speaker, Sir, I beg to support.

**The Temporary Speaker** (Sen. Kang'ata): Could we hear from Sen. Cheruiyot?

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to make my contribution in support of this Motion. From the onset, it is proper for me to say that I support this great idea. There has been great discussion within the precincts of Parliament and out there. Many have wondered whether this is the correct line of thinking to take at this very interesting time that our country is facing.

I want to remind those who are opposed to the formation of this Committee of Article 1(3) of our Constitution which states:-

‘Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance to this Constitution.’

The first to be listed even before the Executive, where the President serves and the Judiciary, is Parliament where we are this afternoon.

It is clear that the spirit and the mind of the drafters of this Constitution envisaged that a time will come when Parliament will have to rise to the occasion and do something that will be great for the country so as to guide it in a time of crisis. The philosophy and the thinking behind the formation of Parliament in all jurisdictions without exception is that this is a gathering where all Kenyans of all shades, colour, tribe and sex gather to discuss and raise issues that concern them.

The 47 elected and the 20 Nominated Senators represent the face of this country. They meet as it is prescribed in the manner before us in the form of a Motion where a Select Committee is being formed. This Select Committee is to discuss issues that will give good guidance to the Independent Electoral and Boundaries Commission (IEBC). I do not understand why somebody would be opposed to such a move.

I understand the fears that are being raised by Members of the Opposition or those from the minority side of this House. What tells them that they cannot come to this Committee and participate? They can convince those of us in the majority regarding the laws or some of the amendments that are being proposed in the Bill that this Select Committee is going to look into and have their way. Why do they have this certain pre-occupation to believe that you can never be heard because they are in the minority?

As a Member of this House, many times, I have seen proposals or amendments being shot down. Some of them have been proposals made by Members from the Minority side. Those of us from the Majority side have listened to them and they have had their way because they had better ideas. We are doing this in accordance with the ruling of the Supreme Court that asked Parliament to give guidance. I am sure that the judge who referred this matter back to Parliament knew that one of the institutions or state organs that have been delegated sovereign power is Parliament. This is where we meet, discuss, engage each other and find solutions that will help this country. If our colleagues are not interested in doing business in Parliament, then it is clear to the country that all they want is anarchy and chaos.

It is in this House that I expect the distinguished Senators from the Opposition to rise and join us in this Committee. They should listen to the views of the members of the public and the clergy. I have seen some of the clergy issuing statements where they have said that they are not endorsing the proposals that are being made to this Bill. I want to encourage those clergymen to come to Parliament instead of issuing those statements. We shall be give people time to make their presentations.

Based on the expert opinion and the views of other Kenyans, I have seen many Bills or many proposed laws being amended at that stage. We are not in a dictatorship kind of leadership. I believe that their views will be considered if we find that they are of better reason. For the sake of national good, some will be dropped and others might be included. I want to appreciate my party and I take this nomination with great humility. I come with experience because I happen to have served in the last Select Committee that worked on the election amendments laws that were used during the 8<sup>th</sup> August, 2017 elections. I bring institutional memory. I remember many things that we discussed that led to some of the laws. Those laws were tested on 8<sup>th</sup> August, 2017 and we saw the difficulty that the IEBC faced when interpreting them.

I know that we shall sit down, listen to everybody, consider the views of those who do not believe that this is a step towards the right direction. It is possible that we might sit as a Committee and be convinced by the people, who will appear before us, that

there is no need to have this amendment. This has happened before. I do not see the reason as to why anyone who wishes well for this country can refuse to join us if they believe that this country can be guided back to prosperity and enjoy the fruits of our labour. We should not live in such times like now when there is so much suspicion amongst members of our society and uncertainty.

That is hurting everybody including business people and many other Kenyans. People are getting worried. I am happy that the majority side has already nominated members of this Committee. It will be a great day for this country if sense trickles to the leaders who come from the minority side and they say that it is in order for them to nominate members to join this Committee.

I support this Motion.

**The Temporary Speaker** (Sen. Kang'ata): Could we hear from Sen. (Dr.) Milgo?

**Sen. (Dr.) Milgo:** Thank you Mr. Temporary Speaker, Sir. I rise to support the Motion on the select Committee on Election Laws (Amendment) Bill No. 3 of 2017. This is based on three or four major reasons. First, when I was coming to this House this afternoon, I realized that the people in this city were not able to move around freely. This is because they were worried that they could be easily hurt or attacked. What was going on in the city is a product of the nullified election. I want to say that the nullification of election that took place in Kenya was the first in Africa and the third in the world. This shocked everyone because the people of Kenya voted on 8<sup>th</sup> August, 2017 and they spoke well. They chose their right leaders. However, it was quite absurd that a process could bring nullification of such a choice.

When we oppose a Committee that is going to ensure such nullification does not take place in future, I think, we are causing Kenya some problem---

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

**The Temporary Speaker** (Sen. Kang'ata): Sen. (Dr.) Milgo, there is a point of order from the Senate Deputy Majority Leader, Sen. Dullo.

**Sen. Dullo:** On a point of order, Mr. Temporary Speaker, Sir. Looking at the time, we have utilised about one-and-half hours. There is a lot of interest. With your indulgence, I will request that you reduce the time to five minutes for each Member.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Senators. Every speaker has 15 minutes but allow me to reduce that to 10 minutes. Instead of 15 minutes, you will have 10 minutes.

Proceed

**Sen. (Dr.) Milgo:** Thank you Mr. Temporary Speaker, Sir---

**The Temporary Speaker** (Sen. Kang'ata): Five minutes is too short. We will make it 10, though Sen. (Dr.) Milgo has only five minutes.

**Sen. (Dr.) Milgo:** Thank you very much, Mr. Temporary Speaker, Sir, this Committee will ensure that in future we are not going to face such a challenge as the one that we have just experienced recently.

The IEBC right now are supposed to put in place a very water tight system. They cannot do that without any. This Senate Committee will ensure that in future, our election procedures will not bring about the annulment of elections.

Over time, if it were not for amendment of laws, a Senator like me would not be in this House. It is out of this amendment that even affirmative action was put in place. In

the past, the registration of voters was a really contentious issue. Somebody would use and manipulate it to his or her own advantage. Right now, the registration of voters is quite streamlined because of an amendment of our laws.

Furthermore, the five Senators that I am seeing here are very seasoned politicians. I am sure in the time they have been given, they will come up with the best amendments to see us through the forthcoming presidential election so that we can have a peaceful country.

I support.

**The Temporary Speaker** (Sen. Kang'ata): Yes, Sen. Halake.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion.

First, I would like to state that laws and regulations are not an end in themselves. They should be serving the purpose for which they were enacted.

**The Temporary Speaker** (Sen. Kang'ata): There is a point of order from Sen. Cherargei.

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

There is a Member who has just walked in and I do not know whether she is dressed appropriately with decorum, as it is the tradition of this House.

**The Temporary Speaker** (Sen. Kang'ata): What is the name of the hon. Senator?

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I do not know her name, but she is seated near the entrance.

**The Temporary Speaker** (Sen. Kang'ata): Maybe we can afford her the right of reply.

**Sen. Kasanga:** My microphone is not working. My name is Sen. Kasanga Silvia. I am not sure what my fellow Senator is referring to. I am in an African outfit. I do not know what the issue is all about.

**The Temporary Speaker** (Sen. Kang'ata): Yes, there was a point of order that was taken regarding the dressing of the Senator.

Again, I refer you to Senators Rules published on August 2017. Part I is on the Conduct of Senators within the premise of Parliament. Rule 5 is clear on how Senators are supposed to dress.

There is no much details in regard to women's dress. It only provides that an equivalent standard shall apply in respect of women Senators. It essentially says that they should have a coat, a collar, a tie, long trousers, socks and shoes or service uniform, religious attire or such decent dressing has been approved by the speaker from time to time.

While I would urge the lady Senator to familiarize herself with that rule, however, she is okay.

Sen. Cherargei, your point of order is overruled for now.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir, please, allow me to continue.

I rise to support this Motion and congratulate Sen. Dullo for taking her time to ensure that the very rules for which a legitimate presidential election was nullified - for lack of what was called simplicity, accountability, credibility and verifiability - are put in place.

As I mentioned earlier on, rules, laws and policies are not an end in themselves. They should serve the object for which they were enacted, both in form, substance in spirit and in the letter. Rules and laws should have a continuous improvement element to them because no rule, law or policy is perfect. Sen. Dullo took her time to study the form and substance of the laws that govern our elections and identify key areas of lacunas that we faced and continue to face as a country. Perhaps this will not be the last time this House will be debating similar amendments for this or even other laws.

I have looked and read each section of the election related Act 2011 and each of the amendments that have been introduced. For example, the amendment to Section (29), Section 6 (9) of the Election Act 2011 and all the subsequent amendments have improved the ambiguity and the mischief for people to manipulate or curtail the process.

Bearing in mind that laws, regulations and policies are to serve higher purpose for which they are conceived, it is important for us to do the right thing. Each and every one of these amendments will contribute greatly towards improving our electoral laws and make sure there is accountability, verifiability and credibility in our elections.

There is also no doubt that reforms are required as articulated by the Supreme Court Judges in their ruling when they nullified the presidential election. Who is best suited to do this than elected Members of Parliament to whom the power of the people has been delegated and whose job it is to do this? It is our job as elected Members of Parliament in both Houses to legislate and to put in place systems and processes that serve the people of this country. What Sen. Dullo has done is take this mandate that is given to her and ensure that she has contributed to these amendments and to make our laws better.

Regarding persons who have been listed as Committee Members, there is need for further consultation. I am impressed by the list of Senators who have been proposed to be in the Committee, for instance, Rev. Naomi Waqo who will bring religious ideals as well as integrity as per Chapter Six of the Constitution on Leadership and Integrity. I cannot think of better legislators in terms of experience, leadership and integrity as per our Constitution, for instance, Sen. Sakaja, Sen. Dullo, Sen. Cheruiyot and Sen. Wamatangi.

Therefore, I support this Motion for its form and substance, objectivity and for allowing us to use the statutory tools that we have in hand to exercise the sovereign powers that have been delegated to us.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support this Motion.

**The Senator for Kirinyaga County** (Sen. Kibiru Charles Reubenson): Mr. Temporary Speaker, Sir, I rise to support this Motion. First, I am a clear proof of a free and fair elections. I come from a Jubilee zone yet I ran as an independent candidate. That is an indication that the elections were free and fair. If they were not fair, Jubilee would have had an upper hand in getting the Jubilee candidate in.

So, let us acknowledge that to a large extent, the elections were free and fair. We ensured that the votes were cast and counted as per the law.

The Bible states that laws are made for man but not man for the laws. In that regard, we can amend because we are law makers. So, it is upon us to ensure that we keep on adapting the laws and rules as the environment dictates. It is surprising that our friends would go to a court of law to seek redress for issues that they feel they are not comfortable with. One then wonders why it becomes very difficult for us to come to the legislature to amend the laws that would make the environment even better.

Mr. Temporary Speaker, Sir, the economy of this country should not always get a “cold when some people sneeze.” It is high time we get some immunization to ensure that we separate the political arena and the economic part of this country so that when people are fighting in the political environment, the economy continues to grow. As we speak, people in the business world are complaining about Kenya. They say that there is no money.

People are asking us, “Where is the money? *Pesa ilienda wapi?* Where do we get the money? What happened to the money?” The issues today are not making the situation better. I call upon the political leadership of this country, more so, my side of the divide, that we live up to what one gentleman, the late hon. Saitoti said, that there comes a time when the country is bigger than all of us. So, I urge our brothers from the other side to come; we deliberate, discuss, debate and agree on the issues that need to be amended.

Mr. Temporary Speaker, Sir, in that regard, I beg to support.

**The Nominated Senator** (Sen. Were Petronila Lokorio): Mr. Temporary Speaker, Sir, first of all, I thank the Amani National Congress (ANC) for nominating me to the Senate. On the proposed amendments to the electoral laws, I have one question to my brothers and sisters on the other side; why now? We have just come from a General Election which was considered to have been held contrary to the law. Instead of us following that law in the fresh election, we are seeking to change it. It is ridiculous, absurd and not in consideration of the good or prosperity of Kenya.

Mr. Temporary Speaker, Sir, I therefore, object.

**Sen. Kinyua:** Asante sana, Bw. Spika wa Muda. Ninaunga mkono Hoja hii. Waliochaguliwa kuhudumu katika hili jopo ni Maseneta walio na umaarufu na uzoefu wa kazi. Sen. Fatuma Adan Dullo, Sen. Wamatangi, Sen. Sakaja, Sen. Naomi na Sen. Cheruiyot wana uzoefu na kwa hivyo itawezekana.

Pili, kazi ya Bunge ni kutunga sheria. Hakuna wakati utakaosemwa ni mzuri au mbaya. Wakati wowote ni wa kutunga sheria. Hiyo ndiyo kazi yetu. Kazi yetu ni kutunga sheria. Huwezi ukasema wakati fulani ni mzuri wa kutunga sheria. Sheria yoyote ambayo inaonekana kuwa na upungufu inapaswa kutengenezwa wakati unaofaa. Hii inatupa fursa njema, hasa kwa wale wanaonung'unika ya kwamba kulikuwa na shida wakati wa uchaguzi. Wanaweza kuja wakaliona hili jopo wakaleta malalamishi yao yote hapa badala ya kwenda kwa maandamano huko nje.

Hii ni kwa sababu hata wakiandamana huko nje sheria inatengenezwa katika Bunge. Jambo lingine nzuri ni kuwa kukiwa na upungufu katika sheria, ikiletwa Bungeni itaangaliwa vizuri zaidi kwa maana isipoangaliwa vizuri zaidi, ikipelekwa kwa Korti, wale Mahakimu watafanya vile watakavyofanya – *I mean they can legislate from the bench if there is ambiguity* ---

**The Temporary Speaker** (Sen. Kang'ata): Point of correction Senator.

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

I am referring to the rules of this House that you are supposed to use one language. You either choose to use Kiswahili or English. Now, that most likely you started with Kiswahili, it is advisable you stick to it.

**Sen. Kinyua:** Bw. Speaker wa Muda, tukiwa na sheria ambayo haieleweki vyema kabisa, kama vile yalikuwa malengo ya Bunge walipokuwa wakitunga ile sheria,

ikipelekwa mahakamani au kortini, wale mahakimu wanaweza wakasema vile ambavyo wanavyotaka kuihusu. Kwa hivyo, ni vizuri sisi wenyewe tuitengeneze kama vile ilivyoletwa hapa kwa marekebisho na kuangaliwa zaidi.

Hakuna kitu ambacho ni kizuri asili mia kwa mia ndiposa kila kitu kinapaswa kuangaliwa vizuri. Kwa mfano, hata ukinunua gari jipya, bado litakuwa na gurudumu la “spare.” Hata binadamu mwenyewe akiwa ameumbwa na Mungu---

*(Laughter)*

**The Temporary Speaker** (Sen. Kang’ata): Order, Sen. Kinyua! Kindly take your seat.

I refer Senators to Standing Order No. 81, whose title is “Proceedings to be in Kiswahili, English or Kenyan Sign Language: and it provides as follows:-

(1) All proceedings of the Senate shall be conducted in Kiswahili, English or in Kenyan Sign Language.

(2) A Senator who begins a speech in any of the languages provided for under paragraph (1) shall continue in the same language until the conclusion of the Senators’ speech.”

Be guided accordingly, Sen. Kinyua.

**Sen. Haji:** On a point of order, Mr. Temporary Speaker, Sir. While that is the correct procedure, on the question of the “spare tire”, we do not have any Kiswahili word for “spare.” Everybody says it in Kiswahili as “tairi spare.” In that case, what would you do?

**The Temporary Speaker** (Sen. Kang’ata): Well, maybe we need a linguistic expert to ascertain as to whether, indeed, we do not have a Kiswahili equivalent of the word spare tire. We can be helped by a Senator who is a linguistic professor.

What is your comment, Senator, on that issue?

**An hon. Senator:** Let him continue, I will assist him.

**The Temporary Speaker** (Sen. Kang’ata): Proceed Sen. Kinyua.

**Sen. Kinyua:** Asante, Bw. Spika wa Muda. Nimeambiwa ni gurudumu la ziada.

Bw. Spika wa Muda, nilikuwa nasema kuwa hata gari jipya liko na gurudumu la ziada.

*(Loud consultations)*

Hata binadamu mwenyewe akiumbwa, hata akiwa mzuri vipi, huumbwa na figo mbili, moja ikiwa ya ziada. Hii ni kwa sababu binadamu anahitaji figo moja tu ndiposa ikikosa kufanya kazi vizuri, atatumia ile figo ingine. Kwa hivyo, nakubaliana na hii sheria, hasa jopo hili; kuwa watakapoanza kuangalia maswala haya, waseme tuwe tunatumia njia zote mbili.

Asante sana, Bw. Spika wa Muda. Naunga mkono.

**The Temporary Speaker** (Sen. Kang’ata): We have a request from Sen. Shiyonga, who does not have a log-in card. Therefore, she can rise and speak.

Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Thank you very much Mr. Temporary Speaker, Sir, for giving me this opportunity. I have a card. I rise to speak on the election laws amendment that is

before this House today. First, of all, I want to thank you very much for representing the House today in the capacity of the Speaker. The other day, I did not get the opportunity to thank the Speaker when he was here.

Mr. Temporary Speaker, Sir, I stand to oppose the amendment. Looking at the temperature of our country at this particular point in time and what Kenya is undergoing, I am allowed to state that we are representatives of different constituencies, counties and parts of our country. I therefore want to urge the Members, especially those from the majority side, that Kenya is our country and our land. Any surgery in the form of amendments that we want to make on this particular law that we have proposed; it might be favoring you or the side that has proposed it. But let us look at the other side; if it was opposing you, would you be supporting it? No, you would not. Today, you can be in the majority side, but tomorrow you might be in the team of the minority, because we are elected leaders.

We need to look at it because these amendments are meant to guide Kenya, not the few individuals who are here. Despite the fact that we have been elected to represent Kenyans, let us represent them in such a way that any other person can look at it and say; yes, I adore and accept what we have done. Let us not look at what the temperatures and our emotions are telling us, but let us look at the Government, our business, our lives and the generations to come. Just the other day, Members who were here before us amended this Constitution, but they had gone through processes and it took them a lot of time, participation and commitment. Some of them did not probably even have a cup of tea and I assume so, to come up with what we have---

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

**The Temporary Speaker** (Sen. Kang'ata): What is your point of information, Sen. Dullo? Do you want to be informed, Sen. Shiyonga?

**Sen. Shiyonga:** Probably if I can finish making my contribution and then she informs me, the better.

**The Temporary Speaker** (Sen. Kang'ata): Well, she has refused to be informed. Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Mr. Temporary Speaker Sir, I was saying that when we are going to discuss these issues in different Committees, let us be remorseful. Let us look at it like we are amending a document that is going to affect every Kenyan in every part of Kenya.

**The Temporary Speaker** (Sen. Kang'ata): What is your point of order, Sen. Mwaura?

**Sen. Mwaura:** I am Sorry, Mr. Temporary Speaker, Sir. You have just given me the chance when my very good colleague, Sen. Shiyonga, has just concluded. But I was wondering whether it is in order for her to ask the House to be remorseful? On what basis are we supposed to be remorseful when passing laws?

**The Temporary Speaker** (Sen. Kang'ata): Well, Sen. Mwaura, you are overruled because you are out of order. It was just a contribution that she made, which I think was correct in terms of what she wanted to communicate.

Proceed, Sen. Waqo.

**Sen. (Rev.) Waqo:** Thank you Mr. Temporary Speaker, Sir. I stand to support this Motion. Before I go far, I want to appreciate the effort of the sponsor, Sen. Dullo, for thinking and being a visionary leader. The situation that we are in today deserves that and calls for that quick action. As I stand, I am not just standing because I am in the list – and



I appreciate the people who considered my name – I feel I will learn a lot from the other experts who were here before me and whose work I really respect and I admire.

However, as you all rightly said, I come from my background as a religious leader. I will look at what is ahead of us, pray about it and also be guided by the scripture. We are in a very unique situation and majority of Kenyans are confused and not sure of what tomorrow holds for us. It is during times like this that we all need to play our roles with a lot of dignity and save the situation we are in.

Outside there, many are asking whether we really have leaders who are leading this country. Do we have people who are thinking ahead of time to save this country? Yes, the situation we are in is not good but we have the opportunity to turn things round. Experience is a good teacher and we have learnt from our experience after the elections and all that has taken place.

I support this, mainly because of the following few reasons: As you know, according to statistics, 38.5 per cent of Kenyans are illiterate. It is even worse when you think of north eastern Kenya where the percentage of illiteracy is 87.1 per cent. When we introduced the electronic transmission system and other technology that we introduced during the last election, many of our people suffered in different ways.

I was there that morning when we were voting and many old people were struggling because their thumbs could not be sensed by the machine. We had to tell them to wash their hands and warm themselves. Mothers really struggled. Some of them were shivering and I wondered why we were going through that entire process. Due to that, we can only be helped by the proposal that has been put before us in order to save Kenya from the challenges that may be ahead of us. There may be people who may take advantage of the loopholes that are there in the electronic transmission.

I am not surprised if our colleagues on the other side of the opposition will not support us because for the last one year, there is nothing much they have supported in this nation. We need to go for this, approve and accept so that we can save this country.

Manual transmission is---

**The Temporary Speaker**(Sen. Kang'ata): Just one minute. My attention has been drawn to the fact that this debate ought to be concluded 15minutes to 5.00p.m. I have seen that there is a lot of interest from Members. I kindly urge you to reduce your time. I also want to alert Members that taking into account the limited time remaining, the other senators will speak for only 4 minutes each.

I have also realised that the other side now wants to speak. They may have to get preferential talking time.

**Sen. (Rev.) Waqo:** Mr. Temporary Speaker, Sir, before I conclude, I was saying that I support this Bill for accountability purposes---

**The Temporary Speaker**(Sen. Kang'ata): One minute only.

**Sen. (Rev.) Waqo:** Mr. Temporary Speaker, Sir, it is the same that has given birth to what we now call electronic transmission. In the church, we say that we are guided by three things: Reason, tradition and scripture and for our purpose here, I suggest that we be guided by reason, tradition and the Constitution, which we have been given the mandate to amend from time to time.

I support.

**Sen. Seneta:** Mr. Temporary Speaker, Sir, thank you for also giving me a chance to support the amendments by my colleague - our sister. I thank her for having brought

this important Bill to this House. I want to congratulate her for having thought hard and especially at a time like this when we need to put measures in place to see how we can correct what has already cost Kenyans billions of money and time.

I congratulate Members who have been appointed to the select Committee and assure Kenyans that these are men and women of integrity and knowledge, and are equal to the task. They will make sure that they have perused through the amendments to the election laws and will come up with amendments that will help this country move forward.

In the same breath, I wish to urge the other political divide of this House to also respect the independence of this House. They should forward the names of their Members to also sit in that Committee and contribute to the amendments on the election laws which can go a long way in correcting what they thought was a mess in the election that was done on 8<sup>th</sup> of August, 2017.

At the same time, we should also respect Parliament just the way we respect the Supreme Court of Kenya because of their independence. They have even made a ruling that we were not happy with but had to respect the independence they have in our new Constitution. They should, therefore, respect Parliament which is the House of rules.

We cannot conduct parliamentary business on the roadside or in the media. I have seen my senior colleagues in the media talking about laws that are supposed to be discussed in this House. They are discussing it all over. I think this is the right place to correct whatever anomalies were in the August election.

At the same time, I also support these amendments especially the election offences which will cure the conduct of our presiding and returning officers who will be given the responsibility to oversee the election process. Last time some of them colluded with some aspirants to refuse to sign documents which are very important for the process of election and that is why we are where we are today in Kenya.

By giving a definition of penalties to be given to these---

**The Temporary Speaker** (Sen. Kang'ata): Let us have Sen. (Prof.) Ongeru.

**The Senator for Kisii County** (Sen. (Prof.) Ongeru): Thank you, Mr. Temporary Speaker, Sir. I stand to oppose this Procedural Motion because looking at the symptomatology or chronology of political events taking place in this country, we are surely driving this nation to an irredeemable level. This is the time when reason and consultations must prevail. You cannot unilaterally set up a select Committee to discuss matters of elections, considering the recent debacle that was witnessed in the handling of the results at the polling stations and the transmission of those results.

Some of us in our respective constituencies or counties are privy to how the system was manipulated. It is only that we cannot all be witnesses to these events. I have been through all this process. In 1997 when we had a similar crisis it was prudent then to set up an Inter Parliamentary Parties Group (IPPG) to come up with a solution that was acceptable to all Kenyans. In 2007 I found myself in the Serena Committee trying to resolve this matter. The current Constitution is a product of a very intensive and aggressive participation by all Kenyans from all walks of life.

Mr. Temporary Speaker, Sir, you cannot change the rules in the middle of a football match. It is ill-thought out and will not augur well. It has no common spirit of moving together. I represent the Kisii County as a Senator and would find it difficult to support a Motion that is one sided. It does not take into account the feelings of people on

the ground. We should be in a position to work out this together without causing acrimony and ill feelings amongst the Kenyan people. It is easy to tip this country to another scale. I would not choose that route because as a Christian and peace loving person, I would love this nation to move together. We have seen before previous events that have gone through this route and had disastrous results. We do not have to recount the many disastrous results we have had.

Therefore, I feel constrained and will not support this Motion for this basic reason; that we are simply using the tyranny of numbers to bulldoze through a legislation which, by all intents and purposes, is selective. I will not go that route because then I would be falling into the level of selective amnesia; that I am not in this House.

**The Senator for Kisumu County** (Sen. Outa): Mr. Temporary Speaker, Sir, I want to take this opportunity to thank the people of Kisumu County for giving me an opportunity to be their Senator. However, even as I do so, I have a heavy burden. I feel lost that we are here discussing a procedural Motion to form a Select Committee to amend the election laws.

It is a sad day for the people of Kenya that we even thought of amending laws because this will bring chaos in the Republic of Kenya. We have come a long way and the Jubilee government is trying to bring chaos and intimidation. People have been killed and a number of injustices that we thought we had left in the previous regimes committed. Kenya has a Constitution and we cannot mutilate laws just because of a tyranny of numbers.

I want to state in this House that we will resist this by all means. If you think that you have the tyranny of numbers, we have the people of Kenya behind us. Even if you pass these laws here because of the tyranny of numbers, we will organize ourselves and call for mass action in this Republic of Kenya in order to defeat these ambiguous amendments that will take us back to the dark ages. I want to believe that anybody who wants a bright future would oppose these amendments to the election law.

Mr. Temporary Speaker, Sir, I want to tell the people of Kisumu County to be prepared from next Monday. We will have demonstrations here in Nairobi County and the entire Kenya to make sure that the plan by the Government to take us back to the dark ages is defeated by the people of Kenya. We will not be afraid. Why should you even preempt the death of the Chairman of Independent Electoral and Boundaries Commission (IEBC), Mr. Chebukati, who will announce the presidential results? What are you thinking? Is there any plan?

You need to come out clearly about this Bill. You cannot make a Bill to threaten and intimidate people. The other day we saw how this Government was trying to intimidate the Judiciary. I want to thank God for Chief Justice Maraga. He stood firm to make sure that all the ills and intention to take us back to the dark ages failed.

Kenyans, wherever they are, should prepare for demonstrations on Mondays and Fridays. We want to bring this country to a standstill through mass action. In fact, we will not go for the so-called repeat presidential election, unless---

*(Loud consultations)*

**The Temporary Speaker** (Sen. Kang'ata): Order, Members! Your time is up.  
Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to oppose this Motion. My good friend, Sen. Murkomen, knows that this is an exercise in futility. Sen. Murkomen sat in the Supreme Court when it was delivering its judgement. If I can take him back to school, because sometimes I wonder why lawyers go to school and cannot interpret what is indicated there---

**Sen. Cheruiyot:** On a point of order, Mr. Temporary Speaker, Sir. Is it in order for Sen. Olekina to refer to legit parliamentary business as an exercise in futility? Why did he then campaign? If you believe that the work we do in this House is an exercise in futility, why did you go around Narok County, campaigning to come here?

**The Temporary Speaker (Sen. Kang'ata):** The Senator for Kericho County, you are overruled. The reason is that if at all the proposal is defeated, of course, it would be a futile attempt. So, it depends on how you vote. If the proposal is defeated then his argument may not be inaccurate.

Proceed.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir, for taking them back to school. I want the people of Narok County to realise that when the Supreme Court delivered its judgment, it was very clear. It was clear that the IEBC was given 60 days to conduct an election within the law and Constitution.

I oppose this Motion because it seeks to amend the Constitution through the back door. You cannot even apply the law in this election. You need to go back and read the judgment of the Supreme Court; it is very clear on its essence.

I want the people of Narok County to realise that instead of the Jubilee administration recognising the fight that most Kenyans or the blood that was poured for us to get our independence and freedom, it is bringing matters of national interest and turning them into issues of Private Bills. An amendment to the election laws is not a Private Bill; you ought to realise that.

Election Laws (Amendment) Bill should not be a Private Member's Bill, we ought to realize that it is not for the benefit a few people. We have children and a country that we have fought so hard for. Any one purporting to amend certain things so that they can use our money to get themselves into power should be ashamed. We are sick and tired of a Government that wants to control people by amending the Constitution through the back door.

*(An Hon. Senator spoke off record.)*

I still have time, Hon. Senator.

I want the people of Narok to know that I will be on the frontline to organise demonstrations against any amendment to the Election Laws. In fact, I want to congratulate Mr. Chebukati for coming out to clearly say that these amendments should not be enacted.

Hon. Members and Kenyans, you should realize that this is a beautiful country. Yesterday, a Senator who has more of his family members in Somali told us that there are kids who were born 25 years ago and they do not know anything about freedom. If you amend this law, Senator Murkomen, your kids will never know freedom. Do not forget that you are on the majority side today and tomorrow, you may be on the minority side.

When you are given power, do not abuse it because that is exactly what you are doing right now. This country is more important than an individual.

If I may plead with this House, this is a House of reason and union, it is supposed to unite this country. Let us reason like men and women of good character. Let us be judged by history as people who stood against impunity and injustices. Let us remember that we are all in this House because of the will of the people who elected us not because of our selfish interest but national interest.

Mr. Temporary Speaker, Sir, I vehemently oppose this Motion.

**The Temporary Speaker** (Sen. Kang'ata): Hon. Members, the time for debating this Motion has been extended by 20 minutes due to the immense interest it has elicited.

Let us have Sen. Samson Kiprotich Cherargei of Nandi County.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion. Any law that is made under the sun will always be repealed and amended. That is the nature of law. As Senators, we should not be apologetic for the reason why we are here. Under Article 1(2) of the Constitution, it is clear that we are here because of the sovereignty donated to us by the people and we shall exercise it. I want to challenge our colleagues in the minority coalition who have resolved to intimidate us because of the tyranny of numbers that we enjoy. We will never be apologetic for that.

*(Applause)*

Any democratic process has majority and that is why now we are the majority.

If you read carefully the majority Supreme Court Judgment, it identified some gaps. I want to thank the Deputy Majority Leader, Sen. Fatuma Dullo, for preparing a solomonic Bill that we will be debating. We must assist the Independent Electoral and Boundaries Commission (IEBC) to have a proper legal framework to carry out a proper electoral process as envisaged in Article 81 of the Constitution. I want to challenge my colleagues, this is the time to stand up and be counted. Laws will always be made and cannot be stopped at any given time. We must rise up and assist the IEBC to play its role.

Article 10 of the Constitution on national values and principles of governance, public participation is key. My brothers in the National Super Alliance (NASA), the only place you can make your voice heard is not in the streets through mass action and press briefings. Make sure you appear before this Committee and bring out your issues.

As I finish, when King Farouk was being dethroned, Gamal Abdel Nasser told the people who wanted to kill the king that history will sentence the king to death. So, NASA people led by their principal will be sentenced to death by history because they want to bring destruction to this country.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Olekina:** On a point of Order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Kang'ata): What is your point of Order, Sen. Olekina?

**Sen. Olekina:** Is my good friend in order to suggest that history is going to sentence people of this society to death? It is your actions that will destroy this country. Let us be careful on certain things that we say.

*(Several Hon. Members spoke off record)*

**The Temporary Speaker** (Sen. Kang'ata): Sen. Olekina, that is not a point of order. Let us have Sen. Mwinyi Haji Mohamed Faki of Mombasa County.

**Sen. Faki:** Ahsante, Mhe. Spika wa Muda, kwa fursa hii ya Kuchangia Hoja hii ya kuchaguliwa kwa Kamati hii maalum ya Seneti kujadili mabadiliko ya sheria za uchaguzi. Mwanzo, ningependa kumkosoa mzungumzaji aliyetangulia kusema kuwa maandamano sio *public participation*. Kwa hakika, hio ndio mojawapo ya mbinu wanazotumia wananchi katika *public participation* kupima mambo yao.

Nikirejea kwa Hoja iliyopendekezwa, Hoja hii inaturudisha nyuma zaidi ya miaka ishirini kutoka tulipoanza mchakato wa vyama vingi nchini Kenya. Mwaka wa 1988, tulikuwa na kura ya mlolongo ambapo wale waliokuwa na milolongo mifupi walichaguliwa kama viongozi na wale waliokuwa na milolongo mirefu walinyimwa uongozi. Hapo ndipo vuguvugu la kubatilisha sheria za uchaguzi na katiba zilianza humu nchini. Kwa muda wote huo, Wakenya wengi walijitahidi na wengine walipoteza Maisha yao kwa sababu walikuwa wanataka kuwe na uchaguzi wa haki na usawa nchini. Kwa hivyo, iwapo tutajadili na kupitisha sheria hii, tutairejesha nchi yetu katika muhula wa fujo, ghasia na mambo mengine kama hayo ambayo si mazuri kwa nchi yetu ya Kenya.

Katika uchaguzi uliopita, ningependa kuwapongeza Jaji Mkuu Maraga na majaji wenzake kwa uamuzi wa busara waliofanya. Mahakama Kuu, *Supreme Court*, ilionyesha ujasiri kwa kudhibitisha ya kwamba nchi ya Kenya ina katiba na sheria za kuendesha mambo yake. Hii ilikuwa ni ujumbe kuwa nchini Kenya lazima tufuate mambo kwa mujibu wa sheria. Kwa hivyo, hatuwezi sasa kuamka na kujaribu kubatilisha sheria za uchaguzi wakati siku ya uchaguzi, tarehe 26 Oktoba, 2017 inapowadia.

Hatuwezi kubatilisha sheria za mchezo wakati mchezo unapoendelea. Hilo ni wazi na hakuna atakaye likubali. Vile vile, ilionekana kuwa tatizo si kwamba sheria ni mbaya bali ni wanaotekeleza sheria. Kuna mvutano katika IEBC kati ya makamishna wenyewe na baina ya makamishna na wafanyikazi kama Bw. Chiloba. Kwa hivyo, matatizo hayo yanahitaji kutatuliwa na sio sheria ambazo zilizoko. Sheria ni msumeno, inakata mbele na nyuma.

Kwa hivyo, swala la kubadilisha sheria za uchaguzi kwa sasa ni swala ambalo halifai kwa sababu tayari kuna mvutano nchini. Kuna baadhi ya watu ambao wamepeleka maombi katika mahakama zetu wakitaka kuruhusiwa wajitenge kutoka nchi ya Kenya. Kule pwani tulikuwa na msembo wa "Pwani si Kenya" lakini kwa kuwa tuliheshimu mahakama, wengine wetu tuliamua tuingie katika mchakato wa uchaguzi kwa sababu tulidhani kungekuwa na haki katika nchi ya Kenya. Kwa hivyo, matumizi ya---

*(Sen. Faki's microphone went off)*

**The Temporary Speaker** (Sen. Kang'ata): Your time is up. Let us now have Sen. Omogeni.

**The Senator for Nyamira County** (Sen. Omogeni Erick Okong'o): Mr. Temporary Speaker, Sir, first, I take this opportunity to thank the good people of Nyamira County for having elected me their Senator. I also want to state that I am proud to be the Senator of the great man called Chief Justice Maraga.

Mr. Temporary Speaker, Sir, I stand to oppose this Motion. For once, I appeal to our friends on the majority side to exercise caution and respect our values in Article 10. If

you read our Constitution, Article 10 obligates us to be patriotic citizens of this country. If you further read Article 94 of the Constitution, you will find that we as honourable Members of the Senate represent the diversity of the people of this country.

Mr. Temporary Speaker, Sir, there is a trend that is emerging from the Jubilee leadership that wants to divide this nation. I want to remind my friends on the majority side that is not a sin to sit on this side. We sit on this side because we have a passion to promote good governance and defend democracy and we will do it without fear or favour and we have no apologies to make.

I was one of the lawyers who appeared *pro bono* in the Supreme Court and there is nowhere where the Supreme Court mentioned or even made a directive that we should make any attempt to amend our electoral laws. The people on the majority side want to exhibit some kind of dictatorship. They want to bulldoze people. You should be worried when you start using what you call “tyranny of numbers”. Tyranny is never a good thing.

You cannot even go to your own house and tell your children that you want to rule them through tyranny. We should reason together and put the interest of this country ahead of all of us. We are in the midst of conducting an election in the next 30 days yet we want to bring laws that will send wrong signals to people who are meant to participate in the forthcoming election. I appeal to the majority side to seriously consider and put this country first before our own personal interests.

Looking at these amendments, I do not know whether we honourable Senators have read the Constitution. If you read Article 49 of the Constitution, you will see that independent commissions are supposed to be independent and they are not supposed to be under the directive of any person. Not even this House can direct how independent commissions should conduct their business.

Mr. Temporary Speaker, Sir, I want the Jubilee affiliates to remember that they are the people of who came up with the tag of being digital---

*(Sen. Omogeni’s microphone went off)*

**The Temporary Speaker** (Sen. Kang’ata): Senator, your time is up. Let us have Sen. Ndwiga.

**Sen. Ndwiga:** Mr. Temporary Speaker, Sir, I want to take up from where my friend Sen. Omogeni has ended. Yes we need to be rational, get together and reason as a House. The previous speaker was in the court and he heard the ruling. After the ruling we all read the judgment which pointed out the flaws and therefore the reason fresh elections were called for.

Mr. Temporary Speaker, Sir, as legislators, it is our duty not to wait for Maraga or whoever it is to tell us what to do. Once we know where there are flaws in the law, it is our duty to get back to this House and rectify whatever the flaws are.

As a country we require to conduct new elections. It is very true that we do not change laws in the streets. I know that as a House or even Jubilee, we cannot compel the IEBC on what to do. I therefore urge my friends on the other side to stop the monkey business on the streets, telling the IEBC what to do. You cannot be on the streets telling the IEBC who to sack and who not to sack and then come back to this House and tell us that we cannot compel the IEBC.

**Sen. Pareno:** On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the Member to imply that doing a constitutional right of demonstrating on the streets is monkey business? Is he in order to use the words “monkey business” in this honourable House?

**Sen. Ndwiga:** Mr. Temporary Speaker, Sir, I think we need to extend the period of induction so that we get to know what is parliamentary and what is not. It is true that MPs or Senators should not be on the streets but in the House amending laws. It is not your fault to sit on that side. When we went for elections, your hope was to sit on this side but that did not happen.

Mr. Temporary Speaker, Sir, I support this Motion because it will bring sanity to electoral laws. It will ensure that when we go to the next elections, we will not again go back to the courts to say that this did not happen or the other happened.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Kang’ata): Order, Members! Sen. Pareno, your point of order is overruled.. You did raise one point of order. I ruled that his speech was correct because what he used was figurative speech. Therefore, it was just a stylistic device.

Sen. Ndwiga, you have 30 seconds to finish.

**Sen. Ndwiga:** Mr. Temporary Speaker, Sir, mine is to advice my friends on the other side. It is true that we want to have a very hon. Senate. Let them please get back to the House and amend all the laws. I agree with Sen. (Prof.) Ongeru that even Inter-Parties Parliamentary Group (IPPG) was not done in the streets; it was done in this House.

I support.

**The Temporary Speaker** (Sen. Kang’ata): Thank you. We only have one slot for one speaker which I will to give to Sen. Madzayo. He is the last speaker on this Motion.

**Sen. Madzayo:** Asante Bw. Spika wa Muda. Ningependa kupinga Hoja hii kwa sababu zifuatazo.

Kuunda kamati ambayo itaangalia njia ya kugeuza zile sheria za uchaguzi, hasa tukizingatia kwamba juzi tulikuwa na kesi kortini na Mahakama ya Upeo ilitoa uamuzi wake na kusema turudi kwa uchaguzi tena.

Litakuwa jambo la kinyume cha zile sheria na uamuzi wa Mahakama ya Upeo ikiwa tutabadilisha sheria ya uchaguzi. Tumeambiwa tuende tukafanye uchaguzi kulingana na sheria. Kwa hivyo, ni lazima tuzingatie zile sheria ambazo zilikuwa wakati huo. Si sheria mpya kutumika bali zile sheria zetu kama vile zilivyo zitumike.

*(Applause)*

Na hivi tunavyoona ni kwamba, ikiwa mpira uko karibu kuingia kwenye goli halafu unaondoa goli na kuiweka upande mwingine, basi nia yako ni kwamba ule mpira ukipigwa usiingie ndani ya goli. Sababu yao kufanya hivyo ni kubatilisha uamuzi wa Mahakama ya Upeo.

Jambo la pili na historia inaweza kutubaini wazi tukiwa hapa ndani ya Bunge hili. Kipengele 2(a) cha Katiba kuhusu Sheria za Uchaguzi, tulisema kuwe na mfumo wa vyama vingi. Utaona ya kwamba, kwa wale watu ambao waliweza kushiriki sana kuleta



vyama vingi hapa kulikuwepo mmoja wetu na ndugu yangu Sen. Ndwiga. Juzi tulikuwa tunajadiliana naye akaniambia kuwa alikuwa anatoroka hapa na pale kukwepa polisi wasimkameta kule nyumbani. Leo ninashangaa nikimuona hapa akichangia na kusema sheria hizi zibatilishwe.

Aliniambia ya kwamba alikuwa anatafutwa kama panya. Pahali popote alikoenda alitafutwa hadi akalazimika kujitetea. Ndugu yangu alinieleza hayo. Mimi nataka kusimama naye tukishukuru sana kwamba leo tunaweza kufurahikia tukisema upande ule ni wa Jubilee na upande huu ni wa NASA lakini sisi sote ni ndugu na Wakenya. Tunaweza kupingana kimawazo na hiyo ni sawa.

Tutachukua jukumu hivi sasa. Ikiwa Mahakama ya Upeo iliweza kupitisha uamuzi wake vile ilivyopitisha. Nafikiria itakuwa si jambo nzuri ikiwa Hoja hii inaweza kupitishwa na kuwa sheria ya nchi hii. Mimi nataka kupinga Hoja hii kwa sababu si wakati mwema wa kupitisha Mswada wa kugeuza sheria za uchaguzi.

Asanta sana.

**The Temporary Speaker** (Sen. Kang'ata): The Mover to reply.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, let me start by congratulating the Senators who have demonstrated a lot of commitment and passion towards this Bill. Allow me to, in fact, congratulate the minority side. At the time I was moving this Bill, there was no indication that any of them would have come to the House and even if they did, that they were going to debate.

We can now assume by conduct that the minority side are now going to participate in legislation in the House. They are back in full swing. They have made robust opposing remarks to this Motion which is exactly why we wanted them here. I also look forward to having them for another two weeks to come and debate on the Bill.

Secondly, when I was moving this Bill, I gave an opportunity to the minority side to give us the four names so that we can amend the Motion. We have waited for two hours. I have conversed and tried to persuade the minority side to leave their hard-line position, which has become a signature position for their political outfit, to give us four names so that we can amend the Motion and include them.

There are some issues that were raised by Sen. (Prof.) Onger from IPPG to Serena talks. There were also issues that have been raised by Sen. Madzayo. There are also the mass action issues that Sen. Outa alluded to which can be part and parcel of the process and considerations of the Senate.

I have seen most of my colleagues in the minority side talking about the desire to go to mass action. You cannot have spent so much money and time to campaign and when the opportunity comes to be a Senator, you say that this is not the right forum and resort to mass action. You can allow those who voted for you to do the mass action. However, you can take this very enviable opportunity and change something meaningfully on the Floor of the House.

I want to convince my friend, Sen. Outa, who has been my friend for a long time that he needs to quickly get used to the "upper" House because here, we do things in a very orderly manner. We do not pour water on ourselves. There is no fighting here and we are ready to listen to every idea. I said this when I was moving the Motion, that the majority side and being the leader on this other side, we are willing to listen to everybody to ensure that this Bill is amended and put in the right version so that we can have a peaceful country.

Thirdly, my colleagues on the minority side are so worried about the tyranny of numbers. The reason why they are here is because of numbers. If there was no tyranny of numbers in their counties – they took the tyranny of numbers – they would actually be languishing in their villages. The men and the women whom you defeated back home are actually crying about tyranny of numbers because that is the definition of democracy.

More people voted for Sen. Olekina in Narok County than his competitor. Otherwise, if it was not for tyranny of numbers, you would have been in Narok negotiating who should come here. Since the majority of the people of Narok County elected him, do not come and bastardized the majority numbers and say that tyranny of numbers is bad. It is not. The reason why they are fighting for the presidency is because they are hoping that they could get the numbers.

Sen. Outa was saying that they are with the people. My friend, we did not come here through stones or rocks or hills; we came here through people. The reason why we are more, that is, we are 38 and you are 29, is because you did not get the numbers. The same people who brought 38 senators on our side here are the same ones who are with us out there.

*(Applause)*

We have been so magnanimous to say that despite the fact that we have the numbers, we are willing to sit down to negotiate, discuss and consult because this country is very important. By the way, by the definition; no politician should be able to castigate democracy. Otherwise, they would not be in the office where they are. They are there due to numbers.

Sen. Omogeni was saying that the Supreme Court never ordered for other laws; that we should just apply the laws as they are. I did not hear any single sentence like “apply the law as it is”. If that is the case, there is no problem. We will pass the law, the IEBC will apply it as it was, but we will have the law in place. This law is not to be passed only because of the 26<sup>th</sup> October, 2017 fresh presidential election. It is a law that will be in place for posterity.

As we have said, the chairman of a commission and their members are not permanent; they are human beings. They can get flu just like the Supreme Court judge was unwell and six judges had to make a decision. If Mr. Chebukati suffers a sour throat and he cannot talk the very day that he is supposed to announce the results, it should not be so difficult for his deputy or any other commissioner to make that announcement. We should not make our country to be at imprisonment of one individual. We are saying that we are opening opportunity for people. Otherwise, there is nothing that threatens the current commission and the current chairman.

I want to advise the minority side that when you become so defensive of Mr. Chebukati as a person than the IEBC as a commission, then you make people become suspicious. That is what I have kept on saying. You make people to start wondering why you are so obsessed with one person. We must protect the Independent Electoral and Boundaries Commission(IEBC) as a Commission and as an institution. We must enable, by law---

*(Some Senators consulted loudly)*

**The Temporary Speaker** (Sen. Kang'ata): Order Senators! Order!

**The Senate Majority Leader** (Sen. Murkomen): As a matter of law, we must ensure that the IEBC is capable of operating and moving forward. I have heard our friends say that this is not their forum; that their forum is mass action, *maandamano* and throwing stones. But let me warn them---

**Sen. Omogeni**: On a point of order, Mr. Temporary Speaker, Sir. Is he in order to say that we have said that we are going to throw stones? Nobody has said that. Can he substantiate?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, the Senator was in and out of the House. He was not here when the Senator for Kisumu County contributed. I would have had a problem if it was him who was raising the issue.

So, Mr. Temporary Speaker, Sir, we support any citizen of the Republic of Kenya who is going to demonstrate, because it is one of the ways of exercising freedom of speech and the right to speak. It is also a way for them to raise their voices against that which they do not like. However, they must remember that the Kenyan people will not accept a situation where freedom of speech and movement is going to be used to undermine the rights of others. So, they must know that their rights end where the rights of others begin. They must, therefore, organize themselves in a manner that will ensure that the rights of the members of the Nairobi Business Community begin where the rights for the members of the National Super Alliance (NASA) end. They must understand the extent they can reach in what they do.

Secondly, it is extremely unfortunate that a coalition that is seeking to lead the country can---

**The Temporary Speaker** (Sen. Kang'ata): There is an intervention from Sen. Mwaruma Mwashushe from Taita-Taveta County.

Proceed, Sen. Mwaruma.

*(Sen. Mwaruma spoke off record)*

**The Temporary Speaker** (Sen. Kang'ata): Okay, thank you.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, they are still learning how to use the gadget.

Mr. Temporary Speaker, Sir, I was saying that it is unfortunate that a coalition that is seeking to lead this country can profile Kenyan companies like Safaricom---

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

**The Senate Majority Leader** (Sen. Murkomen): It better be a good point of order.

**The Temporary Speaker** (Sen. Kang'ata): What is your point of order, Sen. Pareno?

**Sen. Pareno**: Mr. Temporary Speaker, Sir, is it in order for the Member to keep talking about NASA instead of contributing towards the Motion that he has moved? He is busy talking about NASA, what it said and stones instead of contributing to the Motion that is on the Floor of the House. I seek your guidance on that.

**The Temporary Speaker** (Sen. Kang'ata): Senator, you are out of order. He is contributing and making his reply to the issues that were raised during debate.

Proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I think that Sen. Pareno was here when they threw so many questions to the Majority side and I am just responding to the questions as raised.

Mr. Temporary Speaker, Sir, it is a shame; Safaricom is one of the best companies to be ever registered in this country. The Safaricom Mpesa concept is a miracle all over the world and it is being copied by so many countries. Safaricom has won so many awards for this innovation. Safaricom is the face of our Republic when it comes to business. I feel extremely sad when our colleagues confidently negatively profile a company such as Safaricom in public yet they are beneficiaries of Safaricom's pay bill numbers. They even use Safaricom lines to make phone calls yet they can confidently go publicly to negatively profile such a company, which has contributed immensely to our country; employed so many of our youths and exported so much branding?

Why would you seek for a position of leadership if you blame Safaricom and a French company? Why would you seek for a position of leadership yet you do not like the Kenya Defense Forces (KDF) and this country? Why would you want to be a leader of a country when you do not like its economy, security and the beauty and you do not want to live in it? I want to persuade the NASA team that it is time they began to retrace their first love for this country. They should begin to imagine a country where there is a loser and a winner. They must accept that our country must move forward.

Mr. Temporary Speaker, Sir, there is genuine fear going round the country. I was speaking to one business person who told me that these people mention a company like Safaricom with the hope that the company will get scared. When that happens, they send their emissaries to tell them to give them something for campaigns if they want them to keep quiet.

**The Temporary Speaker** (Sen. Kang'ata): Order, Senate Majority Leader! You have to substantiate that point.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I have said and I want to repeat it; that a business man in this town told me of the fear that they have. He did not say that they do it; but it is a fear that they have. They fear that people who do such kind of things to scare such companies and then they send their message, telling them that if you want us to keep quiet, then meet us somewhere in this corner; send something for campaigns or increase the money in my Pay bill account.

*(Laughter)*

I hope that our friends on the Minority side are not intimidating public companies so that they---

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

**The Temporary Speaker** (Sen. Kang'ata): What is your point of order, Sen. Pareno?

**Sen. Pareno:** Mr. Temporary Speaker, Sir, is it in order for the Member, despite you guiding him that he substantiates, to go ahead to talk about the same thing without giving substantiation? We want to hear him substantiate and tell us under what circumstances he came to learn about this or who NASA sent to go and negotiate for them to keep quiet. Please substantiate.

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

**The Temporary Speaker** (Sen. Kang'ata): We have another point of order from Sen. Sakaja. What is your point of order?

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, I have noticed that you are a bit liberal in issuing interventions, which are just interruptions. Let me draw your attention to the Standing Orders, and I hope that Sen. Pareno and the rest are listening. Standing Order No. 87(1) states that:-

“Any Senator may raise a point of order at any time during the speech of another Senator, stating that the Senator raises on a point of order and that Senator shall be required to indicate the Standing Order upon which the point of order is based.”

Mr. Temporary Speaker, Sir, those are points of debate; points of interruption are not points of order. This House is guided by rules. If one does not agree with what the Senator has said, they should wait for their turn to give an opposing view. Most of what you have allowed as points of order are not points of order. Kindly, let us follow the rules in our Standing Orders.

*(Applause)*

**The Temporary Speaker** (Sen. Kang'ata): Thank you.

Hon. Senators, you need to know that one is not supposed to raise a second point of order if the first point of order has not been ruled on. Therefore, allow me to rule on the first point of order that was raised by Sen. Pareno.

Sen. Pareno, you are out of order because your point of order, in actual sense, is a point of argumentation.

*(Applause)*

You had a chance to come and give your submissions but you did not come early enough. Therefore, allow me not to uphold your point of order. To me, that was a point through which you were trying to converse.

The second point of order that was taken by the Senator for Nairobi County is a good point of order and it is there in the Standing Orders. However, I have been using my discretion as the Speaker. Senators are yet to get used to the rules of this House and, therefore, I have not been very strict in enforcing that rule.

Of course you know that the Speaker has that power under Standing Order No. 1(1) to be somehow accommodative. Therefore, going forward, when we come back during the next session, we shall be very strict pursuant to the Standing Order that has been raised by the Senator for Nairobi County. For now, we have been very accommodative so as to allow Members to talk freely.

For now, let us allow the Senate Majority Leader to proceed taking into account what you have said.

Sen. Murkomen, proceed and conclude giving your reply. You have only two minutes to conclude.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I call upon my colleagues to respect our country, avoid these acts of economic sabotage and any acts of creating artificial political crisis.

Let us accept that the same way - I am sending senior counsel Sen. Omogeni - that the same way your competitor accepted that you won and the voters that did not vote for you have accepted that you are their senator, I urge you to also accept that when your coalition leader loses an election it is not time to sabotage our economy or our country. Our country will still be there with us.

There were people who were on that side like Sen.(Eng.) Hargura who are now sitting here and I will not be surprised before the end of the term when more than half of you will have joined us on this side. It is important for us not to wreck our country just for the simple reason that we have an election that is coming.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move this Motion and ask this honorable House to vote in support and that we move with speed to ensure that the amendments are taken care of and that our country can have an election on October 26<sup>th</sup>2017 that is free, fair and credible.

**The Temporary Speaker**(Sen. Kang'ata): Hon. Senators, pursuant to Standing Order 73 (1) I rule that this Motion is a matter not affecting counties. Consequently, the House will proceed to do a voice vote on the matter.

*(Question put and agreed to)*

The Motion appearing in the Supplementary Order Paper, Motion number 11 has been stood over.

#### ESTABLISHMENT OF SPECIAL NHIF FUND FOR PLWD

AWARE that about 15 per cent of the Kenyan population are persons living with disabilities;

APPRECIATING that the Government has taken several measures to avail certain privileges through the National Council for Persons with Disabilities (NCPD) to registered persons living with disabilities;

NOTING that the National Hospital Insurance Fund (NHIF) is a contributory health insurance cover and the remittance of contributions for persons living with disabilities by Government for the cover, is not among the privileges extended to persons living with disabilities;

CONCERNED that most persons living with disabilities have difficulties engaging in gainful income generating activities that would enable them pay the contributions to NHIF, hence are without any medical cover;

FURTHER CONCERNED that many persons with disabilities are unable to access medical services leading to high mortality rate;

NOW THEREFORE, the Senate urges the National Government to put in place the following measures through the Ministry of Health and the Ministry of East African Community, Labour and Social Protection-

(1) Undertake vetting of all persons living with disabilities in Kenya to ascertain those who are unable to afford payment of contributions to the NHIF; and

(2) Set aside a special fund for remittance of contributions to NHIF for those persons who are living with disabilities and cannot afford to pay the contributions.

*(Motion deferred)*

The Temporary Speaker (Sen. Kang'ata) We will proceed with item number 12 which is the adjournment of the House until Tuesday 10<sup>th</sup> October 2017.

We have a point of order from Sen. Cheruiyot.

### POINT OF ORDER

#### FAILURE BY SEN. PARENO TO SUBSTANTIATE ALLEGATIONS MADE IN THE HOUSE

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, I seek your guidance. Yesterday afternoon, during debate on one of our Motions, I rose on a point of order based on utterances that had been made by one of our colleagues, Sen. Pareno where she had alleged that in one of the polling stations in Narok County, the IEBC vote tally had stated that President Uhuru Kenyatta had scored 5,000 votes.

In accordance to Standing Order No 94, you ruled that today being the next day of sitting, that she will either furnish this House with documents supporting her claim or she withdraws that all together. I am seeking your guidance because I have seen her touching her handbag. That means that either she is removing the document supporting or about to dash out of the House.

Mr. Temporary Speaker, Sir, please guide us before she leaves.

**The Temporary Speaker** (Sen. Kang'ata): Yes, indeed, Sen. Pareno you need to either withdraw the remark that you made yesterday or you give documentary evidence which is admissible to this House proving your point.

**Sen. Pareno:** Mr. Temporary Speaker, Sir, I take the business of this House seriously and I also take time to consider what I say before I say it.

I was able to download what I referred to from the IEBC records because I am using their records. I only managed to get them this afternoon showing what I talked about; polling stations in Narok County and specifically I had referred to Nituyupake Polling station in Narok North with 507 registered voters but 5,527 voters are the ones who cast their vote.

Mr. Temporary Speaker, Sir, having downloaded this document and being a lawyer, I have written a letter to IEBC to certify these documents as properly coming from their own data which I downloaded.

I am seeking for indulgence because I want it to go on record as truthful, that you allow me to provide a certified copy by none other than the IEBC. I do not want to give you documents that are not certified. I am willing to do that in the next sitting as far as IEBC can certify the documents but I have copies showing what I talked about and that is what I was saying; that they are very irregular and should not be entertained in this country.

Mr. Temporary Speaker, Sir, indulge me to give certified copies but I have the downloads that show what I have already done. I have written a letter which I expect to be responded to so that these documents can be certified as proper records.

**The Temporary Speaker** (Sen. Kang'ata): Any other Senator who wishes to speak on this matter? Yes, Sen. Seneta.

**Sen. Seneta:** Mr. Temporary Speaker, Sir, I seek your directive on whether we should just accept any download which is not certified or have Form 34As and 34Bs which were also filled on that particular ---

*(An hon senator spoke off record)*

I am on the Floor. I also request that we get the original forms that were filled by the Presiding Officers because some of these downloads which our colleagues in NASA presented in court were doctored by some comen whom they colluded with to produce results that are not real.

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, I have two points. First, the Independent Electoral and Boundaries Commission (IEBC) has its records in two formats as provided for by the law; electronic and manual. The Senator purports to be in possession of some documents which she claims are from the IEBC. I have no way of determining whether they are legitimate or illegitimate.

However, that I can verify some information from the IEBC portal, for instance, Narok County, County No.33; Narok North, Constituency No.179; Olokurto Polling Station, Naituyupaki Primary School, a polling centre with two polling stations. Two polling stations can have a maximum of 1,400 votes.

*(An hon senator spoke off record)*

That is a statement of fact, my friend. That is the law. There are no streams anymore. The results from the IEBC portal are as follows:-

The candidate who won in that polling station is Mr. Raila Amollo Odinga with 818 votes. The second one is Mr. Uhuru Kenyatta with 100 votes. Mr. Abduba Dida had one vote while the rest had zero. Given what I have provided from the IEBC electronic records, it would be in order for Sen. Judith Pareno to withdraw and apologise to this House.

Secondly, even if we were to stick and follow the line of thought that she wants us to pursue, the Standing Orders are very clear. If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, – I draw your attention to the word “instantly” – she withdraws and apologizes until the day she will furnish us with records showing that Mr. Uhuru Kenyatta had 5,000 votes from that polling station. Then we will either apologise to her or adopt the records of this House.

Mr. Temporary Speaker, Sir, please guide us.

**The Temporary Speaker** (Sen. Kang'ata): Proceed, Sen. Olekina.

*(Technical hitch)*



Kindly approach the Dispatch Box.

**Sen. Olekina:** On a point of information, Mr. Temporary Speaker, Sir. Sen. Cheruiyot knows very well that it is wrong for him to give false information. The total number of votes per polling station was 1,400 votes and not 700 votes.

*(An hon senator spoke off record)*

We no longer have streams. Every polling station had 700 votes only. No, you said 1,400 votes. It is on record.

**Sen. Pareno:** Mr. Temporary Speaker, Sir, at any one moment I did not mention any presidential candidate in my submissions yesterday. I would like you to refer to the HANSARD. I think they are only dreaming about the figures that they allude I attached to the President. I did not mention the name of the President. I only talked about polling stations that have more votes than the number of registered voters. I said that there is one polling station that had about 500 – I did not have the figures then. I had left the document somewhere. I talked about more votes than the registered voters. I did not at any one moment attribute a certain number to any presidential candidate.

Mr. Temporary Speaker, Sir, I request you to refer to the HANSARD. May I respond to what they have said.

**The Temporary Speaker** (Sen. Kang'ata): Owing to time constraints allow me to make a substantive ruling on this matter.

Hon. Senators, I invite you to look at the provisions under Standing Order No.94. It states:-

“94. Responsibility for statement of fact

(1) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 110 (*Disorderly conduct*) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Therefore, my hands are tied by the clear words appearing on this Standing Order. The Senator who made that allegation ought to have brought documents which can be admitted today and not later. I rule that she has been unable to do so. Hence, I order her to withdraw the allegation. Of course, she is at liberty to introduce that allegation again upon having strong evidence which she can table before this House but today I order her to withdraw that statement.

I thank you.

**Sen. Pareno:** Mr. Temporary Speaker, Sir, I am law abiding. I know that I must prove my allegations. I am satisfied with your ruling that I can come back to this House with my certified documents proving that at Naituyupaki Primary School, there were more votes cast than the number of registered voters. I will substantiate that. Earlier I

indicated that I have written a letter to have authenticated documents. At the moment I have the print-out which has to be certified by the IEBC. Once certified I will come to this House and prove my point. For now, I withdraw those statements. I apologise for not having the documents but of course there is another day for me to have them.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Kang'ata): Hon. Senators, for your information, I have looked at the Standing Orders on how to produce documents that can be accepted by a Speaker. There is no express provision whether you need a certified document but from where I sit you have to read these rules together with existing laws.

Therefore, I make reference to the Evidence Act. So, if you have to bring a document, ensure it can stand the criteria set out by the Act which shall be our guiding law in respect to your intended production.

I thank you.

Proceed, Senate Majority Leader.

### MOTION

#### ADJOURNMENT OF THE SENATE PURSUANT TO THE APPROVED CALENDAR FOR THE 2017 SESSION

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Orders 28 and 29, the Senate do adjourn until Tuesday 10<sup>th</sup> October 2017.

Since I spent most of my time earlier speaking of the reason we needed to adjourn, I do not wish to take much time saying a lot about this adjournment Motion. Yesterday we passed the Senate Calendar and agreed that we would adjourn and come back on 10<sup>th</sup> October. Part of the business that will take place during this period is that Senators will go back to their constituents to thank them. Most of them could not have gotten a chance since they were sworn in. I am sure that some will engage in the political activities going on, including the campaigns of the National Super Alliance (NASA) that will only be taking place on Mondays and Fridays, in the name of protests.

By the time we come back on 10<sup>th</sup> October, we will meet together and continue until we complete the elections and thereafter, go for the December break. I, therefore, move this Motion and ask that we do all agree to adjourn for purposes of visiting our constituents and attending to our businesses that we need to do as Senators outside the Chamber. These activities include representation and consultation with our voters.

I beg to move and ask Sen. Mugo to second.

**Sen. Mugo:** Thank you Mr. Temporary Speaker, Sir. I wish to second this Motion and support it strongly. I thank the Senate Majority Leader for moving this Motion. We, definitely, need to go back to the source, which is the people who sent us to this House. Especially now with the very high political temperatures, the people out there must be wondering what their leaders are thinking. Particularly, I have very close friends out there and respect them a lot. I am sure your voters want to hear what you are thinking.

As I support this Motion, I wish to urge the Hon. Senators that as we go for recess, let us please bring the temperatures down. Our people look up to us for guidance

and we are capable of bringing the temperatures down. Think of the children out there and the youth. Today the university students were demonstrating. They are taking a leaf from their seniors who they have seen demonstrating. We have to tell our young people that this is not the way to go. The way to go is to reason together, debate, talk and obey rules and laws.

I also want to commend the Joint Select Committee. We look forward to having the Members from the other side, so that they can sit together and reason. This is a House for debate and that is why we are here. We now have an opportunity to look at the electoral laws which were passed in haste. Now that we have very many lawyers in this House, I am sure they will give their input.

When we look at the judgment, there is nothing that the Judges said to blame the commissioners or members of staff of the IEBC. They talked about the processes and irregularities. Maybe there were gaps in the law and that needs to be relooked at. There could not be a better time than this for the Joint Select Committee to do that. Let us not put a blanket on these amendments. Let us look at each one of them and see the value in each one of them.

I was elected quite a few times in Dagoreti and know that one of the rules is recount. You do not just repeat an election. I was actually horrified and surprised when I heard that the elections should be repeated even before recounting the votes. The judges showed that nobody complained about the polling itself. That was supposed to be clear and straight. Nobody was denied an opportunity to vote and put the ballot papers in the *debe*. So, we can only take what was in the *debe* as the correct position. That is why the electoral law provided that, first, we should have a recount. This did not happen. It is only right to seal that loophole with a law.

The others were of course the processes which involve the law. I do not think we should be afraid to look at the law. Some of the laws were passed very late in the day during the 11<sup>th</sup> Parliament. Also there were many cases that went to court. So, it is not late to tidy the election laws. After being told to repeat the election, we should find out whether the law is right. Is there something we should do about this? It would be different if we were changing fundamental areas.

This is really streamlining, for example, the transmission process that had a problem. I remember in the 11<sup>th</sup> Parliament we had a long discussion here about transmission and electronic transmission carried the day. Then there was a provision for a manual alternative. I do not know why the manual option was never used in this case. It is because there was so much pressure on using electronic transmission.

If electronic transmission did not work very well, because that is where there were so many question of opening the servers and others, will it hurt if we do it the other way round, which is manual and then backing it up electronically? I want to urge the Joint Select Committee from both sides not to approach this issue emotionally but with a view to help this country to move forward. We are doing a lot of disservice to ourselves. Kenya is considered one of the best countries to invest in. What are we doing to our investors by attacking one company after another, as I have seen the leader of NASA, whom I respect do? We must put our country first as Kenyans and ourselves second because we will not live forever. It is not a matter of life and death that one must be President or Senator. We must also think about the people we want to lead the country.

If we tear the country into pieces, where will it leave our children? Whom will we lead? A few may fly out of this country and live out there, but the majority of ordinary Kenyans will not be able to do so. Let us consider even the Kenyans who cannot go and live abroad.

Let us look at this issue with a human heart, caring about every Kenyan and not just ourselves. Let us also now follow the rule of law. I have heard each side claiming that they are doing that for the Constitution and they are blaming each other. We can interpret the Constitution how each one wants but if we are honest to ourselves, I think we can really see who is following the Constitution and who is not; who has decided to take the law into their hands and who has not.

As we go on recess, I would appeal to each one of us, as leaders and the presidential candidates, particularly the leader of the Opposition, to tone down and bring down the temperatures so that we can save our country from the brink of violence. We do not want to see a repeat of 2007/2008 post-election violence in Kenya. I hope The International Criminal Court (ICC) is keenly watching to see who is promoting violence now and going against the rule of law. This is because they picked the wrong people and let the one person who promoted division in the country at that time with one tribe against forty two. Now we have added other tribes and I have lost the count. We are going the same route that promoted the fighting. We are demonizing some people such as Chiloba and the others, even those who have not done anything to warrant being put on the cross.

All the people in the Independent Electoral and Boundaries Commission should be left alone to run the election as the Judiciary ordered. They did not say minus this one or that one. Who is it that has an extra-judgment somewhere and knows who did what? This will cause unnecessary animosity. Let us avoid sentiments of tribalism and animosity so that we all become Kenyans and keep peace in this our beloved country.

I beg to second.

*(Question proposed)*

**The Temporary Speaker**(Sen. Kang'ata): Any Senator who wants to contribute will get seven minutes so that we can give opportunity to as many Senators as possible taking into account that we only have thirty minutes before we conclude our business.

**Sen. Pareno:** Mr. Temporary Speaker, Sir, I wish to personally oppose that we should adjourn this House. We just came in the other day. We were sworn in, we went for induction for a whole week and have just come in for two days. We have not even learnt the ropes of this House as to how we are supposed to conduct ourselves as Senators. You did a very good induction which will assist us to perform our duties well but before we even start to practice, the House is adjourned.

I oppose this strongly. What is the reason for adjournment? I have heard the elaborate support by Sen. Mugo and all she has hinted at is that we are adjourning so that we have the select Committee from what I understood. I stand to be corrected.

Sen. Murkomen said we are going so that NASA can go to their campaigns so that we can--- but the gist of it is that this House is being adjourned so that we give time to the Select Committee to go and mutilate the election laws, the very Constitution that is the basis of this nation.

Mr. Temporary Speaker, Sir, I have looked at the proposed amendments to the election law and I realise that the powers of the Chairperson of IEBC will be reduced. That is my understanding and I stand to be corrected. However, we will have reduced the powers of the Chairman of the IEBC. That is my understanding of the proposals that are being made.

The second proposal is to reduce the quorum of IEBC and any three of them can now do anything. The other amendment that is being proposed is to use the manual way as a back-up for our elections when we had embraced the electronic way to avoid things that happened even in 2007 and it was proposed by the Kriegler Commission that we go electronic. That is why this House is going on recess. We are going to remove the footprints that will show us how to get free and fair elections.

If this House is adjourning not to go and do a service that is anchored in the Constitution to protect the laws that we have passed and the supremacy of the Constitution, to reduce the quorum of bodies that have been created and quorum given by the Constitution, then I shudder that I would not myself want to participate in that process. I am happy that we have honourable Senators who have been proposed to go and sit in that Committee to do those things that they are proposing to do.

Hon. Senators, Kenya belongs to all of us, and the Constitution was done by Kenyans. We ask you to go sit down and do what is expected by Kenyans lest you will be judged harshly by history.

Finally, Sen. Mugo has talked about violence. None of us would want to see even an iota of violence in this country. We want justice for the people of Kenya. We want free and fair treatment of each one of us. Be assured that during this recess, towards whatever election date that will come, for us, we need reforms and not violence. We will go ahead. We have been talking about peaceful demonstrations for reforms. We are not talking about violence and we shall not participate in any way. The welfare of this country is in the hands of those that area going to look into those laws.

I beg to oppose.

**Sen. (Eng.) Maina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support that we adjourn. The reason we are adjourning is because a constitutional body ruled that we have a repeat of the election. We, as Senators, we took oath to protect the Constitution. Therefore, anybody holding a different view should know that the Constitution is supreme in this country. We need to go and talk to our constituents and Kenyans.

We seem to think that this country is a theatre and therefore are advocating for violence. We have witnessed violence in this country before and other countries which end up with people dying. We tend to think that violence happened somewhere in the North Pole and not around us. Therefore, I would like to appeal to this House and to the leaders of this country, and I stand to be corrected, it is a sin for anybody to perpetuate words or actions that can lead this country to violence. It is a bit worrying because of the high temperature we have put into our people, especially the youth. We have youths that are vulnerable with no employment and who are frustrated.

Some people preach that they have been denied justice and their rights in this country. We may think demonstration is a casual affair. Irrespective of the intentions, once we start it and it gets out of hand, none of us will be spared. It is the responsibility of leaders of this country to preach peace. I call upon the leaders of both Houses to be

careful on their utterances because we are provoking people and they are listening. What has happened is that the Kenyans are now divided down the middle. There is a definite line when you listen to the two corners. Therefore, it is upon us, as leaders, who took the oath to serve all Kenyans to be responsible. Could we shift from what we have been doing? I do not support the view that we are adjourning so that we sit somewhere and mutilate the Constitution.

The Temporary Speaker, Sir, the amendments being proposed here emanate from the ruling of the Supreme Court. That is why our country is in the current situation. I do believe that we, as leaders, have a duty to give our people hope. We should not divide them and incite them to violence for our selfish ends.

As we adjourn, every one of us should go and utilise this time to preach peace to their constituents. We preach to them to obey the Constitution and the laws. I hope all of us, as leaders, will do good for the sake of this nation.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, we are living in very interesting times. In this country, in times when something is done wrong, people always want to get a quick fix. As we adjourn since we do not have a choice, some of us will take this time to educate our constituents on the dangers that we are facing. The dangers which are being brought about by a Government which I believe has got an interest of widening the gap between the rich and the poor. It is sad.

I have realised that when you look at the penal code, there are certain provisions or articles that have not been used for a very long time. The last time they were used is during the Moi era; Subversion - Article 77. There is a threat to freedom of speech where you cannot say anything otherwise you are subjected to an arrest. You cannot say anything that you hate or despise or you feel that it is taking us back about this country or Government.

This time when we go for recess, I will personally take the time to educate my constituents of their rights to defend the Constitution. Article 3 and Article 249 is clear in terms of protecting the Constitution.

It is important for us to realise that the quick fix that we are yearning for is not what is going to help us. We are going to destroy a great country. This is a fantastic country and we ought to think twice. When I looked at the calendar, I saw that it was designed in a manner that we will be away until 10<sup>th</sup> October 2017. When we come back we will pass certain legislations which are a quick fix or which I consider to be more like private legislation to support a particular interest. We are required in our counties to exercise our mandate, but let us not circumvent the law. Let us not hide and say that we are going there so that we can talk to our constituents and yet we are going there to campaign.

Mr. Temporary Speaker, Sir, since we are going there to campaign, I assure you that you will see a lot of demonstration and many of NASA supporters defending the Constitution. I am very proud of people like Sen. Orengo and Rt. Hon. Raila Odinga because they fought for this nation. I believe you all know Rev. Timothy Njoya who was beaten up. It is sad that we are not interested in building this nation and being on the right side of history. We are only interested in a quick fix or widening the gap between the rich and the poor.

I recommend this book to all Members; "*Why Nations Fail.*" It is important because there is a thin line between the rich and the poor. When you look at Nairobi,

for instance, if one lives in Kawangware and another in Lavington, the thing that divides the two areas is a wall. That is the same scenario that is talked about in that book; it is about two cities called Nogales, one in Mexico and the other in the United States of America.

So, as we go for recess, I want to appeal to Members of Jubilee, who are the Majority in this House. Hon. Senators, let us think about these amendments that your Government, your party or your leaders are forcing you to pass. People pay taxes in this country and it is wrong for us to pay civil servants who, instead of them doing the work that they have been appointed to do; they are taken to the streets to campaign for one particular political party. I appeal to you that during this recess, you should think twice before you take this country back to the days when one could not say anything.

**Sen. (Eng.) Maina:** On a point of order, Mr. Temporary Speaker, Sir. The hon. Senator has continuously insinuated and put intentions on Members who have supported the adjournment. He has said we should not stand here to say we will talk to our constituents on issues of violence. Finally, he has stated that we have been forced to pass amendments to the election laws, which we will be debating. We were elected by our constituents. Therefore, is the hon. Member in order to insinuate without substantiating, that we do not have our own freedom and that there is some authority somewhere ordering us? Could he substantiate and tell us who this authority is? He should also table the evidence regarding this claim.

**The Temporary Speaker** (Sen. Kang'ata): Hon. Senator, you will give a brief reply to that because you have only one minute left. Or were you done with your contribution?

**Sen. Olekina:** No.

**The Temporary Speaker** (Sen. Kang'ata): Use one minute to respond to his point of order before I make a ruling.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, before I respond to the Hon. Member, who is also my good friend, Eng. Maina, I would like to know under which Standing Order he is raising his point of order, so that I can substantiate what I was saying.

**The Temporary Speaker** (Sen. Kang'ata): Hon Member, if I may go back to my earlier ruling on points of order, I ruled that I shall be relaxed on the application of Standing Order 87(I). Therefore, I will not require Members to state the Standing Orders they will be raising their points of order on, because we are still on the learning curve. If I was to do that, I will limit and whittle down debate. Therefore, allow me to excuse the Senator from that requirement. However, going forward, once we are here long enough, we shall be strict on adherence to House procedures.

Be that as it may, Hon. Members, allow me to refer you Stranding Order No. 87 on points of orders. It is long one but I have to read it, because many Members have raised issues. It reads:

“(1) Any Senator may raise a point of order at any time during the speech of another Senator stating that the Senator raises a point of order and that Senator shall be required to indicate the Standing Order upon which the point of order is based.”

So, yes, I agree that it is provided for but I have relaxed this rule. Standing Order No.87(2) states that:

“(2) When a Senator raises a point of order during the speech of another Senator, the Senator who was speaking shall thereupon resume his or her seat and the Senator

raising the point of order shall do likewise when he or she has concluded his or her submission, but no other Senator may, except by leave of the Speaker, speak on the point of order.

(3) The Speaker shall either give a decision on the point of order forthwith or announce that the decision is deferred for consideration after which the Senator who was speaking at the time the point of order was raised may continue to speak.

(4) The Speaker or the Chairperson shall order any Senator who unnecessarily and persistently interrupts proceedings or consults loudly and disruptively to withdraw from the Chamber and Standing Order 110 (*Disorderly conduct*) shall apply to any such Senator.”

What I am saying is that we need to understand these provisions so that we do not raise vexatious or frivolous points of order. I think the point that was raised by my colleague here was somehow valid but be it as it may, I would urge Members not to raise frivolous points of order. I will allow Members to ventilate and canvass their points without a lot of interruptions. Otherwise, if I were to strictly enforce Standing Order No.87(4), I would be compelled to throw out Senators.

So, in reply to his issue, I rule you out of order. He was just canvassing his point. There is nowhere in the Standing Orders that prohibits what he was saying. Therefore, I rule that he was right. I will allow you 30 seconds only because we have several Members who want to speak.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, you should have been generous enough to give me one minute. Given that you have given me 30 seconds, I just want to conclude by urging honourable Members to remember when they go home that this is a House of union. We have 341,000 voters in Narok and I am sure that Kirinyaga could be having over one million.

**An hon. Senator:** Point of information.

**The Temporary Speaker** (Sen. Kang’ata): Do you want to be informed Senator?

**Sen. Olekina:** Do I have a right to reject the information?

**The Temporary Speaker** (Sen. Kang’ata): Yes you have the right.

**Sen. Olekina:** I reject the information.

**The Temporary Speaker** (Sen. Kang’ata): But your time is up.

**Sen. Olekina:** But I have been interrupted.

**The Temporary Speaker** (Sen. Kang’ata): Notwithstanding your speech, your time is up.

Hon. Senators, I have four requests from Sen. (Eng.) Mahamud, Sen. Cherargei, Sen. Seneta and Sen. Mwangi. I propose that each of you have one minute because of time. Let us have Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Temporary Speaker, Sir, I support this Motion. Yesterday we passed the Senate Calendar in accordance with Standing Order No.29 and our friends from that side were not there. In fact, they did not contribute to the Calendar which was passed yesterday and should be gazetted soon. So, the Motion for Adjournment is in accordance with the Calendar. We are not adjourning because we are going to do what our friends have said. In fact, yesterday we adjourned even before this Motion came to the Floor of the House. The reason for that was elaborate; that we have to go back to our counties to set up our offices and also be involved in setting the development agenda.



Mr. Temporary Speaker, Sir, the laws we alluded to were enacted by the previous Parliament. These were the results of the Joint Select Committee led by Sen. Orengo and Sen. Murungi by then. I was a Member of that committee and that law was brought to the attention of both Houses. There was an urgent need for amendment from both Houses but we were asked not to change even a comma or full stop and now this is the time. I urge Members---

**The Temporary Speaker** (Sen. Kang'ata): Thank you Senator, your time is up.

Sen. Cherargei, before you make your contribution, I would like to draw your attention to Standing Order No.29(3) which I earlier read to you. It states that:-

“On a day when the Senate is scheduled to adjourn to a day other than the next normal sitting day in accordance with the calendar, the Senate Majority Leader or another member of the Senate Business Committee shall move a Motion of adjournment which shall be debated for not more than two hours after which the Senate shall adjourn without question put.”

The point is that there will be no voting on this one. So, you will have one minute.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Adjournment Motion and I want to say that this time we are going for recess is the time to go and reflect and also interact with our constituents and to update ourselves with the happenings on the ground in our counties.

Secondly, this is the right time to use much of our time to campaign. However, I want to urge that we use this time to at least preach peace. This is an opportunity to interact with the people and let them understand what is going on. This is because we have been so much involved in the business of the House, but as we go for recess, we can take this opportunity to interact and ensure that we come together.

Finally, on amendment laws, we want to take this opportunity to invite our brothers to use this time to go and reflect; other than going for mass action, they should use this opportunity to ensure that they submit their views to the Select Committee.

**Mr. Temporary Speaker** (Sen. Kang'ata): Yes, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir. I also want to support this Motion and urge my colleagues that as we go back to our counties, we should preach peace and unity and also show a good example to our young people. I am also wishing them all the best as they go to their counties for the one week recess.

**Mr. Temporary Speaker** (Sen. Kang'ata): Yes, Sen. Mwangi.

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker, Sir. I beg you give me five minutes.

I support this Motion because there are many events in the country and we need to participate in some of them and particularly campaigning for the presidential candidates. I would like to say that we are not doing this blindly. We are the same people who fought for democratisation of this country in those years when Hon. Raila Odinga, the former President Mwai Kibaki and ourselves were on the streets every day.

We are principled people. We are not people who can do something blindly. We have been doing legislative work for a while now and---

**Mr. Temporary Speaker** (Sen. Kang'ata): It was only one minute and I had given a direction. You are not supposed to speak because you had already spoken on this Motion.

Sen. Pareno, what is your Point of Order?

**Sen. Pareno:** On a Point of Order, Mr. Temporary Speaker, Sir. I remember in the induction course, you told us - I am looking at the rules - that we should at all times have 15 Members in the Senate for us to be able to be properly convened.

I have looked around and I do not think we have enough Members to form a quorum for this business. I therefore seek to be guided by you.

**Mr. Temporary Speaker** (Sen. Kang'ata): Thank you for that point of order. It is a valid point of order but the only problem is that you are inviting me to make the ruling past time. therefore, we rise.

### ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., the time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 10<sup>th</sup> October, 2017, at 2.30 p.m.

The Senate rose at 6.30 p.m.