

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 4th November, 2021

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

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

PRAYER

The Temporary Speaker (Sen. Nyamunga): Minority Whip, Sen. Mutula Kilonzo Jnr., you can present the Papers.

PAPERS LAID

Sen. Mutula Kilonzo Jnr: Thank you, Madam Temporary Speaker. It is my pleasure to hold brief for the Senate Majority Leader. On his behalf, I beg to lay the following Papers on the Table of the Senate today, 4th November, 2021-

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY EXECUTIVES/ASSEMBLIES AND COMPANY FUNDS

Report of the Auditor-General on the financial statements of Homa Bay County Education Bursary Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Homa Bay County Assembly Car and Mortgage Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Homa Bay County Executive Car Loan and Mortgage Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Fort Beverage Industries Company Limited for the year ended 30th June, 2018.

Report of the Auditor-General on the financial statements of Fort Beverage Industries Company Limited for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Migori County Executive Car Loan and Mortgage Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Nyeri County Enterprise Development Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Kisii County Teaching and Referral Hospital Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Kisii County Assembly Car Loan and Mortgage Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Kisii County Veterinary Services Development Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Kiambu County Assembly Staff Mortgage Scheme Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Nyeri County Assembly Car Loan and Mortgage Fund for the year ended 30th June, 2019.

Report of the Auditor-General on the financial statements of Nyamira County Assembly Car and Mortgage Loan Scheme Fund for the year ended 30th June, 2019.

(Sen. Mutula Kilonzo Jnr. laid the documents on the Table)

The Temporary Speaker (Sen. Nyamunga): Next Order.
What is your point of order, Senator?

QUORUM

Sen. (Dr.) Langat: Thank you, Madam Temporary Speaker. I can see the House does not have a quorum. I do not know if we can proceed with the business of this House. We are so few. That is my concern.

The Temporary Speaker (Sen. Nyamunga): May I ask the Clerks-at-the-Table to confirm whether we are properly constituted or not.

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

The Temporary Speaker (Sen. Nyamunga): What of online? Can we have the Bell rang for five minutes, please?

(The Quorum Bell was rung)

*(Several Senators walked into the Chamber
and others joined online)*

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are properly constituted. We shall continue with the business of the House.

On the Statements, Sen. Kwamboka has two Statements. She is not present. The Statements are deferred.

STATEMENTS

STATE OF POLICE STATIONS IN THE COUNTRY

STATUS OF AN INQUEST INTO THE MURDER
OF MS. AGNES WANJIRU

(Statements deferred)

Sen. Cherargei, can we have your Statements?

Sen. Cherargei: Madam Temporary Speaker, I request for some time to check on my Statement.

MANAGEMENT OF ROAD PROJECTS BY KURA

(Statement deferred)

The Temporary Speaker (Sen. Nyamunga): Can we hear from Sen. Olekina.

IMPENDING MASS SACKING OF EMPLOYEES AT KEMSA

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to make a Statement that is personal and timely because it affects the welfare of 900 Kenyans.

I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the impending mass sacking of employees at the Kenya Medical Supplies Agency (KEMSA).

In the Statement, the Committee should-

(1) State why the Government wants to sack over 900 staff of the Kenya Medical Supplies Agency (KEMSA) in the pretext of restructuring.

(2) Explain the legal basis of the impending mass sackings at the troubled organization.

(3) Inform the Senate of the criteria used to identify officers who are to be laid off in the restructuring process.

(4) Apprise the Senate of the compensation to be awarded to staff for termination of their employment, listing the compensation package per cadre of employees.

(5) State the progress made by KEMSA in implementation of resolutions of Parliament following the probe conducted on the agency by the Senate and the National Assembly last year which extended to this year.

(6) Explain whether the State Corporations Advisory Committee (SCAC) made any recommendations to the President in regards to the re-organization, removal or transfer of officers and staff of KEMSA, and if the Board acted on its advice as required by the State Corporations Act Section 27.

Kindly allow me to add to the issues: This morning the new board of KEMSA sent all employees of KEMSA for a one month off. During this one month, they are supposed to be working from home. Two weeks ago, the President lifted the curfew in the country.

The Judiciary directed all judges to resume work from 9.00 a.m. to 5.00 p.m. Why would the new board now send the staff to go and work from home? The plan by this board is that after the 30-day period is over, all the 900 staff of KEMSA will be fired. They will be asked to re-apply afresh and they will be vetted.

The Temporary Speaker (Sen. Nyamunga): I think now you are over---

Sen. Olekina: Madam Temporary Speaker, that is why I was requesting if I could add more information on this.

The Temporary Speaker (Sen. Nyamunga): Just add information, but do not go into the details.

Sen. Olekina: Madam Temporary Speaker, let me add some more information. This just happened this morning when the new board, led by the board chairperson Ms. Mwandime, who used to work for the United States Agency for International Development (USAID) issued that directive.

What bothers me, and I would like the Committee to look into this, is that in her Press statement, although she knew very well that it was going to affect the psychology of all these employees, she said that within the next 30 days the organization will offer psychological support to all the staff.

Finally, why would the National Youth Service (NYS) be used to go and work there when the other staff are being sent to go and work from home because of COVID-19 or is it because they want to carry out investigations? Why not use the same people?

Madam Temporary Speaker, I would request that the Committee on Labour and Social Welfare expedite this. Just like you had directed that the issue of the Football Kenya Federation (FKF) be dealt with immediately, I would request that you give the same directive on this matter. This is a matter that affects families; not only the 900 staff, but also the extended family members who depend on those people who work for KEMSA. I beseech you to do that.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. I will now allow a few comments on this and the first opportunity is to Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, thank you for the opportunity. This is so unfortunate. Let me be very frank. The 900 officers at KEMSA did not procure the Personal Protective Equipment (PPEs). The 900 officers did not cause the scandal that we are aware of.

This is a cover-up of very powerful individuals and their families from being investigated for the fraud in KEMSA. It is a cover-up and we must call it what it is. Ordinary Kenyans are being jailed left, right and center for stealing, but when it comes to powerful people you send people packing and you bring in the NYS.

It is time we call it the way it is, theft cover-up. Sen. Kembi Gitura who used to sit here was given another job instead of answering questions. It is a cover-up of people who speak the same language and are connected to certain people. It is unfortunate.

If NYS officers can be moved from their job where they are supposed to dig trenches and clean our towns to now procuring drugs, it is unfortunate because this will affect our counties. This is the only source of procurement of drugs. It is a monopoly. There is no difference between KEMSA and Kenya Power. In fact, if counties could procure drugs directly, I would not even bother, but I know this is going to affect our counties. What is more important?

One Senator here - I will not name - wanted to raise a concern about the harassment of the Director of Public Prosecutions (DPP). That Statement was not raised. There is this idea of making sure that you cripple institutions to protect corruption. I have said this before that the Constitution we passed in 2010 which the High Court and the Supreme Court are going to uphold says you are going to answer to questions when you are in office and when you are out of office. You can fool some people sometimes, but you cannot fool all the people all the time. We will get to the bottom of this.

I hope this Committee - because they were dealing with them today - is not going to receive phone calls. I had the same problem and that is why we rejected the committee

led by Sen. Dullo because eventually when we requested them to do a proper audit they ended up with a sham report. I hope that we will not go there. It is unfortunate.

I thank you.

Sen. Cherargei: Thank you, Madam Temporary Speaker for this opportunity. I want to support this Statement. It looks like the problems that KEMSA is facing are serious and endemic with time. It is unfortunate that as we talk as a country, KEMSA - because of reactionary measures that they are putting in place and because they want to protect powerful cartels within the sector especially in the Ministry of Health and also the procurement of drugs - they have decided to go for the 'small fish'.

In the beginning of the year, I remember the the Ethics and Anti-Corruption Commission (EACC), the DPP and Directorate of Criminal Investigations (DCI) were saying that they want to fry the 'big fish' and not the 'small fish'. However, in this instance, it is very unfortunate that 900 ordinary junior employees within KEMSA are being sacrificed at the altar of protection of powerful individuals within Government and the KEMSA fraternity.

You have heard my brother mention that the former chairperson and the board were implicated. The former chairperson who is Sen. Kembi- Gitura and the board were implicated on corruption allegations that were in KEMSA. What did the Government or the President do? They decided to transfer him to the Communications Authority of Kenya (CAK). How do you transfer corruption from KEMSA to CAK? Now CAK will also face corruption issues. You are not ready to fire the board that was implicated, but you are instead transferring the chairperson and rewarding him.

It looks like corruption nowadays is a rewarding competition. The more corrupt you are the more rewards you will be given. The more honest you are, protecting your job and following rules and regulations that have been provided by the labor laws, then you are punished by the Government.

It is very unfortunate that as we talk today, the same board that was implicated is sacrificing the junior 900 employees that depend largely on this hard-earned salary of even Kshs50,000 or Kshs100,000, but the high and mighty---

You remember when the issue of KEMSA came up senior employees were sent home on implications. Late last year after the COVID-19 millionaires heist came out, the President ordered DCI, DPP, EACC to do an investigation in 21 days. Many days and months have passed, but that report is yet to be seen and no one is yet to be prosecuted. The only thing we are seeing are these junior 900 staff who do not have a voice. The only voice they have is us the Senate.

Therefore, we want to challenge the President that you told the country that the KEMSA report would be ready within 21 days and that people would be prosecuted. What is happening? Who are these people who are so powerful that they cannot be prosecuted despite the directive given by the President? I think 21 days are long overdue and I know there is pressure from the USAID.

You remember when there were problems with KEMSA, the USAID refused to continue funding KEMSA until institutional reforms were done. No one has done institutional reforms up to now. Do you want to tell me that they will lie to those donors that donate through KEMSA and USAID about the sacking of those 900 employees? Are they going to tell the donors that they have fired 900 employees because they were participating in corruption within KEMSA?

I think we are lying to the country. We need to be honest with ourselves that 21 days is long overdue. We want to challenge the investigating agencies, the DCI, DPP and EACC that they need to prosecute the COVID-19 heist millionaires.

The third point that I wanted to make is that there is always the State Corporation Advisory Committee who should be consulted if you want to do reforms within a particular sector. What are their recommendations about KEMSA?

As the Senate, we should care about KEMSA. It is the only authority that has monopoly of procuring drugs. The moment you touch KEMSA, you touch Kisumu, Nandi, Isiolo and many other counties. Where will they continue getting drugs? Why are you taking in the National Youth Service (NYS)?

Madam Temporary Speaker, I am sorry to say this; why is there systematic military change over in this country? The other day you saw the Kenya Meat Commission (KMC) was being taken over by the Kenya Defense Forces (KDF), you saw Nairobi Metropolitan Services (NMS) being run by individuals from KDF. Are they trying to give KEMSA to KDF because we are seeing NYS? Why is the NYS going inside the KEMSA yet they do not have expertise of procuring drugs? It should go on record that we will not allow that. Let us not allow that direction. I support and insist that anybody who was found implicated in the issue of corruption within KEMSA must be prosecuted. We cannot allow that.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya Ali, what is your point of intervention?

Sen. Farhiya: Madam Temporary Speaker, I want to inform our distinguished Senator for Nandi County that KMC is doing much better under the military than it was doing when it was under private hands.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this chance to comment on this statement. It is unthinkable for an entire institution to just be brought to an end. When you decide to sack 900 workers, that is an entire institution! There must be something really that is warranting sacking of all these members of staff and workers.

I condemn the act of sacking 900 workers. Sacking 900 workers means that you are affecting 900 families. Every worker probably has a wife and children who all depend on him or her as the bread earner in the family. You can imagine all these families being affected and yet some of these workers have loans or probably have children who are going to school.

This means that the children cannot continue going to school if they are depending on this worker to pay fees for college and all that. It becomes a nightmare. If they are depending also on their parents who are also working with KEMSA for food, it means that they will not be able to deliver food on the table.

Madam Temporary Speaker, it is painful that 900 workers can be sent home, and when we are talking about support, we cannot compromise financial support for psycho-social support. These people do not need psychological support, but financial support. The 900 people need to be compensated for being laid off unlawfully. There is need for

an investigation to be done to really find out what exactly necessitated laying off 900 people.

In the laying off of 900 people, they should not employ other people because you do not decide that you are sacking "A", and then maybe "A" has qualifications and then you bring in "B", who may not even have the desirable qualifications. There is need to investigate. If they sack 900 people, are they able to operate as an organization without all these workers? If they employ other workers, what is the conditionality? What necessitated that they lay off people and then they employ others?

There are things that are under the carpet that need to be unearthed. This Senate should ensure that they unearth what is under the carpet. We cannot just sit and watch families aching and being pained simply because the key earner in the family has no financial provision for the families.

We must stand up for the workers and ensure that they are treated fairly. If there is any unfair sacking, the workers should be given monetary compensation. Apart from monetary compensation, they should be reinstated to the jobs they were in and even elevated. If they have been good workers, they should be rewarded for the good work. I condemn the act of sacking 900 employees and as a Senator, there is need for thorough investigation.

Thank you for giving me the opportunity. I support this Statement.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Madam Temporary Speaker, I congratulate Sen. Olekina for bringing to this House this very important Statement. I do not know what is happening with our country because yesterday when I was watching television, I saw the Government evacuating people; I think it was in *Mukuru Kwa Njenga*, in a very inhuman way. Children were left outside because some houses were being pushed down while people were cooking. I realized that we are living in a time that our leaders are so inhuman or so distant from the feelings of the people.

This is another case that raises concern, sacking 900 people without minding exactly what repercussion will take place thereafter. Could it be that the services of these particular people are no longer needed, but there are significant people behind this particular 900 people? There are very innocent children who are in school, who need food and very many other basic needs, bearing in our minds that most of these people working in KEMSA are living in rental houses.

Sacking them without a proper criterion to show this particular House, with sendoff packages that will see this people live well for a while is suicidal to the lives of these Kenyans. We are in the midst of a pandemic and subjecting these particular Kenyans to such very inhuman practices is not acceptable in a civilized society.

Sen. Olekina has said that we really need to know why these particular sackings at this point in time. We must be informed. Why sack these 900 Kenyans at this point in time? What criteria has been used to arrive at these particular individuals? How many people are working in this particular sector and what criteria was used? Could it be that this is a way of laying off this people maybe from other regions, so that others are employed? We must protect these people.

This is a department that has a bad record of corruption yet we have not seen robust action by the Government against the 'big fish' that we have been talking about in this House. The President had pronounced it so clearly that within 21 days, those found

culpable would be prosecuted. The 21 days have turned to months and it is getting to years without any proper action being taken on the corrupt fellows. In fact, as Sen. Cherargei said, some were instead promoted. This really demoralizes the morally upright people in this country. We must condemn these things. I am so sure the sacking of this 900 is a scapegoat to cover up the deeds and malpractices that have happened in this sector.

This is very inhuman and we should condemn it very seriously. In addition, we want to know the reasons for sacking these people. Secondly, we want to know the sendoff packages that these people will be given so that they may live well thereafter.

Madam Temporary Speaker, we are living in a country full of stress. People are under different kinds of pressure and frustrations in this country. Everyday we hear over social media and mainstream media of people committing suicide because they have been living in very difficult circumstances. Therefore, subjecting these 900 people to the same pressure and circumstances is encouraging this awkward behaviour that we are seeing happening in our society.

We must mind about the children that are significant to these people and the old people that are living with these people. We condemn this particular act. We shall stand with the committee that will investigate this and support it fully. I want to once again thank Sen. Olekina for taking up the concern on our behalf.

Thank you, Madam Temporary Speaker.

Sen. Faki: Asante Bi Spika wa Muda kwa kunipa fursa hii kuchangia taarifa iliyoletwa na Senata wa Narok, Sen. Olekina. Ni wazi kuwa Serikali ya Kenya haina hamu ama haina nderemo ya kupambana na ufisadi. Kwa sababu kutoka Rais alipotoa maagizo kwamba uchunguzi ufanywe kuhusiana na sakata ya Kenya Medical Supplies Authority (KEMSA) mpaka sasa hatujaona ripoti yoyote. Tuliambiwa faili ilipelekwa kwa Director of Public Prosecutions (DPP) na ikaregeshwa kufanywa marekebisho na mpaka sasa hakuna yeyote ambaye amepolekwa mahakamani kuhusiana na kashifa hii.

Bi Spika wa Muda, wafanyaji kazi wadogo sasa wako hatarini ya kupoteza kazi yao kwa makosa ambayo sio yao. Makosa haya yamefanywa na watu wengine ambao ni wakubwa katika shirika hilo na ambao kwa sasa wametolewa kwenye KEMSA, wakapelekwa sehemu zingine na wanaendelea kazi zao na maisha yao kama kawaida.

Hii inaonyesha kwamba hapa Kenya hakuna haki. Mnyonge msonge. Hakuna haki kabisa kwa sababu itakuwaje watu waliofanya kazi zao sawa sawa wakaonyesha kwamba mambo yote yako sawa kwa upande wao wanapoteza kazi zao wakati wale ambao walipokea pesa nyingi, mabilioni, wanaendelea na shughuli zao bila shida yeyote.

Bi Spika wa Muda, kazi ya madawa inayofanyika na KEMSA sio kazi ambayo unaweza peleka mtu yoyote kwenda kufanya pale. Ni kazi ambayo inahitaji ujuzi fulani na hatuwezi kuchukua askari wa National Youth Service (NYS) tukawapeleka kufanya kazi hiyo. Hatuwezi kuchukua askari wa jeshi ambao kazi yao kubwa ni ulinzi tukawapeleka kwenda kufanya kazi hii.

Bi Spika wa Muda mabilioni yamepotea tayari kwa zabuni gushi na vile vile pia bidhaa gushi ambazo zililetwa KEMSA. Na vile vile kuna wengine ambao mpaka sasa hawajalipwa kwa hizo bidhaa zao gushi. Hii itatumika kama njia ya kuziba haya mapengo ili wale ambao walitakikana kulipwa walipwe halafu wale ambao watapata hasara ni wafanya kazi wadogo wadogo ambao wamefanya kazi yao bila matatizo yoyote.

Bi Spika wa Muda, iwapo hawa wafanyakazi watafutwa kazi, wote itabidi waende mahakamani kudai haki zao na itabidi Serikali ilipe mabilioni ya pesa ili kuhakikisha wale wamepata haki kama watakavyoamrisha na mahakama. Kwa hivyo badala na kupambana na lile swala la ufisadi lililokuwepo katika KEMSA Serikali inatumia mbinu mbadala kuweza kuziba matatizo hayo ili kuonekana kwamba mambo yote yako sawa na kuwadanganya wafadhili kwamba kila kitu kiko sawa. Haiwezekani katika karne hii wanyonge kunyongwa katika KEMSA wakati Bunge la Seneti na Bunge la Kitaifa liko hapa kutetea masilahi ya wananchi wanyonge katika nchi yetu ya Kenya.

Bi Spika wa Muda, ijapokuwa swala hili utalipeleka kwa kamati, mimi naomba utoe amri kwamba Waziri wa Afya, aje hapa katika Bunge la Seneti wiki ijayo ili tumuhoji atueleze sababu gani hawa watu wamepeleka likizo ya lazima, kwa sababu gani hawa watu wameambiwa wafanye kazi nyumbani; na je, ni sawa sasa kila sekta ipewe jeshi, wakati sisi tunajua jeshi linapata shida Somalia? Tunajua katika jeshi pia kuna mambo ya zabuni na wao pia ni wafisadi zaidi kuliko sehemu yeyote ingine katika nchi yetu. Kwa hivyo, si sawa kupeleka hili jambo kwa kamati halafu ikalaliwe kwa sababu tayari kuna repoti ya KEMSA huko. Zaidi ya miezi miwili ripoti hio haijajaduliwa. Mwenye kiti haonekani bungeni kupeleka ripoti yake mbele izungumziwe.

Nimefurahi kwamba Sen. Sakaja amekuwa hapa wiki nzima na ameweza kupeleka mbele ripoti yake lakini wenye viti wengine wa kamati hawana shughuli ya kuweza kusukuma ripoti zao ziweze kusikizwa na yale mapendekezo yao yaweze kukubaliwa na Bunge ili tuweze kusonga mbele.

Katika kumalizia nasema kwamba Waziri aitwe hapa na bodi mpya ya KEMSA ije hapa watuambie ni kigezo gani wametumia kuwapeleka nyumbani hawa wafanya kazi 900 wakati wale wahusika na zabuni nyengine kabisa.

Asante.

Sen. Dullo: Thank you, Madam Temporary Speaker. I wish to support this Statement. It is really unfortunate that KEMSA is laying off 900 members of staff although we really do not know the facts behind it. Looking at the situation with the challenges that Kenyans are facing due to COVID-19, laying off 900 members of staff is unacceptable.

Secondly, several institutions have investigated this KEMSA issue. Unfortunately, even our own Committee of Health - I know Sen. Olekina is a Member - I have not seen their report and I know they have investigated this matter. Maybe Sen. Olekina can highlight on that. It is unfortunate that we did not know what transpired as far as KEMSA is concerned.

The Temporary Speaker (Sen. Nyamunga): Will you accept information from Sen. Olekina?

Sen. Dullo: Yes. Let him inform me please.

Sen. Olekina: Madam Temporary Speaker, let me thank the Senate Deputy Majority Leader for raising that concern because this is a concern that I have also had as a Member.

The Report on KEMSA was tabled in this House on 30th March, 2021. It has been on the Order Paper from Tuesday, 11th May, 2021, Tuesday, 18th May, 2021, Tuesday, 25th May, 2021, Wednesday, 2nd June 2021, all the way until 15th July, 2021. We have failed as a Senate because we have not gone ahead and debated that Report and

adopted those resolutions of the Committee. It is upon us now to be able to deal with it because it has been there.

The secretariat has been putting it on the Order Paper, but I am surprised that even now, we are prioritizing county government COVID-19 expenditures and leaving this issue of KEMSA which we spent a lot of taxpayers' money investigating.

I want to inform the Senate Deputy Majority Leader that it is a responsibility that we must take and I take that full responsibility as a Member of the Health Committee, but we have a chairperson.

Thank you.

Sen. Dullo: Madam Temporary Speaker, I want to thank Sen. Olekina for that. It is true what I have raised. I wish to also blame the chairperson of the committee. We have two Members from the Health Committee that sit in the Senate Business Committee (SBC). Normally, in as much as the committee report is sent to the secretariat to be presented before the SBC, it is the responsibility of the chairperson to make sure that the report has been pushed until it is tabled in the House, debated and actually adopted.

Through this, we should have the Health Committee of this House table the Report of KEMSA findings as quickly as possible. It can also help inform us why these 900 members of staff are being laid off. I know the National Assembly also did investigations on the same. It looks like the report is also not in the public domain. We want to know what are the reasons behind it. Various institutions have investigated this matter, but those reports have all been shelved. I think there is something happening somewhere.

My main concern here is this: Could we have a Committee of the Whole, where the Minister can come and tell us what is really happening to the 900 members of staff so that we save them? You cannot lay off people just like that. You have to give reasons why you laid off those members of staff. The Government should get into the bottom of all these issues affecting KEMSA and bring to book those who were involved.

Madam Temporary Speaker, I still urge you to give a directive today for the Cabinet Secretary for Health to appear before the Committee of the Whole by Tuesday next week.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Finally, let us listen to Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Thank you, Madam Temporary Speaker, for this opportunity to join my fellow Senators in congratulating Sen. Olekina for this Statement.

Even before I came to this House, there were issues about KEMSA. I heard the issues being debated in this House while I was outside there. I concur with my fellow Senators that the Committee on Health must table a report to the House and the CS should be asked to come and tell us why all this is happening, but no action has been taken.

It is wrong and unfair for workers to be sacked at this time and especially 900 of them. I mean, were they all involved in the KEMSA issues of corruption? If the workers were involved, where are their bosses, because a worker will never do anything without the instructions of their boss? If they are to be questioned or sacked, the first people to call must be their bosses. Again, it should not be at this time when there is trouble because of COVID-19.

Madam Temporary Speaker, yesterday in this House we debated about the workers in Dubai and Arabic countries. They are going there because they are not comfortable at home. For instance, for those who have been sacked, tell me the reason they have to remain in Kenya? Some of them opt to go out there to look for greener pastures, but they end up suffering.

We must stand firm and defend these workers so that they can have their jobs and feel that they are at home in Kenya. We must sympathize with our children who are going out there. Some of them, especially those who work as domestic servants are mistreated, but they can do nothing about it.

I support this Statement. The Senate must stand firm and defend its own. Very soon I will bring a Motion about the people of Machakos County who were sacked by Mutua. Some 240 of them were laid off for political reasons. If you follow up, you will find that it is because of politics. Politics should not divide people and make our citizens suffer.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, do you have an intervention? Sorry I saw it late, but you can go ahead.

Sen. Cherargei: Madam Temporary Speaker, for purposes of the HANSARD, I think Sen. Kavindu Muthama should be specific because we have so many Mutuas. She said that Mutua fired over 200 employees, but I think she should be specific. Which Mutua?

Sen. Kavindu Muthama: I said Machakos County where we have only one Mutua who is the governor.

The Temporary Speaker (Sen. Nyamunga): Let us now listen to Sen. Sakaja.

Sen. Sakaja: Madam Temporary Speaker, I join my colleagues in expressing dismay and shock at this news. It is not normal for a radical action like that to be taken in the public service.

We have seen such actions of redundancies being taken in the private sector many times. I have dealt with a number of them in my committee because these are labour issues. If what is alleged is true, that 900 staff in the public sector were sent home, it points to something bigger and shows that something is going on.

I have seen the prayer by the Senator that this be brought to the Committee on Labour and Social Welfare because it is a labour issue. We have labour relations laws in this country. We have proper laws on labour issues on employment and we should look at it within the aspects of the laws in terms of what is being followed, what is happening and the intention. In fact, I would have loved it to be dealt jointly with the Committee on Health that has a report on the same institution.

Madam Temporary Speaker, if it is sent to our committee, as usual, we will expedite and deal with it properly and conclusively within the shortest time possible. If you even strengthen it by your direction as to whether it is to the Committee of the Whole, because these people are being sent tomorrow, the worst thing is uncertainty.

Even if you are given a month, but you do not know where your next salary or meal will come from, you do not know whether you will pay fees for your children and you are not sure whether you are in trouble or have caused anything---

When somebody gives a certain announcement and pre-empted by saying we are sending them on leave, but we are also giving them counselling, it is like calling someone and telling them that I need to meet you, but please come with your lawyer. It means

there is something that I want to do. I think that is not the best way to handle public servants.

Public servants must not live in fear. Public servants should not go about their work without the assurance and security of what we call permanent and pensionable or even the terms of their contract. I do not think it is right.

Without saying much, because I have not seen the content because we like dealing with facts, the content of the actual action being taken--- I have heard what Members have said. We shall look into all that if it is brought to my committee.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Let us listen to Sen. (Rev.) Waqo.

Sen. (Rev.) Waqo: Thank you, Madam Temporary Speaker, for allowing me to add my voice to this very important Statement. I also congratulate Sen. Olekina for coming up with this relevant and timely Statement.

I join hon. Senators, because it is matter of concern to each one of us. Sacking 900 members of staff at this particular time when Kenyans are facing a lot of difficulties and challenges is not good. We all know very well that our economy has not been doing well and many people are really struggling because of the impact of COVID-19, which is still with us.

I have interacted with many Kenyans who are struggling to pay school fees for their children and medical expenses. Many people are struggling even to feed their families because of the challenges the country is going through.

By sacking 900 members of staff, you can imagine the number of people who will be affected. That has a huge impact on our population. Many will get sick or even develop blood pressure as a result of this. As we know, this year, many Kenyans have committed suicide as a result of frustrations just because they cannot meet the demands of their loved ones.

Madam Temporary Speaker, as I join my fellow Senators to support this Statement, I pray that the Committee on Labour and Social Welfare, under the able leadership of Sen. Sakaja, gives it the attention that it deserves and that the CS be summoned to come and talk to us and make us understand why this is happening. They should propose measures that can be put in place so that those members of staff do not continue suffering.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I think we have had a lot of deliberations on this matter and we can see the gravity of the Statement. I am glad that the Chairperson of the Committee on Labour and Social Welfare is also around.

I would like to leave it to the discretion of the Chairperson to see the best way to move forward; whether you want to bring another committee on board or invite as many people as you can, but please give it serious attention because it is a serious matter. I refer the Statement to the Committee on Labour and Social Welfare.

*(The Statement was committed to the Committee
on Labour and Social Welfare)*

Let us move on to the next Statement.

Sen. Sakaja: Madam Temporary Speaker, of course, on that one, definitely we shall follow a procedure to call the CS at the soonest availability. Additionally, since I know it takes a while for letters to be processed, I will also make a phone call to the CS to find out what is going on and invite him, because sometimes we invite them seven days prior, but they get the letter on the sixth day and have an excuse.

Today, we were having a very important inquiry on football and the CS admittedly, you know it was very short notice, requested to come back on Thursday. I will update the House because the Speaker directed that we do it in two days.

We had a good part of the inquiry today with the Football Kenya Federation (FKF) on the issue of the audit. Next week, the CS together with other stakeholders will come. I know that many Members are interested in that and I wanted to give that update.

POINT OF ORDER

DELAY IN PROCESSING OF STATEMENTS

Sen. Sakaja: Madam Temporary Speaker, since we are on Statements, there is something that is happening. I sought an urgent Statement from the Committee on Lands, Environment and Natural Resources about demolitions and evictions in Nairobi.

There were impending demolitions in Kamae in Kahawa West. I knew that when the CS, the Nairobi Metropolitan Services (NMS) and Nairobi City County Government appeared, I would ask about what was happening in Mukuru kwa Njenga as well as something impending in Mradi in Embakasi East. I beg that you direct that the Committee expedites it.

I urge my fellow Chairs, when issues are brought to my Committee, I try my best and go out of my way. Please, also do the same because the people of Nairobi City County are watching. There are more than 5,000 families at risk in Roysambu Constituency. You have seen what is happening in Mukuru. They are asking where our leaders are yet when we bring questions here, they are swept under the carpet.

Kindly, Madam Temporary Speaker, you should direct that the Committee expedites that issue because those are matters of life and death and livelihoods. Peoples' properties are outside and the children do not have a place to stay. Sometimes we have to give them something from our pockets to support them, but that does not help. This Senate can stand for those people. Kindly, direct so.

Temporary Speaker (Sen. Nyamunga): What is your point of intervention Sen. Olekina?

Sen. Olekina: Madam Temporary Speaker, I am glad that Sen. Sakaja has brought up that issue. Today, I am going to be completely unorthodox because of what is happening in this House.

It is very disturbing and I would rather just put it out there. Apart from the Deputy Senate Majority Leader, the Senate Majority Leader, the Senate Minority Leader and the Speaker are away. All of them plus the Clerk are away attending a conference. I mean, they have the powers to alter the Calendar. This is the problem. Do they have the moral authority to---

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, are you not seeing the Speaker in the Chair?

Sen. Olekina: I am seeing the Temporary Speaker and I have a lot of respect for her. The problem that I have is this: what moral authority would the Senate Majority Leader, the Senate Minority Leader and the Whips have to reign in the Chairpersons of Committees when they are not here? Sen. Sakaja is raising a very important issue because we have Statements, which have been pending for a very long time.

We are about to go on a long recess. Do you want to tell me that those people who soon will be homeless will wait for the leadership to see the importance of that being in this House? It is time we remembered that we will be judged harshly by history because the leadership or the Senate Business Committee (SBC) has the power to alter the Calendar of the Senate. It is actually something that is disturbing.

The only way we can address the issue raised by Sen. Sakaja and the issues that we have is, at least, the Chairpersons of committees should be here to deal with this issue expeditiously.

I know that everybody is going for campaigns to be elected, but we are still getting salaries from the public and the campaigns are not on. Therefore, it is a concern. Unless we deal with it honestly, we will not resolve that problem.

Temporary Speaker (Sen. Nyamunga): Your point is made.

Sen. Dullo, are you on an intervention or a point of order?

Sen. Dullo: Madam Temporary Speaker, I think the KEMSA issue is very urgent, and I hope the Committee on Labour and Social Welfare will handle it as quickly as possible before major action is taken against those 900 members of staff.

Secondly, I have two Statements that are pending before this House. One is on Ewaso-Nyiro that has been pending for over one-and-a-half years, where some members of staff were laid off, and up to now, they are just languishing in poverty in Isiolo. I hope that the Committee on Labour and Social Welfare will deal with that as well.

Thirdly, I sought a Statement on Identification Cards (IDs and Members of the House raised a lot of concern on the urgency of issuing IDs because registration of voters is ongoing. Up to now, the Committee on National Security, Defence and Foreign Relations, where I sit, has not even taken any action. I think this matter is very urgent.

Madam Temporary Speaker, kindly, give a ruling on the issue of pending Statements.

Temporary Speaker (Sen. Nyamunga): I can see an intervention by Sen. Faki.

Sen. Faki: Madam Temporary Speaker, I also want to join my colleagues, Sen. Sakaja, Sen. Olekina and Sen. Dullo, to emphasize the fact that when we request for Statements in this House, they are supposed to be acted upon so that we report back to our constituents on what has happened on those Statements. It is not proper for a Statement to be read in this House and then a committee kills it.

A petition was brought here by residents of Buxton Estate sometime early this year, but up to now, there is no report. We just have a ping-pong game. They said that they will summon the governor, but when he came to Nairobi, they asked him to go and meet those people. However, up to now, they have not been met and the construction is going on.

The Chairperson of the Committee ordered at the site that there should be no construction, but construction is going on and people have given up. People are wondering whether this Senate is a forum for *gumzo mtaani*. If nothing is happening, what can we do to our people? Do we continue bringing Statements here?

I raised a Statement here on the issue of forced disappearances and extrajudicial killings. A report was tabled here about three weeks ago, but since then, that Motion has never appeared on the Order Paper. We do not know what is happening. Many people are being abducted by the state organs and disappearing.

I remember last week, there was a professor who is an advocate, who was abducted when he was following up an issue concerning his client, who had been released from prison after serving a 10-year sentence on terrorism charges. In Mombasa, there was a young boy of 22 years who was abducted early last month, but up to now, he has not been found. If we are going to work in this Senate and address issues that our people are facing, we need to see reports coming from the chairpersons of committees.

Last year, I brought a Statement here on the shooting down of an aircraft in Somalia. Up to now, that Statement has not been acted upon. Are we coming here just to talk and go or there is some action that is supposed to be taken, so that our people know that we are working as the Senate?

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, do you have something else to add?

Sen. Sakaja: Madam Temporary Speaker, Sen. Dullo has just asked about something before my Committee. As I have said, we try hard to be diligent.

There was a report on Ewaso-Nyiro that was brought to the House. In discussing that report, reservations were raised by Members and the Speaker asked us to take them into consideration. The Committee met again and we wrote to Sen. Dullo on 4th August, 2021 asking her to refer to the report that we had laid on the Table because we cannot “unlay” a report. We were supposed to do an addendum to review it.

The Committee, at its 46th Sitting held on 4th August, 2021 deliberated on the issue and the Senate proceedings of 29th July, 2021 and resolved to request her to formally submit her reservations on the tabled report in writing, so that the committee may follow up and conclude on the issue. We still have not received a letter. How is it that our Committee has not acted on that, yet the Senator herself has refused to write to us? We asked for her reservations on the issue.

Additionally, we wrote to the Ministry again---

(Sen. Dullo spoke off record)

Temporary Speaker (Sen. Nyamunga): Just let him finish, then I will give you the Floor.

Sen. Sakaja: We wrote to the Ministry again on the same issue and they submitted to us a response. That response was shared with the Senator. To date, we have still not received her response.

Madam Temporary Speaker, kindly guide on how else we should move on this issue because we are ready; just waiting for her response. We have reviewed the issue, spoken again to the institution, wrote to the Ministry and the Senator on 4th August, 2021. She is now making the Committee look like it is not working. Is it right? Just guide us on what you want us to do additionally. We have bent backwards on this matter and we want to conclude.

The Temporary Speaker (Sen. Nyamunga): Sen. Dullo, kindly proceed.

Sen. Dullo: Madam Temporary Speaker, I wrote to the Committee. If you want, I will table the response to the letter written to me by the Committee on Labour and Social Welfare next Tuesday. Therefore, I do not understand when the Chairperson says that I have not responded, unless there is a miscommunication. I have sent the letter through your clerk. I will table it on Tuesday next week.

The Temporary Speaker (Sen. Nyamunga): Let us put that matter to rest. She will produce it.

Sen. Sakaja: Temporary Speaker, there is no need to go round in circles. My secretariat will tell me if she has not yet received it. If she has a letter, she can give it to me, I am right next to her. She can give me the letter, then I conclude on this matter. There is no need to wait for Tuesday because we are talking about people. They are out there with issues.

Madam Temporary Speaker, I have come to your county. There is no county that I have not visited other than Narok County, which we were supposed to go to last week when we were in Bomet.

We are now closing these tours because we are the only ones going to people's counties and they are not coming to ours because they are campaigning. We have gone out of our way to sort out issues. Therefore, she can just give me the letter, so that we finish the issue with my Committee by Tuesday. We have no reservations at all.

The Temporary Speaker (Sen. Nyamunga): Sen. Dullo, make the letter available to Sen. Sakaja for him to respond by Tuesday?

Sen. Dullo: I will, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Okay. Thank you, Senator. Sen. Sakaja, how long do you need on this Statement on Kenya Medical Supplies Authority (KEMSA)? Is it two weeks or less? I can see you need to bring other people on board.

Sen. Sakaja: Madam Temporary Speaker, we do not want to give the Cabinet Secretary (CS) excuses. Our procedure is seven days. We will, therefore, cause a letter to go out possibly by tomorrow, then invite the CS for Thursday. I have committed to talk to the CS as well even as the letter is on the conveyer belt because of our procedures. Maybe, we should also change our Standing Orders to allow for electronic communication. This is because Parliament and the Ministry of Interior and Coordination of National Government are near each other, but it takes a week for the letter to reach and be received. We should get and send letters on *WhatsApp* or on e-mail, so that we can do these things faster. We do not want those people to stay in anguish for much longer.

I will go out of my way to do it properly. I am sure my secretariat always follows proceedings, and so, they are hearing me. I have given instructions for them to write immediately to the CS and KEMSA on that matter.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. The clerks will have to fast-track all the other concerns that have been made by other Members concerning different Statements or inquiries. I would like to leave it to the Clerk to work on that.

Let us move to the next Statement. Sen. (Dr.) Langat, are you ready?

DELAYED STAFF SALARIES AND OTHER
UNFAIR LABOUR PRACTICES BY BOMWASCO

Sen. (Dr.) Langat: Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order No.48 (1), to seek a Statement from the Standing Committee on Labour and Social Welfare regarding delayed staff salaries and other unfair labour practices by the Bomet Water and Sanitation Company Limited (BOMWASCO). In the Statement, the Committee should

(1) State why salaries of workers of the BOMWASCO have not been paid for several months.

(2) Inform the Senate the reasons for termination of contracts of some staff of the water company and whether due process was followed in terminating contracts of the affected staff.

(3) Explain why statutory deductions on workers' pay have not been remitted to the relevant statutory bodies.

(4) State measures in place to address workers' grievances in total compliance with labour laws.

The Temporary Speaker (Sen. Nyamunga): Our time is almost up and we still have other Statements.

Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I thank Sen. (Dr.) Langat for bringing this Statement on the plight of Bomet Water and Sanitation Company staff. Counties are facing many problems. It is good that we have the Chairperson of the Committee on Labour and Social Welfare, Sen. Sakaja, in the House. It is a problem that many county staff are facing at the moment.

I do not know whether our county governments are cursed. This is because every county government we talk about is either firing or suspending. If they are not suspending, they are denying to pay statutory deductions, which is an offence. I saw in the news that the Deputy Governor of Nairobi City County is being hunted down by the Kenya Revenue Authority (KRA). It is a serious illegality that the county government must be put to task. The Sen. Sakaja led committee must rise up to the occasion as they usually do and call out the County Government of Bomet and the Governor to order by ensuring that they pay.

Finally, it is painful because these employees need rent, transport, clothes and school fees. These are people who live from hand to mouth. They depend on the salary to survive because of Kenya's hard economic times. Therefore, you can imagine their frustrations when they walk to a hospital and are told that their NHIF card is rejected because the County Government of Bomet has not paid the statutory reductions.

We have also been hired by the Parliamentary Service Commission (PSC). Imagine when you walk to a hospital to use your medical card and you are told that your employer has not remitted the necessary statutory reductions. Therefore, I call upon Sen. Sakaja's Committee to work hard on this. I know that Sen. Sakaja is aiming for higher things in this City. We hope that this thing shall be addressed once and for all.

In conclusion, they should give us a policy or legislative intervention that we need to put in place to protect our workers within the workforce of county governments.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. Olekina, proceed.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Statement by Sen. (Dr.) Langat. I sit in the Committee on Health. On this issue of statutory deductions, I remember when the National Hospital Insurance Fund (NHIF) came to our Committee when we had summoned the Chief Executive Officer (CEO). They indicated that they had given county governments a grace period of three months to submit the statutory deductions.

It worries me that even after those three months, people are not paid their salaries and their statutory deductions are not submitted. I am concerned. This is something that beats logic. In most cases, we are here enjoying good services. Our statutory deductions are submitted and remitted on time. However, the salaries of our own staff delay. Even until today, our own staff have not been paid their salaries.

We enjoy and are very lucky to afford a meal out there, but our own staff in our own offices, have not been paid their salaries. They are not being paid because either the PSC or the Exchequer has delayed in transmitting the money to Parliament. Therefore, when they go to the hospital, they cannot get basic services. This is a much wider issue. It does not only affect the people of Bomet, but also workers of low cadres in this country, including our own in Parliament.

I feel sorry for my brother, Sen. Sakaja, but he is quite capable. Those Statements are coming to him. I congratulate him for being up in the game. The people of Nairobi should be looking out there because he is capable of making sure that things are done.

Madam Temporary Speaker, I hope that when Sen. Sakaja is looking at this matter in his Committee, he can expound to understand why county governments are given a grace period of three months, yet other people are not given the period. This is because it affects us and all of us pay. It is the responsibility of an employer to pay for the employee and remit. If you are self-employed, you pay on time.

Madam Temporary Speaker, I support this Statement. I hope that we can get answers.

The Temporary speaker (Sen. Nyamunga): Sen. Sakaja, that is another Statement that will come to your desk. What do you have to say about that?

Sen. Sakaja: Madam Temporary Speaker, we will deal with that by correspondence. We will write to Bomet County. I apologize to the Senator of Bomet. He knows why I am saying that. We were there the other day.

Madam Temporary Speaker, I know that their governor is out of the country; he is in Greece. However, we will do the correspondence because it is the water service company and many other counties that have not been remitting.

In fact, for us, on top of that specific one, we will write to the National Hospital Insurance Fund (NHIF) and these other statutory bodies. We have done that to Kenya Revenue Authority (KRA), NHIF and the National Social Security Fund (NSSF) for them to tell us which counties have not been remitting and to what extent and the amount.

We shall table that report here, so that every Senator knows the status of their county with respect to statutory remittances and then the Senate can pronounce itself. I am glad we have Members of the Committee on Finance and Budget and the Committee on Devolution and Intergovernmental Relations are here.

Madam Temporary Speaker, in many respects, the Senate can make a decision. Out of the allocation that goes to the counties, we can decide to remove that amount from the counties and pay NHIF, NSSF, KRA directly out of the backlog. It is the same way

counties have been paying for medical equipment directly. We can actually pay directly and make sure that money is paid. The Senate can make that resolution.

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

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Olekina?

Sen Olekina: Madam Temporary Speaker, I fully support Sen. Sakaja. However, there is an issue that he has raised, which cannot happen.

Article 219 of the Constitution is quite clear. A share of county revenue, which has been devolved, has to be sent in its entirety, unless it has been stopped under Article 255. Therefore, there is no way we can justify.

It is not good for us to put anything on the record, which cannot be done. Unless that money has been stopped by the National Treasury, there is no way that the Senate can stop that money. A share of revenue allocated to a county government must be sent in its entirety without any delay. Therefore, that one has to be expunged from the record of this House.

The Temporary Speaker (Sen Nyamunga): Sen. Sakaja, let us not make it an argument. Some of these things can be---

Sen. Sakaja: Madam Temporary Speaker, there is no need to debate this. I understand public finance better.

Article 219 says that each county must be assured of its allocation without any reduction. That is true. What the Senate can do is to specify and ring-fence; that this certain amount from the county's allocation must be used for this purpose.

We can bring a Motion to debate that. I know what I am talking about. It has been done before by this House in the last Senate and it can be done. If out of Kisumu County's money, there is Kshs5 billion and they have not been paying, the Senate can pass a resolution that out of the Kshs5 billion that was given to the County of Kisumu, this amount of money must be used for this purpose. That is the work of the Senate.

The Temporary Speaker (Sen. Nyamunga): So, we conclude that matter. Hon. Senators, I refer the Statement to the Committee of Labour and Social Welfare. Any clarification on that is subject to the relevant Committees.

*(The Statement was committed to the Committee
on Labour and Social Welfare)*

LIQUIDATION OF DRUMVALE FARMERS
CO-OPERATIVE SOCIETY LIMITED

Sen. Kavindu Muthama: Thank you, Madam Temporary Speaker for giving me this opportunity. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee of Tourism and Trade and Industrialization, on the liquidation of Drumvale Cooperative Society Limited.

In the Statement, the Committee should-

(1) Appraise the Senate on the facts that led to the decision to place Drumvale Cooperative Society Limited under liquidation stating whether the members of the cooperative society were involved through public participation and provide evidence of the same.

(2) State the reasons for delay of finalizing the liquidation process since 28th August, 2009, disclosing the full costs of the process to date.

(3) Shed light on claims of mismanagement and irregular disposal of member's assets by the liquidator.

(4) Cause the State Department of Cooperative to undertake a comprehensive investigation and audit on the action of the liquidator to address malpractices and mismanagement of the liquidation process.

(5) Outline measures, if any, to safeguard members' interests and to compensate members and the beneficiaries of Drumvale Cooperative Society Limited.

(6) State measures in place to curb the mandate and tenure of liquidators in order to discourage prolonged liquidation process and detriment of members.

Madam Temporary Speaker, if you allow me, I will add that many of the first members of this firm have long died and their sons are the ones who are following the process of recovering their lands back. The liquidator has been on this firm for the last 12 good years. The farmers cannot access their properties and cannot assist themselves.

Madam Temporary Speaker, there are widows who were left behind with children by their deceased husbands who owned this firm. They have issues. They need to assist themselves with the properties that they were left with by their husbands, but they cannot. My fear is that even those who are there are also---

The Temporary Speaker (Sen. Nyamunga): Are you adding information or you are debating your Statement?

Sen. Kavindu Muthama: I am not debating.

The Temporary Speaker (Sen. Nyamunga): Do not debate. Just add more information.

Sen. Kavindu Muthama: Let me just add information. This Statement should be treated as urgent, so that these people can get their justice and the process comes to an end.

The Temporary Speaker (Sen. Nyamunga): I do not see the Chairperson of the Committee on Tourism, Trade and Industrialisation Committee. Is the Chairperson or the Deputy in the House? I refer the Statement to the Chairperson of the Committee of Tourism, Trade and Industrialization. However, I do not see the Chairperson or the Deputy for the Committee of Tourism, Trade and Industrialization. So, it will be referred to them. We hope to get response on that Statement soon.

Sen. Kavindu Muthama, what do you want to say?

Sen. Kavindu Muthama: Madam Temporary Speaker, this Statement is urgent. These people are really suffering. I take your guidance and hope that it will be acted upon soon.

The Temporary Speaker (Sen. Nyamunga): Yes, that is what I was doing. It is only that I do not see the Chairperson or the Deputy. However, it will be forwarded to them and we will need a response from them as soon as possible. Two weeks should be enough time.

Sen. Kavindu Muthama: Thank you, Madam Temporary Speaker. I do not know if any of the Members wants to add anything to it.

The Temporary Speaker (Sen. Nyamunga): They have not shown that interest. I would have given them the opportunity to add.

*(The Statement was committed to the Committee
on Tourism, Trade and Industrialization)*

Hon. Senators, we will move to the Statement Pursuant to Standing Order No.52(1) by the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 9TH NOVEMBER, 2021

Sen. Dullo: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No.52(1), I hereby present the business of the Senate for the week commencing Tuesday, 9th November, 2021. Before I proceed with the Statement, allow me to take this opportunity to welcome the hon. Senators back from the short recess between 22nd October and 1st November, 2021. I trust that they are well and had an opportunity to interact with their constituents, family and friends.

On Tuesday, 9th November, 2021, the Senate Business Committee (SBC) will meet to consider and approve the business for the week. Subject to approval by the Committee, the Senate will consider Bills at the Second Reading stage, Bills at the Committee of the Whole stage and Motions on reports filed by Select Committees.

On Wednesday, 10th November, 2021 and Thursday, 11th November, 2021, the Senate will consider business that will not be concluded on Tuesday 9th and Wednesday, 10th November, 2021, respectively, and any other business scheduled by the SBC, including Petitions and Statements.

There are 12 Bills due for the Committee of the Whole stage and 23 Bills due for Second Reading, while there are nine Motions pending debate and conclusion, some of which have been outstanding since February this year despite them being scheduled almost on a daily basis. These Bills have been allocated slots in the Weekly Programme of Senate business that is circulated every Friday.

In this regard, I urge respective Movers to be available in the Senate whenever their Bills are scheduled in the Order Paper. Standing committees are encouraged to hasten consideration of Bills referred to them and table reports thereon, while committee chairpersons and individual Senators proposing amendments are urged to be available in the Chamber to move the same at the Committee of the Whole stage.

Allow me at this juncture to point out that as indicated at Orders No.9 and 10 in the Order Paper for today, there are Divisions on Bills at the Second Reading stage. I urge all Senators to avail themselves for the division for smooth transition to the next stage.

Hon. Senators, the following is an outlook of Business to be expected for next week –

- (1) Committee of the Whole on the following Bills –
 - (a) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.7 of 2021).
 - (b) The Kenyan Sign Language Bill (Senate Bills No.5 of 2021) by Sen. (Dr) Getrude Musuruve and Sen. (Prof) Margaret Kamar.
 - (c) The Law of Succession (Amendment) Bill (Senate Bills No.15 of 2021) by Sen. Abshiro Halake.

(d) The Kenya Citizenship and Immigration (Amendment) Bill (Senate Bills No. 33 of 2021) by Sen. Irungu Kang'ata.

(e) The Lifestyle Audit Bill (Senate Bills No. 36 of 2021) by Sen. Farhiya Haji.

(2) Second Reading of the following Bills –

(a) The County Governments (Amendment) Bill, (Senate Bills No. 38 of 2021).

(b) The National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021).

(c) The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021).

(d) The Sports (Amendment) Bill (Senate Bills No. 40 of 2021)

(e) The Elections (Amendment) Bill (Senate Bills No. 42 of 2021).

(f) The Elections (Amendment) (No.2) Bill (Senate Bills No. 43 of 2021).

(g) The Special Needs Education Bill (Senate Bills No. 44 of 2021).

[The Temporary Speaker (Sen. Nyamunga) left the Chair]

[The Temporary Speaker (Sen. Kinyua) in the Chair]

As Hon. Senators will note from the business indicated above, the Senate resumes its sittings with an already full plate. I also wish to remind hon. Senators that at the rise of the Senate today, we will be left with 12f sitting days translating to 48 hours to transact this business before breaking for the long recess.

Allow me in conclusion, therefore, to thank all Senators for the dedication and commitment they have continued to exhibit in service to the people of Kenya and urge that we all continue to do the same during this Part of the Senate Calendar.

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

(Sen. Dullo laid the document on the Table)

The Temporary Speaker (Sen. Kinyua): Thank you.

Next Order.

MOTION

ADOPTION OF REPORT ON STATUS OF LABOUR MIGRATION TO THE MIDDLE EAST AND PROPOSED POLICY INTERVENTIONS

THAT, the House adopts the report of the Standing Committee on Labour and Social Welfare on the status of labor migration and proposed policy interventions laid on the table of the Senate on Tuesday, 2nd November, 2021.

(Sen. Sakaja on 3.11.2021)

(Resumption of Debate interrupted on 3.11.2021)

The Temporary Speaker (Sen. Kinyua): Sen. Faki and you had a balance of 15 minutes.

Sen. Faki: Asante Bwana Spika wa Muda kwa kunipa fursa hii kuchangia Ripoti ya Kamati ya Ajira na Huduma za Jamii. Jana nilikatizwa nilipokuwa natoa sababu za kutokuwa na ufahamu baina ya waajiri na wale wafanyi kazi ambao wanatoka hapa Kenya kuenda kufanya kazi kule Saudi Arabia na kwengineko. Lugha ni jambo ambalo linaleta shida baina ya wafanyikazi na waajiriwa wao. Waajiri wengi wanatumia lugha ya Kiarabu na Wakenya wengi wanatumia Kiingereza, Kiswahili na lugha zao za mama. Kwa hivyo, mawasiliano baina ya muajiri na mfanyajikazi wake inakua ni shida.

Kitu kingine ni kwamba hakuna mafunzo wanayopewa wale ambao wanasafiri kuenda sehemu zile kabla ya kuenda kuanza kazi. Ni muhimu wapate mafunzo ili wajue matarajio ya muajiri wao na matarajio yao katika hiyo kazi. Hiyo imeleta shida. Watu wengi wanaenda hizo sehemu na hiyo imechangia kuongezeka kwa malalamiko.

Jambo ambalo ningependa kusema ni kuwa wale ambao wanapata matatizo ni wachache kuliko wale ambao wanafanya kazi bila matatizo yoyote. Ni muhimu hiyo ijulikane ili isije ikaonekana ya kwamba watu wote wanao kwenda kufanya kazi sehemu zile wanateswa, wana nyimwa mishahara, wanazuiliwa kupata uhuru wa kuenda kutembelea jamaa zao na kadhalika. Ni wazi kwamba wengi wanaofanya kazi kule wanafurahia kazi zao na ndio maana kila mwezi ama kila mara wanatuma fedha kwa jamii zao.

Mwezi uliopita; Mwezi wa tisa, nilikabidhiwa matatizo ya mmoja kati ya wafanyikazi ambao wako kule Saudi Arabia anayelitwa Karen. Familia yake mjini Mombasa ilinijulisha kwamba Karen yuko Saudi Arabia na anafanya kazi kule lakini anateswa. Yeye pia alinitumia *text* kupitia kwa *Whatsapp* akanieleza masaibu yake. Alinipa namba ya ajenti wake anayejulikana kama Issa ambaye yuko hapa Nairobi. Nilitumia Issa ujumbe na ningependa kunukuu vile ambavyo tuliwasiliana naye.

Nilitumia ujumbe nikamwambia, 'huu ujumbe unatoka kwa bibi mmoja anayelitwa Karen na nimetumiwa na jamaa zake.' Aliniuliza, 'shida yake ni nini?' Nilimwambia shida ni kwamba anasema anateswa na anafanywa kama mtumwa kule anakofanya kazi. Majibu yake yalikuwa ifuatavyo. '*What is she subjected to? Amefungwa na chains?*' Nilimwambia 'la, hajafungwa na nyororo lakini mimi kama Seneta wa Kaunti ya Mombasa ningependa kujua matatizo ni nini ili tuweze kumsaidia.'

Majibu yake yalikuwa kama ifuatavyo, '*if you are indeed a Senator, why can you not pay her ticket home? Does it sound complex or stiff to you and for your information, instead of coming with a lot of guts, did you ask me if I tried to address the issue?*'

Nilimjibu nikamwambia, '*you are the one who was paid to take her there so, why can you not pay for her travel back to Kenya?*'

Aliniambia, '*she complained she was sick and was taken to a public hospital. She had nothing. We changed the house she was working in and she is still complaining. We never force anyone to work and it is never our intention to make her do so. Come on bro, everyone works hard. She wants to sit down and use free Wi-Fi hivyo tu. Did we send her for honeymoon? Of all the girls we have sent, it is only her who is complaining. We did everything within our capabilities.*'

Singependa kuchukua muda mrefu kuweza kunukuu maneno hayo, lakini hayo ndiyo majibu ya wale mawakala ambao wanapeleka wafanyikazi hawa katika sehemu zile za nje kwenda kufanya kazi.

Tunaweza kulaumu watu wa Saudi Arabia, United Arab Emirates (UAE), au Qatar, lakini papa hapa kwetu hiyo ndiyo *attitude* ya hawa wanopeleka wafanyikazi hawa. Huo ndio utendakazi wao, kwamba hawako tayari kusikiliza malalamiko ya wafanyikazi ambao wao wenyewe wamewepeleka kwa kulipwa.

Mheshimiwa Spika wa Muda sio rahisi msichana ambaye amepoleka sehemu zile kwenda kufanya kazi aweze kukataa kufanya kazi. Hii ni kwa sababu anajuwa amekwenda kufanya kazi na anatarajia malipo ya kazi ile. Hawaendi kule bure. Kila dalali analipwa sio chini ya Kshs100,000 kumpeleka mtu mmoja kwenda kufanya kazi kule.

Tatizo kubwa liko katika madalali wetu. Hawa mawakala ambao wanachukua hawa wasichana kwa ajira katika sehemu zile wanafaa kukabwa zaidi kwa kupewa vigezo vigumu vya kutekeleza kabla ya kupewa ruhusa ya kuweza kupeleka wafanyaji kazi katika sehemu zile. Itasaidia pakubwa kuondoa tatizo hili.

Ikiwa wakala majibu yake kwa Seneta ni haya, utafikiria majibu kwa yule mfanyikazi ambaye yuko kule yatakua namna gani? Na yule mfanyikazi hajui mtu mwingine ambaye yuko naye kule isipokuwa wakala wake.

Hata familia ikienda kudai, katika hawa mawakala, utapata kwamba wengi wanajibiwa majibu ya ovyo. Wana tukanwa kwa sababu wamempa wakala kazi ya kupeleka mfanya kazi katika sehemu za Ughaibuni kwenda kufanya kazi. Kazi ile imemsaidia wakala na vile vile familia ya yule mhusika.

The Temporary Speaker (Sen. Kinyua): Ni Hoja gani ulio nayo, Sen. Sakaja?

Sen. Faki: Ningependa aniache nimalize kwa sababu akinipa Taarifa---

The Temporary Speaker (Sen. Kinyua): Unataka akuarifu au la?

Sen. Faki: Singependa aniarifu kwa sababu inahitilafiana na mwongozo wangu ambao nimeuweka kuweza kuchangia swala hili.

Naipongeza Kamati hii kwa kuja na mapendekezo haya. Wengi wa wale amabo wanapata shida sio kwamba hawawezi kufanya kazi, bali kwa sababu mazingira ya kazi sio mazuri kama walivyokuwa wametarajia.

Ni bora kwamba kuwe na njia ambayo ikiwa mtu ameshindwa kufanya kazi, kama ni kurejeshe nauli ya ndege, aruhusiwe kurejesha nauli ya ndege na apewe tiketi yake ya ndege kurudi Kenya. Akifika Kenya familia ama wale wahusika warejeshe pesa ya watu ya ndege. Si kwamba mtu aendelee kuzuiliwa, katika sehemu za Ughaibuni bila ya kuwa na nafasi ya kuonana na Wakenya.

Tunajua kuwa katika sehemu za kule, sheria yao ni tofauti na sisi. Kule ukipelekwa kama umefanya ajali barabarani, wewe ndio mwenye makosa isipokuwa wewe mwenyewe uweze kuonyesha kwamba hujakuwa na makosa.

Njia yao ya sheria ni tofauti na yetu. Hapa nchini unaweza kupelekwa mahakamani ukasema hukufanya, ukapewa bondi ukarudi kufanya kesi yako ukiwa nje. Kwa wale ambao wako katika sehemu kama zile, ni vigumu kuweza kupata nafasi ya kuajiri wakili au kupewa bondi ili utoke huko ukafanye kesi yako ukiwa nje. Hasa ukiwa mgeni bila ya mwenyeji kukusimamia, inakuwa ni vigumu.

Tatizo kubwa pia liko katika Wizara ya Ajira na Huduma za jamii. Ndiyo sababu uwezo wao wa kuwasimamia hawa mawakala ni mdogo sana. Hawawezi kusimamia mawakala wote ambao wanachipuka kila sehemu. Kila sehemu utapata kuna harifu. Ukienda Mombasa sasa hivi utapata kuna mawakala wengi ambao wanafanya kazi hizi. Wengi wanachukua pesa za watu na hawawapeleki kule kazini ambako wameahidi. Vile

vile, wengi wameweza kushtakiwa kwa kukosa kulipa pesa za watu ambao wamechukua bila ya kuwapa kazi hizo.

Mhe. Spika wa Muda naunga mkono ripoti hii. Asante.

The Temporary Speaker (Sen. Kinyua): Asante Sen. Faki. Pengine tu ningetaka kumuuliza Mwenyekiti, kwa sababu yeye ndiye alikuwa amelivalia njuga swala hili.

Je, hawa mawakala, ulipata fursa yoyote kuuliza maswali ili waweze kukueleza zaidi jambo linalo tendendeka? Nilivyomsikiliza Sen. Faki akisema, ikiwa atajibiwa namna ile ni kama anakejeliwa, itakuwaje kwa wale ambao wanasafiri? Pengine Mwenyekiti utueleze kwa muda mchache sana.

Sen. Sakaja: Asante sana Bw. Spika wa Muda. Ndiyo maana nilikuwa ninataka kumwarifu Seneta wa Mombasa. Tulikutana na hao mawakala ambao wako katika vikundi viwili, ambapo wamejisajili pamoja, kama *association*.

Tuliwasikiliza na pia wale wafanyikazi ambao wako kule. Ndiyo maana tumependekeza katika ripoti hii ya kwamba hao mawakala wote wapigwe msasa, ili kudhibitisha ya kwamba wanafanya kazi yao kupitia sheria iliyopo, katika *National Employment Authority Act* na huo msasa ukipigwa, waweze kusajiliwa upya na serikali.

Kuna wengi kama yule ambaye amemtaja, ambao kukitokea shida anarusha mikono juu. Hataki kuwajibika wala kumsaidia yule msichana. Hayo ni licha ya kuwa wamepewa pesa, hata zile za kuweka bima na kuhakikisha kwamba yule msichana ambaye ameenda kufanya kazi kule nje ako na tiketi au nauli ya kurudi akipata shida kule Uarabuni.

The Temporary Speaker (Sen. Kinyua): Asante. Jambo nzuri hilo. Sen. Cherargei.

Sen. Cherargei: Thank you Temporary Speaker Sir, for giving me this opportunity. I support the Report by Sen. Johnson Arthur Sakaja, for his leadership, and the Committee. The Committee has been industrious and committed on many labour issues.

When I was seconding an amendment introducing issues of the diaspora, I indicated that for the last two financial years, Kenyans from abroad have remitted more than Kshs780billion. It is the best foreign exchange earner in this Republic. It has gone beyond tea and any other foreign exchange earners that we get as a country. If this country was concerned about the diaspora community, we would even have a special directorate of diaspora issues, such as those Kenyans in the Middle East.

In Nandi County, we have borne the brunt. I have attended several occasions where we have had to fundraise and bring Kenyans who have died in unexplained and unknown circumstances. The other day I was in a part of Emgwen Constituency called Kapkangani where they had lost their daughter working in the Arab Emirates. We must agree on how we can handle this. When you go to Jomo Kenyatta International Airport (JKIA), you will notice that many Kenyans travel to the Middle East to look for job opportunities.

One of the greatest resources, if we take care, is having Kenyans who are working abroad. You saw the other day we were told that the United Kingdom (UK) needed 300 nurses, even though later, we were being told that most of them did not understand English. I did not know where that came from, but that is a story for another day.

Another resource that Kenya can export is the human resource. Every Kenyan everywhere is looking for a job opportunity from the qualification of after Form Four,

certificate, diploma, degree, masters and even PhD. How do we harness, bring on board and ensure that we protect our labour and our sisters and brothers who work in the Arab Emirates or the Far East?

Mr. Temporary Speaker, Sir, I thank the Committee on Labour and Social Welfare, led by Sen. Sakaja, for finding time to visit those countries to understand the challenges that Kenyans go through. Apart from the diaspora challenges of renewal of passports, issuance of *Huduma Namba* and renewal of Identity Cards (IDs), we realised that there is need for deportation or holding centres in those counties, so that our children are well protected.

This is an important matter and that is why I have always insisted that we should have a special directorate to deal with diaspora issues. The Ministry of Foreign Affairs should be able to tell Kenyans how many young people are in those deportation centres waiting to be deported; how many are in holding centres or how many are in distress. All of us get distress messages of people who are stranded.

We have seen sad videos on social media, where young girls are pleading for help because they are being frustrated and humiliated. Going into the future, the Ministry of Labour should have a requirement for agents running these organisations to sign a certificate of a particular conduct or responsibility.

It is good that the Chairperson of the Committee has indicated that there is even insurance. Why is it that agents are quick to take people to the diaspora, but when it comes to somebody being frustrated or is sick, it becomes very hard for them to repatriate or bring them back to the country? Yesterday, we were told that the moment you take one person to work there, you get USD1,500. That is good money for them.

Mr. Temporary Speaker, Sir, I agree with the Committee report that we should know how many Kenyans are in distress, those in detention or deportation centres and their employers. On many occasions, I have read allegations on social media, where somebody claims to work in 10 houses or his job descriptions were not clear. It is a clear violation of human rights. Kenya is a signatory to the International Labour Organisation (ILO) and there are particular standards that must be followed.

In the interest of the country, the Committee also recommended suspension of the export of labour for some time because many Kenyans have died there. Their bodies are brought back to the country without any explanation of the circumstances that led to their death. We are reactionary in nature and the only time we are active is when such a matter is reported by the media or on social media. That is when we say that there is need to address this issue.

As a country, we need to suspend labour export and audit the number of our children who have signed up for jobs with various agents. Who are these agents? Sometimes when these issues come up, we see agents calling press conferences, saying that they follow Kenyan and the Middle East labour laws. We need to protect our people.

I have always indicated that the future of Kenya is in the human resource. A total of 300 nurses were needed to go to work in the United Kingdom (UK), but the problem was English. However, that is neither here nor there. We need to agree that the next frontier of Kenya is not oil, tea or coffee, but young, energetic, well-learned and educated people, who are willing to work across the globe. Some of these young people are working in the Middle East countries.

Mr. Temporary Speaker, Sir, with the industrious nature of Sen. Sakaja, the Chairperson of this Committee, I also propose that we should have active rescue centres. When you talk of deportation centers, as a lawyer, I would tell you it is a total ball game all together. What do our embassies in those countries do? Do they have employees or attachés to act as rescue centres? When Honduras tried to close their borders, you could see the American Government had rescue centres to take care of their citizens. They were fed, clothed and conducted COVID-19 tests on them.

I think we need to agree that the embassies should ensure that we have rescue centres. I think Sen. Sakaja, who is the next Governor of Nairobi City County, should be very insistent on having rescue centres. As Sen. Faki said, these rescue centres should be able to provide clothes, medication, water, psychosocial support and counseling.

Mr. Temporary Speaker, Sir, another unrelated issue is investments, where we need to also protect the diaspora community. These are 'hustlers' working as maids or house servants and drivers. This is what we call bottom-up. When we talk of bottom-up, it is that we must ensure that we work hard on it. Just the way we are protecting *mama mbogas* and *boda boda* riders, we must protect those individuals in those places. That is why I was saying the issue of counseling is important.

The Ministry of Foreign Affairs and the Ministry of Labour must ensure they provide counseling to distraught families. As a family, you have sent your child to the Middle East and before you know it, you are told that your child died. The body is then brought through the Jomo Kenyatta International Airport (JKIA); and you can imagine the pain.

These are some of the things that will form the core of the decisions of the next government of the 'hustler nation.' You remember the Ethiopian Airlines plane crash, unfortunately, claimed many lives. The Ministry of Foreign Affairs provided psychosocial support to the families of the victims. Why are we not doing the same with the families that have lost their loved ones abroad? Your child flew out while well, but is brought back in a casket at JKIA, and no one tells you anything.

Mr. Temporary Speaker, Sir, the other issue is about the INTERPOL. For most of the deaths, no one tells us anything about the postmortem report or what the investigations found. We need the Director of Criminal Investigations (DCI), Mr. Kinoti and the Director of Public Prosecutions (DPP) here. They should share intelligence, the same way INTERPOL does and be linked up with the families of the deceased. You will find that a family is just told that their son or daughter fell off the balcony and died, and that is it. The body is brought back and the family buries their child, and the story dies.

The question should be: What is the DCI, Ministry Foreign of Affairs and other investigative agencies doing? They should collaborate with the Middle East countries like Qatar and the United Arab Emirates (UAE) government and seek the truth. I do not mean only the Middle East because Kenyans also die in the United States of America (USA). What is the DCI and other relevant stakeholders doing to ensure that investigations of the deaths of Kenyans in countries that have a weak criminal justice system, so that we do suspect foul play? For most deaths that we hear of, normally, the explanation is usually that somebody died under unexplained circumstances. Thorough investigations should be conducted on the deaths of Kenyans abroad.

Mr. Temporary Speaker, Sir, the other important thing is unclaimed assets. The Unclaimed Financial Assets Authority (UFAA) must tell us who takes the property and

payments of the young men and women who die abroad. Do you even know this ‘animal’ called UFAA? It is in existence in law and has a chairperson. Sen. Omogeni here knows that if a Kenyan worker died in the Middle East, they had a salary and property. Who takes care of that property until the rightful owner shows up?

Sometimes Kenyans and our African nature do not like writing the next of kin because we do not want to premeditate bad things will happen. Who takes their property? Who takes their money in the bank? What is the UFAA? As a country, it is very important that we have this Authority. What is the role of that Authority and who audits this Authority? Have they expanded their issue to include the diaspora?

The UFAA must be at the forefront to ensure that when our brothers and sisters unfortunately pass on in unclear circumstances and if they had property and money, it should go to the rightful owner like the next of kin; their wives, husbands, daughters, brothers or their children, so that we can follow the law.

Mr. Temporary Speaker, Sir, I have agreed that all these issues should be considered. The final thing that I request the Ministry of Labour is that we must audit how many Kenyans are employed. I request this in the interest of many Kenyans living abroad. The Attorney-General’s and the Solicitor General’s offices should assist in scrutinizing the dubious and unscrupulous contracts. *Zinaitwa in Kiswahili kandarasi gushi*. One interesting thing is that whenever you sign a contract, you sometimes do not see the small writing called terms and conditions. Kenyans sometimes sign *kumbe* you are hanging yourself.

The Temporary Speaker (Sen. Kinyua): Sen. Cherargei, be consistent. If you are speaking in English, speak in English. If it is Kiswahili, speak in Kiswahili. However, if you wanted to say fake contracts, you say *gushi*.

Sen. Cherargei: Thank you, Mr. Temporary Speaker, Sir. I wanted to say fake contracts. I am not as eloquent in Kiswahili as you, but I was looking for the word fake contracts or even compromised contracts.

I think these agencies must work in collaboration. That is why a diaspora directorate is important so that we can have a legal department before these young men take air tickets. I am told they get \$1,500 to take one person to those areas. Before they sign the contracts, we should scrutinize if it is a standard contract. Since that contract can say when you land in Dubai or anywhere in the Middle East, your relationship with the agency ends, yet the agency should have an obligation to bring you back. They have an obligation when you are in distress.

Most of the embassies that we have abroad should have such mechanisms to assist. I also request that even as these agencies are vetted here in Kenya, our embassies abroad must assist us by vetting those agencies in those areas. Even the Kenyan Embassy should be telling us if a Kenyan like Sen. Cherargei works in Nairobi, we should be able to know the address, where they work, which estate they live in and which property they own so that it becomes easy for tracking.

Mr. Temporary Speaker, Sir, I want to thank Sen. Sakaja’s led Committee. They have done a superb job, but I challenge them to bring legislative and policy interventions. One of the Solomonic directions on how they can do shaking changes is by proposing a directorate of diaspora issues only. In that directorate, there should be issues of labour, investments, counseling, risk centres, repatriation and holding centres as well as deportation centres.

When these Kenyans are brought back, we must have a programme of re-integration in the society. We must look at this. For example, when they are deported back into the country they should be reintegrated in the society. That is another issue I challenge Sen. Sakaja's led Committee to look into. You can die out of depression because mental health is becoming a problem. If you deport somebody from those countries, they come and do not have anything. If we do not do proper reintegration into the society, they can become societal problems or societal misdemeanours.

Mr. Temporary Speaker, Sir, I support this Motion and thank Sen. Sakaja's Committee for providing leadership. I hope when Sen. Sakaja becomes the Governor of Nairobi City County, he will be able to assist the country in ensuring these agents comply with the law because most of the agencies are based in Nairobi. I know the county government will have a role in licensing these agencies and it will be people who understand the challenges that Kenyans are facing. Majority of the people in the Middle East come from Nairobi City County.

Thank you for the opportunity.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Cherargei. Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to contribute to this report. Every time I stand to read a piece of work done by the Senator of Nairobi City County, I cannot hide the brilliance in the work that he does. We must acknowledge that among the Senators in this House, one that is hardworking, brilliant and puts belief and conviction in the work he does, is Sen. Sakaja.

When you read the report that he has presented before this House, it is not disappointing. I must thank him and Members of his Committee for the effort they have put in trying to look at the problems and the misery that is facing these vulnerable groups of Kenyans in our midst.

Mr. Temporary Speaker, Sir, it is shocking that this country does not care about the welfare of over 80,000 Kenyans working in the Kingdom of Saudi Arabia. These are young Kenyans who have been forced to go to Saudi Arabia, Qatar or the United Arab Emirates (UAE) in search of greener pastures. If our country called Kenya put in place mechanisms for these young Kenyans to find employment, they would never have found their way to these countries.

When you read stories that have been captured by the Committee chaired by Sen. Johnson Sakaja, this is a matter that should call for an urgent reaction from our Government. We need action now and not tomorrow. In fact, it should have been done yesterday. Here are Kenyans who genuinely without committing any crime, look for opportunities for employment out there. They go to employment bureaus, they are offered jobs and go to Saudi Arabia. What do they receive in return? Not only are they paid low, poor salaries but they are mistreated in the hands of their masters.

Mr. Temporary Speaker, Sir, we keep quiet as a country. I ask what is the essence of having a Government that we say is a Government of the people, by the people, for the benefit of the people? The Government is there to protect the vulnerable, the poor and those who cannot speak for themselves. I am even wondering whether the Government has read this report ever since it was tabled before this House and the recommendations there.

The first one I am seeing is that the Committee has made a very urgent request that all Kenyans currently out there, who are in distress and stuck in Saudi Arabia be repatriated back to the country. As we speak this afternoon, what action has the Government of Kenya done?

Mr. Temporary Speaker, Sir, I am speaking as somebody who has witnessed first-hand, a victim who left this country after her fourth form, a sister of the former Chairperson of the Kenya National Union of Teachers (KNUT) in Nyamira County. She went to Saudi Arabia and disappeared, incognito with no communication and after six months, it was discovered that this lady had died in the hands of her employer in Saudi Arabia. Then you go through the agony of looking for money to bring that body back to the country. Do we have an embassy in Saudi Arabia? Does it care about the welfare of these poor Kenyans?

This is a report that should provoke action and sympathy from our Government. It is a sorry state of affairs. What is the Office of the hon. Attorney-General doing? How do you allow Kenyans to leave this country, go out to be employed, then they are subjected to this inhuman and almost servitude kind of treatment? We hear nothing from our Attorney-General. What has he done, as we speak today? These are some of the happenings that should call for resignation of some office holders; 80,000 Kenyans and you feel nothing? You are behaving as if nothing at all is happening.

Just the other day, I read in the social media – I do not know how true that was – that Luis, an Interior Minister in Peru resigned simply because he violated observance of some COVID-19 regulations. Here, we have an Attorney-General who does not care, has done nothing and feels nothing about the suffering of these poor Kenyans. It is a shame. I am a lawyer, but telling the Attorney-General, ‘shame on you’. As a country, how do we sit back and feel as if nothing has happened?

How many Kenyans must die before we see action from our country? Are we waiting for another body to be brought and another one next week and month, and we do nothing as a Government? That should not be. Any Kenyan that dies in a foreign country under mistreatment is a mistreatment to all of us, Kenyans.

I do not even feel inspired to take a trip to the United Arab Emirates, Saudi Arabia or Qatar if this is what they are doing to my brothers and sisters. It is not right. We are talking about people who are domestic workers and are serving with dedication. They are mistreated, killed and exploited after which the dead bodies are just sent back. When some of these Kenyans land in Saudi Arabia - I do not know whether Sen. Sakaja was able to establish this - their phones are confiscated. They are not allowed to communicate to their motherland, not even through email or WhatsApp. So, they are working incommunicado. They are more or less prisoners.

I do not know whether this is just happening to Kenyans or other nationalities are also experiencing the same. Senator, did you establish what happens to nationalities from other countries? Are they subjected to the same treatment? Is it because of the colour of our skin? This is annoying. These are not strangers, but people from your village and my village. It could happen to your children. It is only that you are lucky that you are able to give them good education and they can find jobs. However, it could happen to anybody, even our aunts.

Mr. Temporary Speaker, Sir, we must demand some immediate action on these recommendations that have been put forth by this Committee, especially recommendation

No.1 on the return to Kenya of all current and former domestic workers who are in distress and stuck in the Kingdom of Saudi Arabia. We want to hear that Kenya Airways has been sent there, tickets bought for these Kenyans and they are brought back to the country. Chairman, we will send you to receive them at the airport.

Secondly, we want an investigation done and a report submitted to the Senate, so that we get to the bottom of this problem. We do not want what is happening on the social media. When I walked here, Sen. Cherargei told me that my wife is trending on social media. There are Kenyans who misuse social media to character assassinate other people, like what they are doing to my spouse. I want to tell them that as I stand here as the Senator of Nyamira, I love my wife, support her in what she does and will be unshaken. She will continue to dispense justice as a Judge of the High Court of Kenya. The shenanigans going on in social media will not shake Kenyans who want to serve their motherland.

One year ago, I made a report to the Ministry of Interior and Coordination of National Government. I reported to Gigiri Police Station about somebody who went to the media and was doing character assassination on my person and my own mother. I am a son of Nyamira and everybody knows. My mother is a respected woman in Nyamira, but somebody was writing in social media that my mother was married in Luo land, in Siaya; gave birth to me in Siaya, then migrated to Nyamira; bullshit, nonsense! That kind of ineptitude we see from our own investigative agencies should not be reflected out there.

The Temporary Speaker (Sen. Kinyua): What is it, Sen. (Prof.) Kindiki?

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, is the Senior Counsel, Sen. Omogeni, in order to use the term he has just used? Is it a parliamentary term; the 'bull word'.

Sen. Omogeni: Professor, you should assume that you did not hear what I said.

The Temporary Speaker (Sen. Kinyua): That is not a parliamentary term and you have to withdraw.

Sen. Omogeni: I did not use the word he is alleging. I think he was not attentive. Next time be attentive and listen to my contribution. He is my good friend.

The Temporary Speaker (Sen. Kinyua): Sen. Omogeni, did you use that term?

Sen. Omogeni: No, I did not. I think Sen. (Prof.) Kindiki was not attentive. Next time, I urge him to be more attentive even if he had a five-course lunch.

I would like to continue.

The Temporary Speaker (Sen. Kinyua): What is it, Sen. M. Kajwang'?

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, did you hear Sen. Omogeni refer to a professor of law as not being attentive? I know for you to become a professor, then a Senator for two terms, lead this House and be the Deputy Speaker of this House, your level of attention can never be doubted. Is it in order for the Senator of Nyamira to imply that my good friend, Professor, is not attentive now and has never been attentive? How then did he get his Doctor of Philosophy (PHD) and professorship? I know that he did not go to school with Hon. Sudi, but with Sen. Sakaja and I. Could the Senator of Nyamira withdraw that assertion that the good professor is not attentive?

The Temporary Speaker (Sen. Kinyua): What is it, Sen. (Prof.) Kindiki?

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I will stick to the straight and narrow. Sen. Omogeni is a respected member of the Bar. He is a Senior Counsel. He used

the ‘bull word’ and I asked whether it is in order to use such a word, not just in respect of my senior, but for posterity, the ‘bull word,’ which I do not want to repeat, parliamentary? If Senior Counsel insists that he did not use the word, let the HANSARD bear us out. Is he in order?

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

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

Sen. Olekina: Mr. Temporary Speaker, Sir, I do not know which dictionary we will be looking at to define whether a term is parliamentary or not. If I heard clearly what the good professor of law is asking, it is whether my good friend, Sen. Omogeni, is in order to use a term, which can be defined as ‘untrue talk’ by the English Oxford dictionary. The term ‘nonsense’ or ‘bullshit’ are terminologies, which can be defined as ‘untrue talk’ – things that have got no substance.

Mr. Temporary Speaker, Sir, I do not think that we should restrict parliamentary language to become so conservative such that we let people go in and malign other people with untrue talk. Perhaps the good professor of law can take us into another trajectory of defining terminologies in English. If we have a parliamentary dictionary, please share with me because I have not seen one.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Kinyua): There are two statements that I am supposed to make a determination on. One, he said that the professor was not attentive and second is the word that he used.

Sen. Omogeni: Mr. Temporary Speaker, Sir, can I make it easier for you? I withdraw the part where I said that my good friend is not attentive, because he is my good friend. However, I fully agree with my colleague that the word that I used in reference to people who misuse social media is not unparliamentary. I am not making reference to any Senator. I am making reference to those who misuse social media for character assassination, and I think that they deserve the terms that I have used.

The Temporary Speaker (Sen. Kinyua): Senator, those terms are being used here. The issue is for me to determine whether that is parliamentary or not. I will proceed to make a ruling on that, but because you have apologized for what you said about the Senator, please, proceed.

Sen. Omogeni: Mr. Temporary Speaker, Sir, the other point I want to emphasize on the report that have been brought before us by this Committee is the requirement that all local agencies that recruit and send our Kenyans out there should be registered.

I do not know what mechanism we can find under the Ministry of Labour so that we can hold them liable. How do you recruit a Kenyan in Nairobi and send them to Saudi Arabia, but bear no responsibility when these Kenyans are mistreated and die in the hands of foreigners?

Some time back we used to find hundreds of Kenyans around Agip House seeking employment from these agencies. Six months down the line, they close shop and disappear. Like the case I gave you for Nyamira, when the relatives of that girl wanted to trace the agency that recruited that poor girl, they had closed shop.

Mr. Temporary Speaker, Sir, I agree with the recommendation by Sen. Sakaja that we should have a clear mechanism where these agencies have registered offices and contact persons. Even when they fold up, there should be a clause tying them to be

responsible to have contacts where they can be reached for a period of a certain number of years.

Another thing that I agree with is that our labour officers in Kenya--- This is basically an employment issue. We are allowing more than 80 Kenyans to work in Saudi Arabia, just like our nurses are going to London. I read in the papers and have not seen the comprehensive report.

I read in the papers that the Ministry has negotiated that these nurses will be given money equivalent to I think 7,000 Pounds as a settlement package in the United Kingdom (UK). They have been negotiated for return tickets, they have been allowed to relocate with their families. They have been given an option to become citizens in the UK.

Mr. Temporary Speaker, Sir, this means that in the case of domestic workers, they are left on their own. Those poor Kenyans are left on their own, but when it comes to the specialized cadre like nurses, the Government has taken a keen interest. The Principal Secretary (PS) for Health flew all the way to London to negotiate terms for the 20,000 Kenyans who are going to work in the UK. I have never heard that the PS for Labour made a trip to the United Arab Emirates (U.A.E), Saudi Arabia or Qatar to negotiate terms for these poor Kenyans. We need to see some interest from the Ministry of Labour.

Mr. Temporary Speaker, Sir, I can see that my time is up. I thank Sen. Sakaja for this very good report. I hope that this is not going to gather dust in the shelves. I really hope that we will ensure that the recommendations we have made are taken out by the Government and that action will be taken so that we can give a smile to these Kenyans who are out there trying to eke a living for their families that have been left behind. They go out there because we, as the Government, are not able to offer jobs for these poor Kenyans.

I thank you, Mr. Temporary Speaker, Sir. I also thank Sen. Sakaja for the good work.

The Temporary Speaker (Sen. Kinyua): Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I thank you for giving me an opportunity to add my voice in support of this important report. I will be very brief.

First of all, the challenge of Kenyan nationals working in foreign countries is a big challenge affecting our country.

Secondly, our Ministry of Foreign Affairs, through the Kenyan missions abroad have done not so good a job. This is because part of their core mandate in the places where they have embassies, high commissions and permanent representative missions is to ensure that they have a database of all Kenyans who live there, where they live and what they do, including the everyday experiences that may be of concern to us, as a country.

That is why we spend a lot of money to keep and maintain embassies and high commissions in over 50 capitals of the world. Some of them are multilateral stations. Therefore, I am afraid that our Ministry of Foreign Affairs may not have done a very good job in that respect.

I agree with Senior Counsel, Sen. Omogeni, that our Cabinet Secretaries (CSs) and PSs should travel abroad and negotiate and look at the conditions that our fellow countrymen and women are going through abroad. However, I do not see any sense wasting money in that kind of an effort when we have permanent missions and embassies abroad.

Thirdly, it is my view that the Ministry of Labour, especially the National Employment Authority (NEA) and other agencies of Government that are responsible for labour matters have also done a very good job. This country requires a complete database of all persons who are involved in recruitment and exportation of labour abroad. I say so because this database is not only important for our country in terms of tracking where our people are abroad, but it also helps us in conjunction with other countries of the world to minimize and mitigate the consequences of illegal migration and trafficking of persons.

Mr. Temporary Speaker, Sir, I am afraid that some of our countrymen and women maybe have been caught in the intricate and lucrative business of trafficking persons abroad. I also call upon our country to develop meaningful and close collaborative arrangements with the International Organization for Migration (IOM), which has a very good database of people and movements, including movement for purposes of labour and migration in many parts of the world. Some of the information that our Ministry of Labour and agencies that this House wants to have could be provided by the International Organization for Migration (IOM) which has one of the biggest regional office here in Nairobi that serves quite a number of countries.

Mr. Temporary Speaker, Sir, having said that, I commend the Committee led by Sen. Sakaja for taking up this matter. This is because there is a big concern and outcry from our people who have gone through harassment, mistreatments and illegal labour practices abroad. However, it is important to note that it is not all Kenyans working outside, including the Middle East, who are going through this hardship. We also need to profile and highlight best practices of countries and employers. This way, we will not discourage Kenyans who might get good opportunities out there that will enable them to bring up their families and contribute to the remittances that are working well and compensating tea, horticulture and other products that have gone awry. Therefore, it is important to distinguish between good practices in this area of foreign labour, but also the bad practices need to be addressed.

Finally, I support the position that there is need to identify and track all people who are involved in exporting labour abroad. They can borrow from the legal profession. Any person who wants to engage a lawyer, needs to go to the nearest computer, log in and find out whether the person they want to hire is a registered advocate and if so, whether they are licensed to practice that particular. They also find out whether they are active or dormant, their disciplinary cases and their address.

When a law firm moves address, we normally provide a notice to the Law Society of Kenya (LSK) that from this time, please note that my law firm is moving from one address to another. So, the issue of agents flying by night, changing residences and winding up, should not be used to excuse these kinds of things.

If we did that, we can provide a good framework and allow Kenyans to work abroad. I am a big proponent of trade-in services. Many of the countries that have made good strides in international trade have capitalized, not only, on trading goods but also services. We have good professionals who can work in the domestic realm, seafarers, experts in accountancy, finance, law *et cetera*. We have a huge outlay of human resources which we should encourage to be of economic use to our country out there.

I take this opportunity to support this report and applaud the Chairperson, Sen. Sakaja, for doing a great job in this House for the last five years. The people of Nairobi

should be proud for electing Sen. Sakaja. This is because he has done a great job in representing, not only Nairobi, but all the counties of the Republic of Kenya.

I support.

The Temporary Chairperson (Sen. Kinyua): Thank you, Sen. (Prof.) Kindiki.

There being no other request, I call upon the Mover to reply.

Sen. Sakaja: Mr. Temporary Speaker, Sir, I am grateful for the Senators who have contributed to the debate on this report.

I affirm that the reason why we chose to make it a report that needs a resolution is because of these serious recommendations that the Senate needs to pass. I am grateful to Sen. Kihika who was part of the delegation that did this tour. I am also grateful to Sen. Murkomen who, in as much as had a different view initially, finally saw the light in terms of the temporary suspension of migration of domestic workers.

I am grateful to Sen. Cheruiyot, who spoke after him and laid it bear as to why we need to suspend labour migration of domestic workers until those specific conditions are meant. We are not asking for a blanket suspension. We understand that it is an economic frontier.

Sen. (Prof.) Kindiki has put it well. That is an area through which our country is gaining. However, until we can assure Kenyans of their safety and wellbeing, no amount of dollars in remittances is worth the life of one Kenyan.

I am grateful to Sen. (Dr.) Musuruve and Sen. Shiyonga, who is a Member of the Committee and is part of those who supported this report.

Sen. Olekina made strong remarks around this. He is a true fighter for the people. Sen. (Dr.) Langat, also gave good contributions.

Sen. Faki also gave us practical and direct examples, including that of an agent called Issa who when one of the domestic workers was in distress, sent rude messages asking him why he is coming with a lot of gas and if he is a Senator, he should buy the ticket and send her back.

I have gotten the contacts of that agent and forwarded the number to the National Employment Authority (NEA), with a view of them taking action of such agents. This is because I know they are listening to this discussion. I am also grateful to Sen. Cherargei and Sen. Omogeni and for the kind words.

Finally, Sen. (Prof.) Kindiki has given advice on how to deal with these issues. As Senator for Homa Bay confirmed, indeed, as a Yorkist, he can never hide his education. He went to a brilliant school and subsequently furthered it. On top of Lenana School, he went on and on and he is now a professor with us.

Mr. Temporary Speaker, Sir, this is one of those reports whose implementation we will not allow to be a by the way. We will do a monthly review as a Committee on Labour and Social Welfare on this report until the day we leave the Senate in August. Hopefully, those conditions will be met. This is because they are things that the Government can do.

When we were debating the report, I was sent videos of bodies of Kenyans which were removed from Shameesi Mortuary yesterday. When, Sen. (Prof.) Kindiki was contributing, a young man has sent me a distress call about his brother whom they suspect is held at Tahirih Deportation Center for an altercation with his boss.

These are live matters. We are not discussing theories or something about geothermal or space energy that we cannot feel or touch. We are talking about real lives

of real Kenyans who are looking to us for real solutions for their problems. That is why I am proud of the Senate for taking time to look at such issues of Kenyans. I am also proud of my Committee. I am grateful for the comments.

Sen. (Prof.) Kindiki has asked us about best practices and we have looked at that. In the report, we have looked at Philippines, which has negotiated for her people. Sen. Omogeni asked why Kenyans are being mistreated. The reason is because they believe they can get away with it.

Saudi Arabia is such a disciplined country. If you drive and your belt is not on, no policeman will stop you. The cameras immediately take a photo of you and the money is deducted from your account. There is no discussion or court.

Those people are so disciplined will only do these things when they know they can get away with it. What have other countries done? They have secured solid bilateral labour agreements that have secured the welfare of their people. So, we have become easy prey.

The complaints from the people is that when you go to the embassy with a case against the Saudi, you are guilty until you prove yourself innocent yet you are a Kenyan. Our embassies must be seen as fortresses for Kenyans who are out there. They must be places where Kenyans feel safe.

If you have a complaint against a foreigner in the country, they will believe me first and establish whether they are saying the truth or the other way round. That is why we have asked for safe houses.

We have asked Mr. Juma who is the only attaché and is overwhelmed--- I think he needs to be given a good battery of staff. A proper labour office should be set up in Jeddah as well. He told me thousands of kilometres he has to drive to respond to distress calls on the other side of the country. Many times, there is no budget. So, he is forced to go into his pocket to resolve issues. Why do we have a mission there?

Saudi Arabia is such a key labour destination and the focus on that mission should be labour. I wish I was still in the Committee on National Security, Defence and Foreign Relations. We need to tailor the functions of our different missions based on the strategic interest we have in that country.

Our mission in the United States of America (USA) needs to be geared towards our strategic interest in the US. Our mission in Uganda, which is our biggest trading partner, should be focused on trade, but our mission in Saudi Arabia must be focused on labour.

We only have one officer, but we have other people there who in many respects will actually have a case to answer when this report is transmitted this afternoon after we vote on it. I do not like making blank allegations. Once this report is transmitted to the Ministry of Foreign Affairs, Amb. Macharia will have work to do.

We have one of the best diplomats in this country at that station. We expect more from Amb. Ogego whom we know very well because he has done so well. He was in one of our most important stations in Washington DC for many years. We expect so much more from him and we know he has the passion. If he needs to change his staff, let him tell us. If he needs support of other consular services, let him tell us, but the embassy there cannot focus more on non-core issues of this country.

Mr. Temporary Speaker, Sir, I am passionate about the National Employment Authority (NEA) because I consider it my baby. It came about by legislation I brought to

Parliament in 2015. The NEA has the potential of making Kenya a proper supplier of skilled and even unskilled labour, but mostly skilled because we have many young people out there with degrees, diplomas and certificates who are disillusioned and disengaged.

I have always said that the biggest threat to our security in this country is not the Al-Shabaab or AL Qaeda. It is millions of disillusioned and disengaged young people with qualifications, but without jobs who just see leaders zooming past with big guzzlers and giving them empty promises.

By now, the NEA should have created proper job centres across the country to train young people, up skilling and packaging them to be able to get employment in different sectors. That is why in that board, we have representation from the Ministry of Foreign Affairs and technical institutions, so that we can streamline the courses we teach our children.

They should advise them what majority of the people are studying at the university. The employers in that board should inform them what the market needs or what it will need in five years, so that courses taught in our institutions such as universities are aligned to the market needs.

Today, everyone is doing procurement and I wonder why. Just because you have gone to university does not mean you will get education that will give you a job. The NEA has the mandate under the law to do vetting and registration of all employment agencies.

In this report, we have stated that all agencies must be freshly vetted and must have the financial capacity to guarantee safe repatriation of any Kenyan who needs to come back. That is what is done by other countries.

Let me tell you because some Members do not know, but this is booming business. I met the mega recruiters there such as Maharah and the rest and they were asking for 2,000 Kenyans. For each one of them, you are given between USD1,000 to USD2,000. Calculate that. So, they see it as a commodity. This is more than exporting cows and other agricultural products. They just put them in a plane.

I love what Sen. (Prof.) Kindiki has said. It is always good to listen to professors. The same model they have in the professional body is what the association of agents should have. Saudis have a system called Musaned. We should be able to tell where an agent comes from and where they operate from. If they move, we should also know where they have gone to and the girls under their care. The relationship should not end.

Part of the USD2,000 or USD1,500 should be a contribution to a welfare fund. For example, if it is USD1,500, USD200 should go to a welfare fund because when one loses their life or are distressed and come together under the body I told you called Jaliyat, they are helped. I have heard an embassy saying that Kenyans should not contribute money to support another Kenyan, but they are not being helped, yet you do not want them to meet. All those recommendations are in this report. I want to thank Senators. Let me not take much time.

Mr. Temporary Speaker, Sir, a few weeks ago, I represented the Senate in a meeting with the International Organization for Migration (IOM) and I am glad professor has mentioned it. In the meeting, we discussed the national coordinating mechanism for migration.

There is a proposed national migration policy. In the national migration policy, I told them that for the sake of Kenya, the area they need to boost more--- I do not think we

have as much emerging refugee issues or other aspects of migration as much as labour. The chapter on labour actually stands alone. It is labour migration policy from which we should have a legislation because there is no labour migration law.

I told them that I also know how the process of formulation of policy takes long in this country especially now that we will have a transition. It has to go to a Cabinet sub-committee before being reduced to a sessional paper by the Cabinet and that could take two or three years. We cannot wait for that. We are working with them and I pray that I will be able to sponsor the National Labour Migration Bill.

Whatever engagements our missions are getting into are because of statutes and not because of relationship of specific ambassadors at certain times. It will have provisions on how Kenyans should be treated and what happens. You will not take away Kenyan passports or confiscate their phones because the law does not allow and there will be minimum pay for them. You cannot take someone from Kenya for a job and then they go and do something different.

Please, Members, let us pass this report so that we resolve the issues. Immediately it is passed today, I will forward it to all the agencies, but I know the Senate will do it officially. We do not have an implementation committee.

I will set up a sub-committee in the Committee on Labour and Social Welfare to fully follow the implementation of these resolutions. I hope I will come back here in a month or two to report that the national Government has complied with the resolutions and we should now lift the suspension. Once we pass it today, domestic labour migration to the Kingdom of Saudi Arabia will be suspended until the Executive demonstrates that they can comply.

Mr. Temporary Speaker, Sir, I beg to reply. I thank you.

Sen. Olekina: Mr. Temporary Speaker, Sir, I had certain reservations and I just wanted to get some clarity from Sen. Sakaja because we are just about to vote for this.

My concern was suspension of labour migration to foreign countries. Does that extend to individuals, who on their own volition, go to Dubai to look for jobs? I think it is important to clarify that, so that when we vote, we know. I will not feel comfortable voting for something that will bar individuals from travelling on their own.

Sen. Sakaja: Mr. Temporary Speaker, Sir, in as much as you have used your discretion because I have replied, I must give that clarification. This does not touch on individuals who go to places like Dubai.

Sen. Olekina, I saw the video you posted of three lovely Kenyan ladies from Nyeri who you found on the streets of Dubai. I am sure they are the ones who identified you because your hair and height stands out. They said they went there to look for greener pastures on their own.

This is specific to the Kingdom of Saudi Arabia because there is a protocol. Even in their own country, you will come in as an individual looking for job unless you come in through the *Musaned* system which I have exhaustively explained. Once this is done, it is only applying to that one specific jurisdiction because that is where we are getting these cases of deaths and they have that system. However, a Kenyan who is going to look for a job in Qatar or Dubai can do so. They are many in those countries. In fact, I was chatting with one of them called Desmond who is my good friend. When you go to Dubai you meet them. They love taking photos with us and we keep in touch. That does not apply to them.

Secondly, it does not apply to those who are there already who wish to continue with their employment. However, we have said that anyone who is in distress and is stuck there must be brought back. We want database and an accountability on all of them.

That is the proposal. I thank you.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Sakaja. As is provided by our Constitution in Article 123 and our Standing Order No.79, I have determined that this matter does not affect counties.

(Question put and agreed to)

Next Order.

BILL

Second Reading

THE HERITAGE AND MUSEUM BILL
(SENATE BILLS NO. 22 OF 2021)

(Bill deferred)

Next Order.

BILL

Second Reading

THE COUNTY OVERSIGHT AND ACCOUNTABILITY
BILL (SENATE BILLS NO. 17 OF 2021)

(Bill deferred)

Next Order.

BILL

Second Reading

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)
BILL, (SENATE BILLS NO. 37 OF 2021)

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, I beg to move that the House now considers the Intergovernmental Relations (Amendment) Bill, (Senate Bills No.37 of 2021).

I thank the Chairperson of the Senate Committee on Devolution and Intergovernmental Relations who sat in that Committee before I did because that is when the thinking around this amendment Bill started.

This House in February, 2020 was notified in the media that the Nairobi City County Government had signed--

The Temporary Speaker (Sen. Kinyua): Chairperson of the Senate Committee on Devolution and Intergovernmental Relations, approach the Table.

(Sen. M. Kajwang' consulted the Clerk-at-the- Table)

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, I beg to Move that The Intergovernmental Relations (Amendment) Bill, (Senate Bills No. 37 of 2021) be now Read a second time.

Please allow me to proceed.

The Temporary Speaker (Sen. Kinyua): Please, proceed.

Sen. M. Kajwang': Article 187 of the Constitution provides guidelines on how functions that have been assigned to county governments can be transferred to the national Government. It also provides guidelines on how functions assigned to the national Government can be---

The Temporary Speaker (Sen. Kinyua): Chairperson of the Senate Committee on Devolution and Intergovernmental Relations, it would have been kind of you to mention the former Committee Chairman who had this thinking for purposes of record.

Sen. M. Kajwang': The thinking behind this amendment Bill was conceived when the Senator of Laikipia was Chairperson of the Committee on Devolution and Intergovernmental Relations.

(Laughter)

It was the good Senator for Laikipia who did all the necessary conception and the Senator of Homa Bay did all the necessary action for delivery.

It is a fairly straightforward matter. I am glad that the Senator for Nairobi City County and future Governor is here because some of the issues that prompted this amendment originated from Nairobi City County.

The Intergovernmental Relations Act gives further effect to Article 187 of the Constitution and provides some procedures for transfer of functions. However, the Act says that the county assembly and Parliament shall be notified of a decision to transfer.

In the matter of Nairobi City County going by the current Act, the Nairobi County Assembly was notified of the transfer after the deed of transfer had been executed. Was the law broken? Probably not. Perhaps it was bent, but not broken. All that was required was notification of the County Assembly.

It is interesting that even though the deed of transfer was signed on 25th February, 2020, public participation on the matter was undertaken on 4th of March, 2020. This was several days after the deed of transfer had been executed and the Nairobi Metropolitan Services (NMS) established.

The case of Nairobi City County was Executive-driven. There was a belated involvement of the County Assembly, absolutely not involvement of the Senate or Parliament and public participation was done to tick boxes rather than to provide ingredients into the deed of transfer.

What was transferred from the Nairobi City County Government to NMS was the functions of health, transport, public works and utilities, planning and development had been assigned close to Kshs16 billion in the budget of the county for Financial Year

2019/2020. This was an extremely significance transfer of duties, responsibilities from one level of government to the other.

Article 187 is clear that the elected governor of a county still retains constitutional responsibility for the transferred functions. It is for interpretation whether the acting Governor of Nairobi City County is really taking responsibility for the transferred functions. It seems as if the acting Governor is now taking instructions from the entity that the functions were transferred to.

Mr. Temporary Speaker, Sir, this amendment seeks to provide clarity in transfer of functions from the national Government to county governments, but also considers the reverse from county governments to the national Government.

We have seen transfer of functions from county government to the national Government in the case of Nairobi City County. I recall also Taita /Taveta had put a request to transfer the roads function from the county government to the national Government. On the other hand, there could be cases where the national Government wishes to transfer its functions to county governments. Perhaps that has not been explored.

In areas such as education infrastructure, there are those who are of the view that instead of the national Government channeling funds through the National Government Constituencies Development Fund (NG-CDF), it probably would go to the county governments as a conditional grant. This is because governors are people on the ground and they could take that responsibility of developing education infrastructure if there was an intergovernmental agreement.

Today we will be talking of NMS taking over the functions of Nairobi City County, but there could be cases where county governments are taking over functions of the national Government.

This amendment seeks to provide for a role of the county assemblies. The existing Act says county assemblies shall be notified. The amendment makes clear the role of county assemblies in the transfer process. It says that once an intergovernmental agreement has been drafted, it shall be submitted to the county assembly. The county assembly shall carry out public participation and it shall vote on the matter.

It goes further and provides for the role of the Senate. Once the county assembly has approved the matter, that approval is transmitted to the Senate which also takes a number of days to consider it.

Mr. Temporary Speaker, Sir, you recall the process of conferment of city status has got similar processes where the county assembly will take a resolution which will be brought to the Senate. Interestingly, there was no timeliness to conferment of city status. That is why in this case, we have made it clear that the Senate should take 30 days to consider the transfer of functions so that it is not an indefinite matter.

Mr. Temporary Speaker, Sir, the amendment has also provided that where the national Government wishes to transfer a function to county governments, the National Assembly shall consider the matter. Once it has, the Senate shall also consider it. The amendment makes it mandatory that public participation shall be undertaken at all levels by the county assembly and by the two Houses of Parliament when they are considering a case for transfer of functions.

The amendment also clarifies issues of financing and budgeting and makes it clear that the transferring entity shall be responsible for financing the functions that have been

transferred. In the Nairobi City County matter, we have seen cases where financing for Nairobi Metropolitan Services (NMS) is not done through the County Revenue Fund (CRF). It is done by a direct Exchequer to NMS. That is an illegality. If these are county functions, budgeting for them must be done by the Nairobi City County Government and not the Executive.

Again, it has provided the manner in which oversight will be undertaken. It is clear that the county assembly shall exercise oversight over functions that have been transferred. There has been some concern on who should be over sighting NMS, especially when they say they are an Executive agency or branch. They have been suggesting that NMS should be reporting to the National Assembly and not the Senate. I think that is a ridiculous way of looking at things.

Article 187 of the Constitution is still there and it says that constitutional responsibility lies with the entity to which that function was assigned. Therefore, this amendment attempts to make that very clear that the county assembly continues to exercise oversight over the transferred functions. The Senate as well has a responsibility to oversee the implementation of the inter-governmental agreement.

Mr. Temporary Speaker, Sir, we have made an important proposal that an agreement to transfer functions from the county to national Government shall lapse at the next general election. This is the practice in other jurisdictions like Australia.

We do not want a situation where Sen. Sakaja, running for Governor of Nairobi City County, is doing so to be able to go and manage the payroll because all the substantive functions have been taken away by NMS. It should be clear that when you are running for Governor of Nairobi City or any other county, you are going to exercise the powers of a governor undiluted.

The current deed of transfer lapses sometimes in February or March next year. In the event that the Executive was to extend it, that extension should not go beyond the next general election.

(Applause)

If the reasons for that transfer was incompetence of the then governor, it cannot be passed now to the next governor who definitely will be a competent governor and capable of overseeing the delivery of those services.

I urge the House to look at that provision quite carefully. I think it is very important to avoid some mischief where entities like NMS are established and they stay forever. They then serve to take away certain constitutional provisions through the backdoor.

Assuming that a deed of transfer lapses, what happens to the assets and liabilities that have accrued during that period where functions have been transferred? For example, you have NMS putting up lots of infrastructure in the City, especially hospitals, roads and water projects. However, there could also be liabilities that NMS is accruing during that time. Liabilities could be payments for salaries, statutory contributions and such like things.

At the end of the agreement, it is important that a stock-take is done. Which entity would do that? Even though we have not provided for it, I see the IGRTC being the nexus between the national Government and county government at the lapse of an inter-governmental agreement.

Mr. Temporary Speaker, Sir, two weeks ago, we had a retreat with the IGRTC and this matter came up. They proposed that if we could amend this to provide for the role of the IGRTC to be the custodian of all deeds of transfer and also the entity that will take stock of assets and liabilities at the end of the period of the agreement. I think it is a reasonable suggestion that could come by way of amendment before the House passes this Bill.

In the case of Nairobi City County, they were completely out of the picture and yet it is a statutory body that is meant to balance both ends. As Sen. Sakaja sometimes puts it very interestingly, devolution is not just about counties. It is the delicate balance between the interests of counties and those of the national Government. That is why the IGRTC was established.

This entity has not delivered to the level that we had expected it to. For example, the issue of transfer of assets and liabilities is one that they have taken to the summit and some resolutions made. However, we have not seen action. We are not seeing things moving.

Having sat in the County Public Accounts and Investments Committee (CPAIC) with Sen. Olekina, transfer of assets and liabilities is a recurring audit issue in all the 47 counties. We need to think of ways to empower the IGRTC so that it is able to effectively carry out its mandate. IGRTC has made proposals that if we could also amend the Inter-Governmental Relations Act to expand their scope and give them more powers, then they would play a better job at being the referee.

The IGRTC has been given the powers to conduct Alternative Dispute Resolution (ADR). All these cases that county governments are taking to court, suing the national government or the national government suing county governments or county assemblies suing county executives, the IGRTC has the capacity and mandate to carry out ADR in such cases. However, as presently constituted, they find a lot of challenges because even in terms of financing, budgeting and funding, it still comes through the parent Ministry. Sometimes they get really frustrated.

Mr. Temporary Speaker, Sir, as we proceed, the Committee on Devolution and Intergovernmental Relations should probably make a few amendments that do not alter the substance of the transfer of functions. They should strengthen the IGRTC to be the empire and custodian of deeds of transfer and be the team that checks on assets and liabilities at the end of the transfer period.

I think NMS has acquired many assets. It must be clear that those assets belong to Nairobi City County Government and not the national Government. If we empower IGRTC, then they would keep an inventory of all those assets and liabilities.

I want to leave it at that and thank the current and past Members of the Committee on Devolution and Intergovernmental Relations. I would also like to advise the current Cabinet Secretary (CS) for the Ministry of Devolution and Planning to do better than the former CS.

The Act requires the CS to come up with regulations. Indeed, these amendments ought to have been dealt with through regulations. Since 2013, the CS, Ministry of Devolution and Planning has failed to bring regulations to this House. I know that when you chaired this Committee, you gave directions for the CS to provide regulations. Perhaps they are happy to operate without regulations because that way, some of these things can be done quickly. They can be done expediently. However, we should not be

expedient in a way that we then trample on the rights and responsibilities of citizens. I request Sen. Olekina for Narok County to second this Bill.

Thank you.

The Temporary Speaker (Sen. Kinyua): Thank you Sen. M. Kajwang. Sen. Olekina.

Sen. Olekina: Mr. Temporary Speaker, Sir, I rise to second this very important Bill. Before I proceed, I want to recognize your effort and creativity in ensuring that the relationship between the national Government and county governments stays intact and sober.

I also thank the current Chairperson of the Committee on Devolution and Intergovernmental Relations, Sen. M. Kajwang for having taken up the matter from where you left and has tried to demystify this issue of Article 187.

What is happening in Nairobi City County today is an illegality because there is no clear legislative process on how transfer of functions should be managed or how the reporting mechanism should be outlined. When you read Article 187(2)(b), it is quite clear on who has got the constitutional responsibility of a transferred function.

I have always been on record saying that NMS is an illegal entity and those who are busy carrying out this illegality will end up paying if and when we have a Government that respects the rule of law. Article 226(5) of the Constitution is clear on the responsibility of the mismanagement of funds.

Mr. Temporary Speaker, Sir, because of lack of this amendment to the Intergovernmental Relations (Amendment) Bill or Act, today NMS is behaving as if they are, indeed, the county government. If you touch NMS, you are touching very powerful people in this country. I have just heard from the Chairperson that the National Treasury is now sending money directly to NMS instead of the county government as per the law. This is shocking.

When you read the Public Finance Management (PFM) Act and the Constitution in Article 219, it is clear on where the funds should be sent. They should be sent directly to the county government. The county government having transferred these functions and having budgeted for all those functions, transfers the budgeted amount to NMS. However, that is not what is happening.

Tomorrow another illegality will still come up. Tomorrow NMS will be launching what they are calling the Nairobi Revenue Services assisted by the Kenya Revenue Authority (KRA). Nairobi City County Government should be spearheading this process.

The importance of this legislation - I hope Sen. M. Kajwang will be able to add or expound into the amendments - is that once it is in place, it will be very clear even in the Senate and an oversight body like the National Assembly on who to summon to be accountable.

Right now, you see Committees of this House summoning NMS to appear before them while in essence they should be summoning the County Executive. Article 179 of the Constitution clearly stipulates that the authority is vested in the Executive who is the county governor, the deputy governor and the 10 County Executive Committee Members (CECMs) who are not members of the County Assembly. The way things are happening now is like NMS is superior to the governor.

I hope Sen. M. Kajwang can incorporate in this amendment a clear definition of the scope of work of the transferred functions and a clear reporting mechanism. In a real

world where accountability is what defines the order of the day, NMS ought to be sending in a status report to the Executive or the county governor of the functions that have been transferred to NMS.

They should indicate clearly that of the transferred functions that you sent to us, one being an example of health, you outlined the following functions for us to deliver, set up the following deliverables and the following milestones have been achieved before any funds can be transferred.

The Temporary Speaker (Sen. Kinyua): Sen. Olekina, you mentioned the Committee is summoning NMS. In Article 125, it is within their mandate to summon any institution for purposes of evidence

Sen. Olekina: Mr. Temporary Speaker, Sir, it has been a tradition of this House that we summon the Cabinet Secretary and not the Permanent Secretary. We summon the person who has got the constitutional responsibility. There is no problem with a committee summoning the NMS Director, but he should accompany the governor because the constitutional responsibility remains with the transferring entity.

This amendment to the Intergovernmental Relations (Amendment) Act is timely. I would like to see a situation whereby this amendment defines clearly how this process should be carried out. It should define the scope and set out the deliverables as well as the reporting mechanism for the milestones.

In other developed nations, when functions are transferred from one entity to another, a project charter is developed which defines the scope, so that the entity now being given the authority to carry out functions know what their scope is. Today, as I stated earlier, NMS and KRA are setting up the Nairobi Revenue Services system whereby they want to collect all the revenue. They are the ones setting it up.

In my view, even though the service has been transferred to them, the County Executive ought to be able to take it to the Assembly for approval. Once it is approved, come in and have a meeting with them. It should not be the other way round. It should not be the Director-General inviting the governor to go in and participate in an exercise of activation to let Kenyans know that NMS and the KRA have set up this system. That system should not belong to NMS nor to the KRA. It should belong to the County government of Nairobi City so that tomorrow when 'Governor' Sakaja takes over, he does not have to go to NMS to be given the system to handle. That is the loophole for corruption which we have been talking about.

When I was with Sen. M. Kajwang in the CPAIC, one of the challenges we had was trying to find out how the money from the JamboPay was being accounted for. The gentlemen who came in presented a live stream of how the income was coming in. The problem that we had then is what is going to come up today now that the Nairobi City County Government did not have control of that system. How then do we expect the county governor to be answerable to oversight bodies such as the National Assembly or the Senate, if they do not control or own the system? This is an illegality.

Mr. Temporary Speaker, Sir, we must be people who believe in doing what is right and where we see that something is going wrong, we stop it. We do all these things for posterity. If we are not doing it for now, it does not matter how much power we have, we should not be trying to line our pockets at the expense of future generations.

I support this amendment because no one will come and tell us tomorrow that just because Nairobi City County has transferred this function, the governor ceases to have

any powers in terms of ensuring accountability. The person who has to be accountable as per Article 179 of the Constitution is the governor. Article 179 of the Constitution places the governor as the Chief Executive Officer (CEO) and the deputy governor as the deputy CEO. In fact, the Constitution does not place the President as the CEO of the country. It is only the Governor who is defined as the CEO of a county. I hope that our colleagues will see sense in this. Also when this Bill gets to the President, he should see the sense in it because we are trying to protect our Constitution.

Today if you ask the Nairobi City County Government to give you a status update on all the functions that have been transferred to NMS, they will tell you to go to NMS and get it yet, it is their responsibility.

If you go to the County Assembly of Nairobi today and ask them how things are being done in terms of the Level 5 hospitals, ask them on the issues Sen. Sakaja was raising on Intensive Care Units (ICUs), among other issues, they will tell you they do not know anything. NMS is running this county as if it is their own property. They make the law and determine what has to be done. I dare say that the Constitution is suspended when it comes to the issue of NMS in this country. This is an illegality which we must state so that we correct it.

I am quite happy with the accountability aspect which I heard Sen. M. Kajwang' describe on how these transferred functions should be funded. Today, if you ask the County Assembly and the County Executive of Nairobi headed by the Deputy Governor on how much money has been budgeted for building hospitals in Nairobi, they will tell you they do not know. Whatever is budgeted, more money is spent there, the Exchequer releases more money.

The other day we saw the President opening hospitals at night. Were those hospitals funded through the sharable revenue? Where did the money come from? There is the illusion that the President or the Executive arm of national Government owns all the money in this country. This is a fallacy which we must tell as it is. It is Parliament that allocates the revenue which is shared between the national Government and county governments.

This Bill will be important for future the government because of the transfer window. Today, we are well aware that the transferred functions or the deed of transfer will be lapsing sometimes in March of 2022. I am 100 per cent sure that currently there is a lot of debate, lobbying and pressure for the Executive of Nairobi City County to sign the transfer of functions all the way past March, 2022.

This Bill should define or set prerequisites for renewal of the transfer of functions. They should be clear on what should be done when the agreement lapses. I hope we can amend some of these proposals to include the approval by Parliament after it has extensively gone through the report of the success, looked at the milestones of the functions which were transferred from the county government to the national Government.

This is the only way we can be sure that when transferring a function, you are not transferring authority, but a function for it to be carried out better than you would. I am sure the framers of the Constitution what they had in mind when they came up with Article 187 was that, if by any chance, a governor was unable to build roads because of lack of expertise, he transfers the function to the national Government because he believed they could do better than him. It was not because there was pressure from the

Executive to take that function. One day, we will be accountable and judged by history if we do not correct it now.

I thank Sen. M. Kajwang' and the Standing Committee on Devolution and Intergovernmental Relations for trying to put some sense and sanity into this issue of transfer of function.

I beg to second.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Olekina. I will propose the question first.

(Question proposed)

Sen. Sakaja: Mr. Temporary Speaker, Sir, it is always a joy listening to Sen. M. Kajwang'. He is one of those who I have a hard time in concealing education. It just comes out. He has done a brilliant job espousing the true nature of devolution and the tenets of our Constitution. This is timely. At a time when we are grappling with a practical example of transfer of functions, I am grateful to the Committee.

Sen. Olekina has been passionate about this issue. During our oversight meetings with NMS and Nairobi City County Government many times he has insisted that they cannot show up on their own, but come with the bearer of the constitutional responsibility. In this particular case, the Nairobi County Government.

This is a necessary piece of legislation at this time. I will outline why I say that as I find a copy of the Bill. The drafters of Article 187 of the Constitution had a good reason to provide for transfer of functions between county governments and national Government. The drafters of our Constitution, including the task force on devolution never imagined that all functions would immediately be devolved. There was supposed to be a phased-out devolution of the functions in the Fourth Schedule. However, due to outcry, and I remember that time we had a strong Council of Governors (CoG) led by Governor Isaac Ruto. They insisted that everything must be devolved and we all plunged into devolution at a go. However, it was supposed to be phased out. Nonetheless, here we are.

The most beautiful gift this Constitution holds is devolution. That is why when we were discussing Building Bridges Initiative (BBI) report and the draft that proposed Nairobi City County to be under the national Government, I was for a long time the sole voice refuting that.

We gave a presentation to the task force at Laico Regency. When those Senators and Members of National Assembly who at that time were perceived to be pro-BBI were called to Naivasha. I made another passionate appeal, that if devolution is the best gift to Kenyans, why would you deny 10 per cent of Kenyans who are the residents of Nairobi this best gift? It was almost because of the sins of two people that millions of Nairobians would be disenfranchised forever.

Episode one of devolution did not work in Nairobi. Episode two was not working and went to season 2.1 with the NMS. We did not get it right then, but we will get it right. Nairobi will get it right. That is why I keep on saying in my mantra that let us make Nairobi work. We can make it work.

Mr. Temporary Speaker, Sir, this transfer of functions from Nairobi City County to the national Government that culminated in a deed of transfer was extremely necessary

at that point. I remember the High Court had given a ruling on governors who were facing charges and not being able to discharge their duties. At that point, our governor, my good friend, Hon. Sonko, was facing charges. To add to the complication, he did not have a deputy.

Mr. Temporary Speaker, Sir, there was no one to execute the executive functions that needed a governor to sign off. The county was grinding to a halt on many functions. People in construction sector will tell you that building approvals and plans were not being approved because meetings could not be held.

Many aspects were not working. So, we said that we needed to take a stop gap measure or intervention that will keep Nairobi rolling and moving. I remember that I was involved in that process by the Executive. I gave suggestions and many of them found themselves to the deed of transfer. Of course, I was told not be seen anywhere near State House during the time it was signed because the minute the persons signing would see me, they would reverse. They thought it was a trap, but it was not.

Mr. Temporary Speaker, Sir, Nairobi needed that first aid. However, it now needs radical surgery moving forward. The NMS came in. It is a cocktail of hits and misses. They have been good in certain aspects and have not excelled in others. They have done very well in the aspects of brick and mortar in some parts of Nairobi. I commend them. If you look at the roads in certain parts of the city, they have been paved. The planning approvals are going through and certain markets have been done.

Mr. Temporary Speaker, Sir, there is the matter of the social infrastructure, welfare and people's livelihoods, they have not done very well. People do not want a machine to run a city. Sen. M. Kajwang' is an Information Technology (IT) expert. He will tell you that we have Artificial Intelligence (AI) technology that can replace Senators, Members of Parliament (MPs) and other leadership. It can do legislation and run counties. However, people want leadership that they can see, touch, feel and that can listen to them.

That is why we have had demolitions in many places. That is why the garbage menace has come back. That is why we have hospitals that are structures, but without doctors who are motivated to treat patients with no drugs.

Mr. Temporary Speaker, Sir, that is why I have brought so many questions on how we infuse life into Nairobi City County through the NMS for this period of time. So, this is extremely important. I remember the public participation that was held. I told them that they need to do public participation.

Mr. Temporary Speaker, Sir, you know what politicians do. We have one thing in common between us and electricity. We look for the path of least resistance, but with the greatest impact. So it had to be done. Now we have time to objectively look at this area and pass legislation. This is going to be a land mark legislation. I congratulate Sen. M. Kajwang', Sen. Olekina the Committee and the conceiver. The person who participated in the conception and has not denied the paternity of this initiative, who is yourself.

Mr. Temporary Speaker, Sir, there are questions that we will still need to answer. For instance, this deed of transfer in Nairobi lapses in March. I have not seen a provision for what happens in terms of extension. The camel gets into the tent with just the head, but then it enters the whole body. I do not even know if we transferred the well-wishes.

I saw the Director-General wishing happy Diwali on behalf of the county government and NMS today. I do not know whether we transferred that function of

wishing people a happy Diwali. He said that is was on behalf of NMS and the Nairobi City County Government. He cannot speak on behalf of the county government. He is an entity that is holding fort, a baby sitter. When you have a baby sitter taking care of your baby, they cannot claim that, that is their baby when you come back. They hand the baby back and say, “Daddy is home. Go back to your daddy.” The “daddy” is the people of Nairobi City County.

Mr. Temporary Speaker, Sir, I know that there are a lot of discussions going on right now. The acting governor is being arm twisted before being sworn in to extend the transfer into the next term past August. That is unconstitutional. There is the fear of who comes in. There is the assumption that county governments have devils and the national Government has angels. Corruption can creep in at the national level.

Even in the NMS, we have seen areas where cartel behaviour has begun. The Swahili say, *mgema akisifiwa, tembo hulia maji*. That is why I will still persist on accountability. I intend to be good governor if the people of Nairobi give me the trust to run this county. When they are sworn in after August 9th 2022, a good governor would be pragmatic enough to say that certain aspects of NMS have been working.

Mr. Temporary Speaker, Sir, instead of reinventing the wheel, I will maintain certain aspects of it and incorporate them as part of the county government. Sen Olekina and his relatives in the USA say that if it is not broken, do not fix it. We must maintain what is working, but the responsibility is ultimately with the governor. That governor is held to account by the county assembly and the Senate. That interest will be safeguarded. Nairobi can work. We must make Nairobi work. If the health department is working, why go look for new people?

In the same way, we have Nairobi City Water and Sewerage Company. That is discussion for another day. We can still have NMS as a department of the county government dealing with certain aspects. I believe in devolution. Devolution is based on the principal of subsidiarity. The principal of subsidiarity is that a service is best offered at the lowest level compatible to benefit area of that service.

That is why as Governor of Nairobi City County, the first thing that I will do is step down Nairobi into four boroughs. We will have North, East, West and South. At that level, the person in charge of water and roads in Kayole should not be the same person I am holding to account in Karen or South C for that matter. The person thinking about markets in Westlands should not be the same person thinking about markets in Mukuru kwa Njenga.

You cannot run Nairobi that way because it is too big. Seeing that it is too big, a lot is lost and slips through the fingers of those in charge. We can agree on the budget for each level. Is this what we need for environment? Is this what we need to make sure that there is no garbage? Is this the number of nurses, doctors and drugs that we need for our hospitals? They will report at the level almost like County Executive Committee Members (CECs).

I like what Governor (Prof.) Anyang’-Nyong’o has done with the city manager. Nairobi will need four city managers in those boroughs. Once I have given the budget, my work is to move around Nairobi and observe. If I see garbage in Lavington, we know who is in charge of that sub county and he will go home. That is how you run a city.

Mr. Temporary Speaker, Sir, I do not know if you were with us the last time we were in Washington DC. I met with the Office of the Mayor of Washington DC. I want to

collaborate with Nairobi as sister capital cities. God willing, we will implement that from next year. They have the mayor who has a step down leadership. They know who is charge of transport, water, garbage and revenue in whichever part of Washington DC.

What is happening in this city? As a result of the pressure that they have been given, it has almost become sacred. The accounting officer of NMS is not at the Kenyatta International Convention Centre (KICC). He is the State House controlled. Have we summoned the accounting officer of NMS? That is the person who is signing off for now. Not that there is a problem with him. He is a man that I respect. He is a good friend, but that is not what devolution envisaged.

Mr. Temporary Speaker, Sir, we need to make sure that the lady in Mutuini can hold to account somebody that they can see and touch. They should be able to see them and have public participation. I had the chairs of all the city council estates at my office recently. They fear because they have been told that their houses at Woodley, Ofafa and Ziwani will be demolished. There were around ten estates in Eastlands. We are saying okay in as much we support urban renewal, there is no one who can come sit with us, talk to us and explain to us.

Mr. Temporary Speaker, Sir, a human in that seat will say look from 1,000 houses we will build 13,000 houses. All of you 1,000 who have been there for three generations you have been in those houses, we will deem what you have been paying all this time to be ownership. When we build the 13,000 houses, you will have a unit. What does it take to do that?

You say affordable housing. Affordable to who? If you have been paying Kshs2,000 for 20 years, you move me to Kshs11,000 is that affordable to me? That is the problem I am sorting out in highrise now in Majengo. People were in the slum. They were paying Kshs6,000 or Kshs5,000 and now they are paying Kshs11,000. They are being auctioned almost soon because of Kshs60 million in arrears. I support this.

Mr. Temporary Speaker, Sir, finally, let me just add one thing if you give me a half a minute. How many minutes do I have? Okay, I have five minutes to go.

We must listen to the Professor who believes in devolution. The KRA that has been incorporated to collect revenue is at war with my people in Nairobi. I must say it. The other day when I was in Parliament, I got a short message on my phone that my car is parked at Ngong' Road and I am here. I thought my car had been stolen. If you look at how they are moving around with General Service Unit (GSU) officers harassing business people, you will be shocked. Nairobi is a business capital of this continent and they are harassing them. I am glad Boniface Mwangi released a video.

Mr. Temporary Speaker, Sir, they just come in without identification and they are bundling you up. These are business people who are being forced to pay more than 13 licenses. Despite that harassment, revenue collection has gone down. When you make revenue collection facilitative, compliance goes up. When you make it a policing issue, compliance goes down. That must be changed. We cannot have GSU collecting revenue in Nairobi with KRA.

Women in markets are being bundled in the back of those broken down tetanus-filled pickups because of failing to pay Kshs35. Why are you even charging them in the first place, yet you are not providing services? The ladies in Gikomba would tell me they would be very happy to pay, but they have been paying and they have never seen somebody coming to clean up that market. The same case with Marikiti, Westlands and

Outering Road markets, they want to pay but they are not getting services. We must change how we see this city and how we deal with transfer.

Mr. Temporary Speaker, Sir, I am happy that now we are starting to create a framework through which we can do transfer of functions. I would like to advise those who are currently in charge not to get too comfortable. You have just until March. I support the extension until August so as to facilitate that asset issue where we have the asset register.

We should add an amendment that they should be reporting to the Senate on top of the IGRTC. Let us know the asset register of NMS that they have acquired. That is the trucks, the bowsers, tanks, vehicles and what not. I have seen so many Subarus and Land cruisers and I do not know how that is helping Nairobians.

Mr. Temporary Speaker, Sir, we need that asset register back to Nairobi County. We need to understand. There are certain projects they got into without listening. When they started they were very good and facilitative. Maj. Gen. Badi would come up to my office. He is 24th floor and I am on 26th floor. He used to be told give him a brief and I would see and call all the 17 Members of Parliament (MPs). I would explain to them this is what we are doing and this is where we are. We would move on together.

Mr. Temporary Speaker, Sir, I think a memo was sent to them telling them to stay as far away from politicians as possible. We are not just politicians. We did not hire ourselves. I got elected by close to a million Nairobians, I must account to them. I must tell them for this road, this is the plan. You call these officers and they have stopped picking up calls, but it is okay. It is a few months for us to get back Nairobi to its people.

Mr. Temporary Speaker, Sir, let transfer of functions from county to national Government be always a matter of last resort. Let transfer of national to county government be encouraged because we believe in devolution.

I support this Bill and congratulate Sen. M. Kajwang' and Sen. Olekina. Are you in that Committee? I do not know why I am congratulating you. It is because you seconded, but generally I also congratulate you. This is a good job. Please allow us to speak together on proposed amendments, including on that of extension of transfer if required, so that no one tries to overlap into the next administration.

I support.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Sakaja. Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I thank you for giving me this opportunity. I also thank you for according to Sen. M. Kajwang' conceiving the contents of this Bill. I thank Sen. M. Kajwang for not only moving this Bill, but also delivering it. He also claimed credit for delivery.

Allow me to highlight two biases that I have and hope will not influence my remarks. The first is that the Deputy Governor of Nairobi City County who is the acting governor and a beneficiary of the transfer of power and the politics around, is a citizen of Tharaka Nithi County. Therefore, I am a proud Senator of a county which has produced two current governors, one is a full governor and the other one is an acting governor. That is a bias I must announce.

Mr. Temporary Speaker, Sir, the second one is that this issue we are discussing today in this Motion is an issue which my views are in the public domain. In fact, it cost me a position in this House on 20th May, 2020 when the Mover of the Motion in the lack

of confidence with the Deputy Speaker said that one of the reasons he brought that Motion was because I had certain views about Nairobi City County Government and the transfer of powers.

I said I must announce that bias so that it removes any shadow of doubt that whatever I am saying here is influenced by the 20th May last year or any other thing or the fact that the acting governor is from my county.

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

The Temporary Speaker (Sen. Kinyua): What is it, Sen. Sakaja? Do you want to be informed by Sen. Sakaja?

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, certainly.

Sen. Sakaja: Mr. Temporary Speaker, Sir, I do not know how Sen. (Prof.) Kindiki will take this information that that date might be poetic. This is because the 20th May the day he was ejected was exactly eight years after he participated in the launch of The National Alliance (TNA) on the 20th May, 2012. How he takes that information is up to him.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, that information coincides in the tragedy and mixed feelings we all have about our party, TNA which we founded with Sen. Sakaja. We worked very hard for it until the party got into headwinds and I do not think it will survive the crush.

Article 186 of the Constitution---

Sen. M. Kajwang': On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Kinyua): What is it, Sen. M. Kajwang'?

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, Sen. Sakaja has brought a very interesting dimension. Will I be in order to then say that 20th May, 2020 also marked the death of the party that they had formed someday back on 20th of May? I think when the good professor left that Chair, then the rain started beating the Jubilee Party.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, the party is alive, but in the Intensive Care Unit (ICU). We wish it well, but I have already said from where I stand, I think it is over.

Article 186 (1) of the Constitution provides that the functions that are provided for in Schedule Four Parts I and II respectively, shall be exercised exclusively by the national Government and county government, respectively. The lawyers call that exclusive jurisdiction clause.

Mr. Temporary Speaker, Sir, Article 186 (2) provides what in law is known as concurrence jurisdiction. It says that a function may be performed concurrently by the national and county governments. Then Paragraph 3 talks about residue jurisdiction which is that any function which is not assigned in Schedule Four either Parts I or II is a function of the national Government.

I want to start from that point and say that, indeed, the Constitution is extremely generous to the national Government. It not only assigns them much of the functions that really move the hardware of the state craft. The functional hardware is in the national Government, but also the left overs such that residue jurisdiction of whatever remains also are ascribed or appertained to the national Government.

Mr. Temporary Speaker, Sir, nevertheless, despite this generosity from the Constitution, we have witnessed a huge appetite by the national Government to encroach on the little functions that are left to county governments. If you look at Schedule Four,

the functions of county governments are very soft on agriculture, county health services, county transport, and so forth and so on. Even where functions are devolved, all policy functions in all sectors across the board are retained by the national Government.

Mr. Temporary Speaker, Sir, it reminds me of the story in the Bible of the man who had 100 sheep. One day, he got a visitor and could not countenance slaughtering a single sheep from his herd of 100, but instead went and robbed his poor neighbour who had only one sheep. He robbed that poor man of his one sheep and slaughtered it for the visitor. That is what the national Government is doing to devolution. I am afraid another decade of such direct attack on devolution will kill the cherished crown jewel of our Constitution, which is devolution.

Mr. Temporary Speaker, Sir, Article 187 provides that the reason for transfer is effectiveness. It is not for fun. It has to be manifested even in the transfer deed that the reason the transfer is being effected is to make the delivery of that service effective. Even in that case, the resources are supposed to follow the organ or level of government implementing the function. However, the constitutional responsibility remains with the original owner of the function.

The same provisions of Articles 186 and 127 have been amplified in Sections 25 and 26 of the Intergovernmental Relations Act of 2012. Therefore, this Bill helps to streamline further the already existing constitutional and statutory provisions on the issue of transfer of power.

Mr. Temporary Speaker, Sir, I submit as follows, despite what I said in my opening remarks: The purported transfer of functional authority from Nairobi City County Government to the national Government was illegal and remains illegal for the following reasons.

First, it is a direct affront on devolution, particularly Article 6 (2), which distinguishes the two levels of government and demands mutual respect for each level. The facts of the transfer bespeak of a condescending Executive that literally overran a very weak county government in Nairobi, cajoled, threatened and simply took over power and forced the Governor of Nairobi County to sign the deed of transfer. It is illegal and cannot be excused under any law.

Secondly, it was initiated by the Executive. In fact, I propose to Sen. M. Kajwang' and team that the national Executive, where power is being transferred upwards, from county government to the national Government, the national Executive cannot and should not be the initiator of that process. It should be the county government or other agencies, including the public, but not the national Government.

Mr. Temporary Speaker, Sir, for equality of arms, the same can apply; that when a function needs to be transferred from the national Government to the county government, also the county government should not initiate. That way, we will protect counties from ravaging and gluttonous national Government that wants to predate on counties and take over everything for itself.

Thirdly, it is an illegal exercise because we are witnessing or it perpetuates the militarisation of civilian functional space. We have seen military people now selling meat and doing everything. I am told that they have taken over Kenya Medical Supplies Authority (KEMSA). They are going to sell drugs, treat people, sell veterinary services, including vaccinating dogs, and selling meat. Now they are running television, radio, and all manner of things.

Mr. Temporary Speaker, Sir, that is how military dictatorship creeps into our country. You psychologically tune people to believe that the military is a better administrative agency than civilian agencies. It is wrong. I pronounce on the Floor of this House not only as the Senator of Tharaka-Nithi County, but also as a Senator of the Republic of Kenya. The encroachment by the military of the Republic of Kenya in civilian affairs is illegal and must be resisted democratically.

In a democracy, military authority must remain subservient and subordinate to civilian authority. That is why I believe that the military has no basis paving roads and building dispensaries in Nairobi. It does not matter how effective that is. The function should have been taken by the national Government, but could still have been placed under civilian hands.

Mr. Temporary Speaker, Sir, the transfer was also, for lack of legal provisions, procured by false pretenses, menaces and inducement because the Governor for Nairobi County told the country that he was intoxicated. That is what the Governor for Nairobi City County said. Those who gave him the psychotropic substances to take are the same people who asked him to sign that deed of transfer. This law is trying to streamline a very sensitive area.

I agree with my colleagues who have spoken; Sen. Sakaja, the distinguished Senator of Nairobi City County, Sen. Olekina, distinguished Senator of Narok County and the Mover of this Motion, Sen. M. Kajwang' the distinguished Senator of Homa Bay County. The transfer of power from counties to the national Government should be very rare, indeed, and extremely justified, and not left to the whimsical interests and appetites of the national Government.

Mr. Temporary Speaker, Sir, I also want to provide the following concluding remarks because I know that our time is gone. I also agree with the sentiments that there must be annual reviews approved by both the county assemblies and the Senate. Therefore, the renewal or extension of mandate must be based on a scorecard, which has been reviewed.

Secondly, no transfer of functions should go beyond one election cycle. The transfer of functions is supposed to be a short-term solution and not a permanent or long-term solution. Therefore, I support this Bill and thank the Committee for bringing it. We hope that it will be processed before we go to the next election. We want to send a warning for those who trying to extend the mandate of the NMS beyond next year. They are engaging in an illegality.

Mr. Temporary Speaker, Sir, thank you, and I support.

The Temporary Speaker (Sen. Kinyua): Thank you. The Mover will reply when the Bill next appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Kinyua): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until Tuesday 9th November, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.