

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 22nd February, 2022

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

DEMISE OF HON. (DR.) WILFRED MACHAGE,
FORMER SENATOR, MIGORI COUNTY

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I have a Communication.

Hon. Senators, it is with a heavy heart that I convey the news of the passing of Dr. Wilfred Machage, Kenya's High Commissioner to Nigeria and the former Senator for Migori County.

The late Sen. (Dr.) Wilfred Machage passed away in Abuja, Nigeria on Saturday, 19th February, 2022, after a short illness, at the age of 65.

He was born on 10th August, 1956.

The late Sen. (Dr.) Machage attended Taranganya Secondary School for his O-level certificate and Chavakali High School for his A-level certificate.

He later pursued a career in the medical profession in his early years having attained a Bachelor's Degree in Medicine and Surgery from the University of Nairobi in 1983.

The late Sen. (Dr.) Machage joined elective politics in 2003 when he was elected a Member of Parliament (MP) for Kuria Constituency in the then Migori District. He served in this position for two terms until 2012.

During his time as a MP, he served in various capacities in Government including Minister for East African Community (EAC), Assistant Minister for Home Affairs in the Office of the President, Assistant Minister in the Office of the President, Assistant Minister in the Ministry of Health and Assistant Minister for Roads and Transportation.

In 2013, the late Dr. Machage contested for and was elected to the Office of the Senate for Migori County. He served as a Member of the Speaker's Panel and Chairperson of the Standing Committee on Health. Under his stewardship, the Health Bill of 2015 was passed into law.

The late Sen. (Dr.) Machage was an astute, humorous, humble and distinguished leader. As a Member of the Speaker's Panel, he was steadfast and a stickler to the Standing Orders and parliamentary practice.

He possessed impeccable passion for public service and devotion not only to the people of Migori County, but this nation, Kenya, whenever he was called upon to do so.

He will be remembered for relentlessly advocating for the rights of minority groups and especially the Kuria People.

In 2018, the late Sen. (Dr.) Machage was appointed and posted as Kenya's High Commissioner to Nigeria covering Nigeria, Benin, Sierra Leone and Togo.

During his tenure as the High Commissioner, the late Sen. (Dr.) Machage served with honour and distinction. Indeed, this can be attested by Members of Kenya delegation to the Commonwealth Parliamentary Association-Africa Region Conference that was held in Abuja Nigeria in November, 2021. He effectively facilitated the delegation that was led by the Rt. Hon. Speaker of the National Assembly and the Chairperson of Commonwealth Parliamentary Association-Africa Region, Hon. Justin Muturi, EGH, MP.

Hon. Senators, today, we mourn the death of a patriot, colleague, and a friend. We have indeed lost an honourable man, a public servant, a selfless leader, and a national statesman.

On behalf of the Senate and on my own behalf, I take this opportunity to condole with the family of the late Sen. (Dr.) Wilfred Gisuka Machage, the people of Migori County, the diplomatic corps and all his friends in this most difficult time.

Hon. Senators, in honour of our departed former colleague, I request that we stand and observe a moment of silence.

(Hon. Senators stood and observed a moment of silence)

I thank you.

I can see a lot of interest from those who want to eulogize the former Senator. The first opportunity is for Sen. Kang'ata.

Sen. Kang'ata: Madam Temporary Speaker, Murang'a takes this opportunity to express its deepest condolences to the family and friends of the late Hon. (Dr.) Machage. The people of Murang'a know that he was an inspirational leader. He served as a Member of the National Assembly before becoming the pioneer Senator for his county.

Dr. Machage was a very learned Senator. He used his knowledge to advance the course of healthcare in this Republic of Kenya. The younger generation of leaders will definitely take note of the good ethics that Hon. (Dr.) Machage bequeathed this generation.

I urge this country, as we go into the period of electing new leaders, to consider the lessons we learnt from Hon. (Dr.) Machage. In particular, these are lessons concerning humility, great representation of a small community that is deep in Nyanza and also traverses into Tanzania, the empathy for the poor and the weak and ensuring the programmes that we proffer for those seeking gubernatorial positions or national leadership of this Republic extol the virtues of caring for the jobless, the women and other discriminated demographic groups of this Republic of Kenya. That is what we learnt from the life of Hon. (Dr.) Machage.

Finally, looking at the circumstances that led to the death of Hon. (Dr.) Machage, we need to realize the importance of taking care of the elderly. Hon. (Dr.) Machage was an elderly person. If at all, despite his education and status in society but he encountered huge medical problems, what about a poor person in Nyamira, Kisumu, or Murang'a?

His death should inspire the current crop of leaders and the Government to institute a universal free healthcare system. The best way to approach that is by providing free National Hospital Insurance Fund (NHIF) card to each and every person in this Republic.

I know that is possible within the means of respective counties. For instance, in Murang'a County, we have 320,000 households as per 2019 census data. However, only 40,000 households have NHIF cards, whether paid by public or private sector.

It is time we used this sad event to push our counties to set aside funds to ensure all elderly people get NHIF cards and can access free and subsidized healthcare in this Republic.

The Temporary Speaker (Sen. Nyamunga): Sen. Kwamboka, please, proceed.

Sen. Kwamboka: Madam Temporary Speaker, I join my colleagues in conveying my condolences to the late Hon. (Dr.) Wilfred Machage. Indeed, he was a great leader. He served the people of Migori and he was a pillar to the Kuria community.

I listened to one of his speeches and he was a composed leader. He was a man of wisdom and served this country in a good way. *Pole sana* to the people of Migori, more so, the Kuria community and Kenya at large. We have lost a hero.

May his soul rest in peace.

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

Sen. Dullo: Madam Temporary Speaker, I wish to join my colleagues in passing my message of condolences to the family of our late colleague. I served with the late Hon. (Dr.) Machage in the previous Senate. He was a strong and promising leader and was also social in the House.

He fought for healthcare rights, more so, the Universal Health Coverage (UHC). Although I know that that has not worked as expected, he had a better structure for this country, and I hope this country will remember him in his death.

When associating with people, the late Hon. (Dr.) Machage never showed that he was from a minority community. I know it is a big loss to the Kuria Community because he was a strong pillar as a leader that the Kuria people depended on.

I hope we will get somebody else who will fit in his shoe. I also hope the Government will find a space for the family to take over what he has left behind because it is not easy especially for the family. However, that is God's will which we cannot question.

I pray that God strengthens the family as they prepare a befitting sendoff for our former colleague who was dear to this House when he served as the Senator for Migori.

We wish them all the best. May God give them strength during this trying moment.

The Temporary Speaker (Sen. Nyamunga): Sen. Wambua proceed.

Sen. Wambua: Madam Temporary Speaker, I join you and my colleagues, on my behalf and on behalf of the great people of Kitui County, to pass my condolences to the family of the late Hon. (Dr.) Machage. I will say three things about the late.

In his life, he distinguished himself as a real fighter for the rights of the marginalized. I share an experience with the late Hon. (Dr.) Machage. Where he comes from, the Kurias in Migori have the same experiences as the Tharaka in Kitui; a marginalized communities living in the midst of an almost homogenous community.

Madam Temporary Speaker, in Sen. (Dr.) Machage, I would have had a compatriot in the fight for the establishment of additional counties to take care of the interests of marginalized people, living in counties like Migori and Kitui.

The second thing I want to say about Sen. (Dr.) Machage is that he fought for Universal Health Care (UHC). He believed in providing a stable and a reliable healthcare to all people especially the marginalized people. Before we wind up this Senate Session, the Committee on Health has a duty of care and responsibility to tell this country what is happening across the country in terms of healthcare.

Madam Temporary Speaker, I come from a county where the entire healthcare system has completely broken down. Today, as I came to this House, I received a call from a casual worker who works in a dispensary in Kitui and another one who works in a health facility in Kasee, Mumoni Ward. For eight straight months, casuals working in hospitals and dispensaries in Kitui have not been paid their wages. Something needs to be done.

It is not enough to say that Sen. (Dr.) Machage did a good job pushing for the UHC agenda, we must walk the talk and complete the journey that he started and fought for from the bottom of his heart.

Madam Temporary Speaker, I want to say to the people of Migori and to the family of Sen. (Dr.) Machage that my family, the great people of Kitui County and I condole with you and that may the soul of our departed colleague, rest in God's eternal peace.

I thank you.

Sen. Cherargei: Thank you, Madam Temporary Speaker. On my own behalf and on behalf of the great people of Nandi, I take this opportunity to pass our deepest condolences to the family of the late Sen. (Dr.) Machage, the former High Commissioner to Nigeria and also the Senator to the great people of Migori.

Looking at his history, having been a medic as well as a champion of minority rights groups, the minority groups have lost a champion in this Republic. I read his history and learnt that he has a twin brother who used to be an Ambassador to Russia. Our condolences to the family, the great people of Migori and to the medical practitioners.

Sen. (Dr.) Machage was among the pioneer practitioners of medicine in the Republic. Coincidentally, Dr. Machage and his twin brother were medical doctors and I think they closed down but they used to have a hospital in Migori and another one in Narok.

Madam Temporary Speaker, it is sad for the country. This old man was a seasoned politician and leader. His beard which was his trademark was his signature. It comes at the backdrop that devolution must work as he was a pioneer Senator.

They were the first Senators including some of our colleagues, who set the basis and the foundation when devolution was something new. People did not know how the Senate was supposed to function. A lot of functions were devolved including health.

Madam Temporary Speaker, Sen. (Dr.) Machage was passionate about health. Even as we talk, it is sad that in Kapsabet County Referral Hospital - and it was in one of the newspapers - people cannot access drugs and the medical services are not up to standard. These are some of the ideals and agendas that Sen. (Dr.) Machage pushed and ensured as a medical practitioner, that people should access medical care as provided for under Article 43.

Sen. (Dr.) Machage also pushed for minority rights groups. The people of Migori owe us as a nation, the direction when it comes to championing the rights of minority groups so that the legacy of Sen. (Dr.) Machage lives on.

Thank you, Madam Temporary Speaker.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker. I stand here to condole with the entire nation concerning the death of Sen. (Dr.) Machage. He did what can never be forgotten in Migori. The Senate is there to represent counties and the interests of the counties. He did his part as a Senator.

I traversed Migori County last weekend. We had gone on a legislative mission with the Committee on National Cohesion and Integration of the National Assembly Committee and I could see how big that constituency is and it needs a lot of work. I am sure that the work he started will be picked up by the Senators who are there and other Senators who come.

I am happy with the contribution he made. He has left a legacy. Since he was championing universal healthcare and he was a medical practitioner who made a huge contribution, he will forever be remembered.

Madam Temporary Speaker, I condole with the family, friends and everyone else. I also condole on behalf of persons living with disabilities, Lugari Constituency that I represent here in the House and also my family.

Thank you, Madam Temporary Speaker.

Sen. (Eng.) Mahamud: Thank you, Madam Temporary Speaker. I join my colleagues and the rest of Kenyans in condoling with the family of the late, Sen. (Dr.) Wilfred Machage, the immediate High Commissioner of Kenya to Nigeria.

I had the opportunity to serve with Sen. (Dr.) Machage in the 10th Parliament. He was a leader, friend and a champion of minority rights. In him, Kenyans have lost a good Kenyan who actually worked across the board; across ethnic and religious lines. He served Kenyans well. He was a very humorous person. He talked about things that benefitted this country.

Madam Temporary Speaker, I condole with the rest of the family. At this trying moment, let them be strong because life has come to an end. Death is a must but the Hon. Senator has left a legacy as a leader who served with dignity and dedication, and as somebody who was a true Kenyan. May God rest his soul in peace.

Thank you, Madam Temporary Speaker.

Sen. Outa: Thank you, Madam Temporary Speaker. Let me join my colleagues to send our condolences on behalf of my family and the people of Kisumu County. Sen. (Dr.) Machage was a great man.

I had an opportunity to serve with him in the 10th Parliament and he was a man who, any time that you approached him, he would be willing to listen to you. He contributed immensely, especially during the time when we were discussing the UHC in Parliament. He did well and was very passionate. I used to call him "Migori".

I remember Sen (Dr.) Machage very well because we used to tease each other. He would say that he had a lot of struggles in Migori County because he came from a minority tribe so when he wants to run for any political office, he has to fight for it.

The late Sen. (Dr.) Machage was a jovial man. It is unfortunate that God has decided to take him home. I wish he would be alive to see the transformation that will take place after 9th August, 2022. It is a time that he has also been waiting for Kenya to have a good leader. I pray that God may protect his family and the entire Kenya especially the people of Migori who have lost a man that would take a long time to replace him.

The late Sen. (Dr.) Machage will also be remembered as one of the pioneers of the Senate. All that he contributed to this House will be cherished for people to know that there was a man called Dr. Machage. May God rest his soul in eternal peace.

The Temporary Speaker (Sen. Nyamunga): Sen. Seneta, the Floor is yours.

Sen. Seneta: Thank you, Madam Temporary Speaker. On behalf of the people of County of Kajiado, I condole with the family of the former Senator for Migori County.

As my colleagues have stated, the late Sen. (Dr.) Machage was a committed and dedicated Member of this House. He brought a Motion to advocate for the medical equipment scheme that has gone a long way to assist many of our counties despite the challenges they have faced.

He was a professional and a member who wanted to help our counties through upgrading our health facilities. This country has lost a professional, an expert in the field of medicine. I pray that the family has strength during this difficult time.

I thank you.

The Temporary Speaker (Sen. Nyamunga): On Zoom, we have Sen. Kavindu Muthama. Please, proceed.

Sen. Kavindu Muthama: Thank you, Madam Temporary Speaker. I join the rest of my colleagues to condole with the family of the late Senator and a hero in this country. He was very vocal in the Senate and knew what he was doing.

This country and the people of County of Migori especially the Kuria community have lost a hero. I pray that God will give them peace and bring forth someone who will stand in the gap for that community. I congratulate the late Sen. (Dr.) Machage even in his death for standing out as a hero and defending his country as an ambassador.

Madam Temporary Speaker, it is a high time for us to take good care of the old. There are many types of sicknesses that the old people and which are not common with the young people. Many old people in our counties are suffering from diabetes, high blood pressure, arthritis, asthma and other terminal diseases. They go to our hospitals and they cannot get their medication because they do not have money.

I pray that we will get to a time when all the counties, not only Machakos County, will have medication for the old people in the counties without any problem. Thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Murkomen, the Floor is yours.

Sen. Murkomen: Madam Temporary Speaker, I thank you for this opportunity. My condolences to the family, friends, relatives and friends of the late Sen. (Dr.) Machage.

I had the privilege and honour to serve in the last Parliament with the late Sen. (Dr.) Machage. He was such a passionate, committed public officer and particularly a servant of the people of the County of Migori. I knew Sen. (Dr.) Machage when he was in the 10th Parliament. At that point in time, I was a consultant on matters devolution and I went all the way to Kehancha in Migori County.

The late Sen. (Dr.) Machage was among the Kenyans who opposed the new Constitution. His argument was that the Constitution had not provided mechanisms on how to protect new minorities who were going to be minority groups in counties where there were other larger communities. I went all the way to Kehancha with the former Prime Minister and my duty was to take the people of Kehancha through new Constitution and the chapter on devolution. At that point in time, I was a member of the Task Force on Devolved Government.

Madam Temporary Speaker, that man was so passionate about the people of Kuria; his own people and the things that affected them. Even though he was opposed to the Constitution, the issues that he raised at the time are still alive. We still have challenges on matters devolution particularly new minorities. In areas where you have communities who many not be the majority in the country but they are a majority in the county. The problems that bedeviled the devolution are still about further marginalization of minority groups.

I do not come from Migori County, but the aspiring and future Governor of that county, Sen. (Dr.) Ochillo-Ayacko, and any other person who will govern Migori County will have a duty to ensure that the people of Kuria are protected the way Senator Machage wanted. When he had the opportunity to serve as a Senator, he came from the minority side and I was on the majority side as I have been until the 'handshake'.

Madam Temporary Speaker, the late Sen. (Dr.) Machage was a firm defender of the rights of the people of Migori County as a whole. He fought for devolution and accountability. The late Sen. (Dr.) Machage and I had a very interesting relationship. He was an elder to some of us, a great story teller and a fluent speaker of Kiswahili. Most of the times in this Chamber, he debated in Kiswahili. He gave us very interesting stories from different *riwayas*, *tamthilia* and many other stories of which he narrated in Kiswahili. It was easy for him to do so because he lived in a border county. Therefore, he would sometimes live in Tanzania but mostly on the Kenyan side.

Towards the end of the term of the 11th Parliament, he switched sides and sided with us as you will see what many people will do in this Chamber. Many of us here will change sides.

One of the most interesting moments we had - Sen. Wetangula must remember this - was when we were dealing with the Elections Act Amendments. There were these late amendments that we were bringing towards the elections and Sen. (Dr.) Machage was on the Chair. He made certain interesting rulings in favour of us who were on the Majority side. It was a very interesting time.

Sen. Wetangula: He rigged to your favour.

Sen. Murkomen: Madam Temporary Speaker, you can hear the then Minority Leader saying that he rigged into our favor.

His rulings were very interesting. Remember he used to sit where you sit. He was in the Speaker's Panel and he used that opportunity to make a lot of contributions to this House. The HANSARD of this House has his contributions. Any person who will resort to the HANSARD of this House, will get to know who Sen. (Dr.) Machage was, the contributions he made on matters devolution and his passion for this country.

When he went to be the Ambassador in Nigeria after losing the elections, I knew that Kenya was in safe hands. We needed a strong Ambassador in Nigeria with a strong will for this country.

Unfortunately, the cruel hand of death has snatched from us a very committed public servant. May I say *pole sana* to the people of Kuria, Migori County and the people of Kenya who knew Sen. (Dr.) Machage.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator.

Sen. Wetangula, proceed.

Sen. Wetangula: Thank you, Madam Temporary Speaker. I thought Sen. Murkomen would also mention that we have, in fact, lost two colleagues. Apart from Sen. (Dr.) Machage, we have also lost the former Member of Parliament (MP), John Serut.

Sen. (Dr.) Machage was a very good medical doctor apart from being a politician. He ran big medical establishments in this country and helped many people. He used to tell us how he had a cadre who enjoyed free medical services in his establishments whenever they went for such treatments.

As a personal friend, I had an opportunity to visit him in his rural home in Kuria. He also visited me in my rural home in Bungoma County and we worked together very closely even at times when we were on opposites.

In the last Parliament, I was a leader of his team in this House on the Minority Side. He was a constant companion in many collaborative and consultative decisions that we made as a team. I can describe him as a great team player.

When he was appointed as a High Commissioner to Nigeria after failing to defend his seat, I constantly called our Committee of Defense and Foreign Relations. In fact, Sen. Dullo can bear me out. We have a pending trip to Nigeria courtesy of Sen. (Dr.) Machage, who kept telling us that he had arranged for our Committee to visit the Nigerian Senate to meet our counterparts to discuss matters of devolution.

Madam Temporary Speaker, as you know, Nigeria has the most impressive devolution in Africa. They assign 52 per cent of their national budget to devolved units and leave 48 per cent for the national Government. It is unlike here where the greedy---

(There was a technical hitch)

He is the Senator who brought here a Motion that gave birth to the idea of the Universal Health Care (UHC) which has been poorly implemented. When we were sitting in the “garage” at the Kenya International Convention Centre (KICC), he brought a Motion and it was acclaimed by everybody, that this country deserved and needed UHC to protect especially vulnerable Kenyans who cannot afford healthcare.

We shall remember him as a colleague who had no known disagreements with anybody. I remember when President Jakaya Kikwete of Tanzania came to Kenya and came to address Parliament, Sen. (Dr.) Machage and I met him as he came to Parliament. President Kikwete then joked that he was very happy to have finally met a Kuria because he only read about Kurias in Tanzania in police files.

Thereafter, Sen. (Dr.) Machage joked about that encounter, that Kurias always raid Tanzania and walk away with cattle and that is how President Kikwete was reading about them in police files.

Sen. (Dr.) Machage, rest in peace. *Pole* to your dear wife and your twin brother whom I appointed an Ambassador to Russia. May I say *pole* to the whole family. Time allowing, we will come to Kuria to see Sen. (Dr.) Machage off. Through Sen. (Dr.)

Machage, my party has very good hardworking Members of County Assembly (MCAs) in Kuria. He introduced them to me to become elected as MCAs.

Madam Temporary Speaker, we have also lost a great son of Bungoma County, Hon. John Serut. He served for two terms in the National Assembly and he was also an Assistant Minister for Lands. When I mentioned this, Sen. Murkomen, was talking to the distinguished Senator for Isiolo County. I expected him to mention Hon. Serut as well.

Hon. Serut was a very hardworking MP, coming from Mt. Elgon Constituency of Bungoma County. This Sub-county had many security challenges at the time but he helped to stabilise the peace and security, especially in Mt. Elgon Sub-County.

This morning, the Speaker of the Senate, Hon. Lusaka; Bungoma Women Representative, Hon. Catherine Wambilianga; and I, took time to visit the Serut family in Kileleshwa. We condoled with Mama Pamela and her children. We know that we will all leave this world at some point. When we do, we cause a lot of stress and pain to families but that is God's wish.

I will miss you, my brother, Hon. Serut. We worked very closely and supported each other very dearly. I will miss you so much in the political and social arena and as a personal friend. The people of Bungoma County are the poorer with the passing on of Hon. John Serut from Mt. Elgon.

May the souls of both Sen. (Dr.) Machage and Hon. Serut rest in eternal peace, till we meet.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to ask the Members who are going to condole next, to be a bit brief.

I urge the next speakers to be a bit brief with condolences because of the interest, and time is running out.

Proceed, Sen. Sakaja.

Sen. Sakaja: Madam Temporary Speaker, allow me to join fellow colleagues in eulogizing and mourning the death of our fallen colleague.

First of all, Sen. (Dr.) Machage was a good friend despite our age difference. He was part of a group of Senators to whom I am forever grateful. They took time to speak to young leaders when I was in the National Assembly. I had lunch every last Tuesday, once a month, with Sen. G. G. Kariuki at Serena Hotel. Sen. Yusuf Haji also mentored me and Sen. (Dr.) Machage was the third.

He used to joke that his Identity Card (ID) read a different age. In fact, if you look at what has come out as a release, it says that he would have been 66 years old. However, according to him, he would have been 75 years old this year.

Sen. (Dr.) Machage has his background in Isebania, where he went to primary school. He also studied at Taranganya Secondary and Chavakali High School. We would joke many times that he went to school with my relatives and we would laugh about it. We had very good banter despite even our political differences. He would joke at that time that he was coming to join The National Alliance Party (TNA). I doubt that he ended up doing that.

He was a man of good cheer. You would not miss him out. His family really needs all the support that they can get. He is a man that will be missed. More than that, I feel very sad for his twin brother. He had an identical twin brother, Amb. Sospeter Machage who was also the Kenyan Ambassador to Russia. They were also in the medical profession. It is said that they have been very close since they were in their

mother's womb. To Amb. Sospeter Machage, family of the late Sen. (Dr.) Machage and the people of Migori County, we really wish you *pole*. God will comfort them at this time.

Madam Temporary Speaker, allow me to also pass condolences to the family of Hon. John Serut. We were colleagues with him in the last Parliament. He is from Mt. Elgon Constituency of Bungoma County. I know that he has really suffered. He has had a terrible time for the last two-and-a-half years. He is now at a place of rest. He was a very forthright Member who fought for his people. He stood firm during difficult times in his constituency. We all know the security issues that have been there.

I say *pole* to the family. I was to join Sen. Wetangula and the Speaker, Hon. Lusaka. However, I was Chairing a Committee in the morning. On behalf of the people of Nairobi, I will make sure that we visit those two families.

Finally, as the people of Nairobi, we have lost a great leader, one of our Members of County Assembly, Hon. Mellab Atemah. She has also been really unwell. When I got the news, I went through the messages that she has been sending me from the time that she was in The Nairobi Hospital until when she went to India.

She had been the Deputy Minority Leader in the Nairobi County Assembly, nominated by the Orange Democratic Party (ODM), but she knew how to cross the political divide. The last time I was with her was in Pentecostal Assemblies of God (PAG) Church, Kawangware. We were together with Sen. Wetangula. She was vying to be an MCA for Kabiru Ward. She was doing really well. I do not want to say that she was going to win, but she was doing really well. It is a shock to us. I know that Sen. Kwamboka will speak to it.

We want to assure her husband and the family that we will stand by them during this time and make sure that she gets a good send off. She had gone up to sitting at the women desk in ODM. She got nominated and was now going for the MCA seat. I knew that her future was bright because she was one of those leaders who would reason despite political intrigues.

A cosmopolitan County like Nairobi that is not of political homogeneity needs leaders who are able to cut across the political divide and can speak to each other. *Pole* to the people Kabiru Ward, Dagoreti North and generally, the people of Nairobi, for this great loss of Hon. Mellab Atemah Lumalah.

I thank you.

Temporary Speaker (Sen. Nyamunga): Senator of Vihiga, Sen. Khaniri, please, proceed.

Sen. Khaniri: Asante sana, Bi. Spika wa Muda kwa kunipa nafasi hii ili niweze kuungana na wenzangu kutoa rambirambi kwa mwendazake rafiki yangu mpendwa, Sen. (Dr.) Machage. Nilizipata habari za kifo cha Sen. (Dr.) Machage kwa masikitiko makubwa. Tumejuana kwa miaka mingi na kuna mengi ambayo tunashirikiana naye.

Kwanza kabisa, vile mlivyosikia kutoka kwa Sen. Sakaja, tulienda kwenye Shule la Upili ya Chavakali, ingawa alikuwa huko miaka mingi mbeleni kabla yangu. Wakati mwingi tulipokuwa tukikutana, tulikuwa tukiongea kuhusu shule yetu ya zamani, Chavakali.

La pili, tulifanya naye katika Bunge la Kitaifa akiwa Mbunge wa Kuria West nami nikiwa Mbunge wa Hamisi. Tukawa naye pia kama Mawaziri Wasaidizi katika

Serikali ya Mhe. Kibaki. Hatimaye baadaye, tulijipata katika hili Bunge la Seneti akiwa Seneta wa Migori nami nikiwa Seneta wa Vihiga.

Kwa hivyo, yeye ni mtu ambaye ninaweza kusema kwamba tumetoka mbali. Tunamkumbuka kwa mambo mengi mazuri. Namkumbuka hasa kwa Kiswahili chake chema. Aliongea Kiswahili sanifu kabisa. Ndiyo maana niliamua siku ya leo niweze kutoa rambirambi zangu kwa lugha ambayo Sen. (Dr.) Machage aliipenda.

Kiti chake katika Seneti kilikuwa ni hiki hapa nyuma yangu. Kwa utani, nilikuwa namwita, "*Bogi Benda.*" Tukikutana ilikuwa ni, "*Bogi.*"

Kwa niaba yangu, familia yangu na watu wa Vihiga ninatoa rambirambi kwa familia yake, watu wa Migori na Kuria kwa kumpoteza kiongozi huyu shujaa. Ntoa rambirambi zaidi kwa ndugu yake pacha ambaye walizaliwa pamoja, wakasoma pamoja na wakawa wote madaktari. Najaribu kufikiria yale huyo ndugu yake anaweza kuwa anayapitia sasa hivi kwa kumpoteza mtu ambaye walizaliwa pamoja na wamekuwa pamoja miaka hii yote mpaka katika uzee wao.

Letu ni kusema Mwenyezi Mungu afariji jamii. Awapatie nguvu ya kustahimili msiba huu ambao umewapata. Mwenyezi Mungu ailaze roho ya Sen. (Dr.) Machage mahali pema mbinguni.

Niruhusu pia nichukue wakati huu kutoa rambirambi kwa aliyekuwa Mbunge wa Mt. Elgon, Mhe. John Serut. Nilipata vile vile nafasi ya kufanya kazi naye katika Bunge la Kitaifa, akiwa Mbunge wa Mt. Elgon nami nikiwa Mbunge wa Hamisi.

Tumesikia kwamba amekuwa mgonjwa kwa muda. Labda Mwenyezi Mungu amempumzisha. Tunaomba aiweke roho yake pahali pema mbinguni na aweze kufariji jamii ambayo ameiacha nyuma.

Nimekumbushwa pia na Sen. Sakaja kuhusu kifo cha mpendwa ambaye alikuwa rafiki wangu wa karibu sana, Mhe. Mellab Atemah. Alikuwa Mbunge Mteule katika Bunge la Kaunti ya Jiji la Nairobi. Tumejuana na Mhesh. Atemah kwa miaka mingi sana akiwa rafiki yangu wa karibu.

Ni masikitiko makubwa ya kwamba tumempoteza akiwa na umri mdogo sana. Alikuwa na matarajio mengi katika siasa na maisha yake. Ntoa rambirambi zangu na familia yangu kwa familia yake, jamaa na mume wake.

Mwenyeze Mungu awalaze wote watatu pahali pema mbinguni.

Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you Madam Temporary Speaker, for giving me an opportunity to join our colleagues here in condoling my late Senator.

Madam Temporary Speaker, the people of Migori---

(Loud consultations)

Temporary Speaker (Sen. Nyamunga): Sorry, Sen. (Dr.) Ochillo-Ayacko.

Hon. Senators, can we have some decorum in this House? Senator, please, continue.

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, thank you for your protection. The people of Migori are engulfed in grief. The late Sen. (Dr.) Wilfred Machage was a leader that we had a lot of respect for.

You will recall that his election to the Senate was as a result of the *Azimio* of the people of Migori. The people met and agreed that the late Sen. (Dr.) Machage deserved to be the Senator. At the time of his election, there was no opposition in Orange Democratic Party (ODM). He later decided to run for a National Assembly seat, which was the subject matter of a different competition.

The people of Migori, who unanimously elected him as a Senator, have lost a wonderful person, a leader, a friend, a parent, an in-law, businessperson and professional. We are grieving as a people.

We are happy to receive condolences from colleagues who served with him here. I also served with him in the National Assembly. I inspired and recruited him to join politics. I was his tenant before joining politics ahead of him. I lived in a house that had been built by him when I was practicing law in Migori and Nairobi. He was a wonderful landlord.

Later on, I also became his advocate and represented him and his companies when he had issues with the National Hospital Insurance Fund (NHIF). Therefore, we were close professionally. He was a professional practitioner of Medicine, while I practiced law. We shared many things in terms of how to handle politics and our people.

When I was compelled to leave my Cabinet post for reasons I do not want to explain today, he was appointed to take that place in our great County of Migori. When I left Cabinet as the Minister for Sports, he took over and we continued working together.

While we were together in the National Assembly and I was the Minister for Energy, he pointed out to me the places that required electrification in the great society of Kuria. He directed me to Isebania and Kehancha. The first electricity poles were taken to that place because of his intervention. He was good businessperson and he was selfless and committed to serving his people.

Last year, he invited me to attend the wedding of one of his sons and we began consultations on how to have a better Migori than the one we have today. He is a person that my family, the people of Migori and I will miss. We will miss his humour, ability to articulate and speak to topics as expected of an elder without mincing his words.

“*Baba*” will miss him too because he was his close friend. Now that he is no longer with us, his place will be hard to fill. It will be difficult to get a person of his calibre.

I must confess that among the Members of Parliament (MPs) from the Abakuria Community, he was a major unifier. We have four clans, that is, the Bakira, Bairege, Banyabasi and the Bagumbe. When he served as their MP and Senator, they all came to him for counsel. On the side of the Luo Community, he was a respected friend to many of us. We will greatly miss him.

I know there are many more of our colleagues who would like to condole with us. We need prayers as the people of Migori. We have had three Senators and two of them are no longer with us. I am the third one. I hope that your prayers will save me from joining the two who have left us at a very untimely moment. We need your prayers and comfort. When we will be laying our colleague to take his journey to Heaven, I hope most of you will have time to attend.

Madam Temporary Speaker, I also served with the late MP, hon. Serut, who just passed on. We were good friends. It appears that those who served with me and others are passing on.

We need to pray as a nation, so that the cruel hand of death does not continue to visit leaders. As a nation, we need leaders this year more than before. It is an election year and we need leaders to help us inculcate peace among ourselves and the electorate.

Thank you for the opportunity to condole with the people of Migori following the loss of our dear brother, (Dr.) Machage, and with the people of Mt. Elgon for the loss of their MP.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, may I have your attention. We have several Bills lined up for Division. I urge as many as possible to log in. Those who have logged in, please, stay on. We expect the rest of the Members to be in the House within the next five minutes. Senators who may be sitting out there should kindly come back to the House.

Sen. Farhiya: Thank you, Madam Temporary Speaker. Although Sen. (Dr.) Machage was not known to me, for someone to come from a minority clan, get education and achieve the much as he did, he must have been a very hard working and great leader.

It is a loss to the minority of this country. His contribution made sure that the rights of the minority are enshrined in the Constitution. I pass my heartfelt condolences to the family of the late Sen. (Dr.) Machage.

May he rest in peace.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ali, I will give you a chance after the Division.

(Sen. (Dr.) Ali consulted loudly)

You need a minute? Okay, proceed.

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. The late Sen. (Dr.) Machage was a colleague and friend. We were together in the National Assembly. He was a very god man. When he was the Senator for Migori, I was also a Member of the Commission.

I send my condolences to the people of Migori, Kuria and his family. He has been a very good man.

As part of the team that visited him in Nigeria when he was the ambassador, he was very jovial and hardworking. This is how the world is; people come and go.

I wish his family peace.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are now going for the Divisions. We would like to have the Bell rung.

(Several Senators consulted loudly)

Hon. Senators, let us have some order.

Hon. Senators, for the convenience of the House, I would like to have Order Nos.8 to 14 read out.

BILLS*Second Reading*

THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION
OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO.21 OF 2021)

(Sen. Halake on 9.2.2022)

(Resumption of Debate interrupted on 9.2.2022)

Second Reading

THE IRRIGATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.12 OF 2021)

(Sen. Poghisio on 10.2.2022)

(Resumption of Debate interrupted on 10.2.2022)

Second Reading

THE COMMUNITY GROUPS REGISTRATION BILL
(NATIONAL ASSEMBLY BILLS NO.20 OF 2021)

(Sen. Poghisio on 10.2.2022)

(Resumption of Debate interrupted on 10.2.2022)

Second Reading

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILLS NO.44 OF 2021)

(Sen. (Dr.) Musuruve on 15.2.2022)

(Resumption of Debate interrupted on 15.2.2022)

Second Reading

THE COUNTY RESOURCE DEVELOPMENT BILL
(SENATE BILLS NO.45 OF 2021)

(Sen. Nyamunga on 16.2.2022 – Morning Sitting)

(Resumption of Debate interrupted on 16.2.2022 – Afternoon Sitting)

Second Reading

THE ELECTIONS (AMENDMENT) BILL
(SENATE BILLS NO.42 OF 2021)

(Sen. Murkomen on 16.2.2022 – Afternoon Sitting)

(Resumption of Debate interrupted on 16.2.2022 – Afternoon Sitting)

Second Reading

THE ELECTIONS (AMENDMENT) (NO.3) BILL
(SENATE BILLS NO.48 OF 2021)

(Sen. (Eng.) Maina on 17.2.2022)

(Resumption of Debate interrupted on 17.2.2022)

The Temporary Speaker (Sen. Nyamunga): Can the Bell be rung for three minutes?

(The Division Bell was rung)

(Loud consultations)

Hon. Senators, can we have some order, please? We are ready to vote. For the convenience of the House, we will vote for the seven Bills at once. Indicate whether you vote “Yes” or “No”. Please, remember to vote for all the seven Bills.

We will have Roll Call voting.

(The Senators proceeded to vote by Roll Call)

(There was a technical hitch)

The Temporary Speaker (Sen. Nyamunga): The technical team, we are getting information that Members are not being given the opportunity to vote. Kindly, check on that.

(Roll Call Voting in Progress)

I ask the Clerk to re-read the Roll because we realized there was a technical hitch. I hope the technical team is on top of the job now.

Clerk, kindly, go through the Roll again. Senators, if your name is mentioned, please, just vote again.

(Roll Call voting in progress)

*Second Reading*THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION OF ECONOMIC
AND SOCIAL RIGHTS BILL (SENATE BILLS NO.21 OF 2021)**DIVISION**

ROLL CALL VOTING

(Question, that the Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No.21 of 2021) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil.

Teller of the Noes: Sen. Kwamboka.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENCES: Nil

The "Ayes" have it.

(Question carried by 27 votes to Nil)

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

*Second Reading*THE IRRIGATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.12 OF 2021)

DIVISION

ROLL CALL VOTING

*(Question, that the Irrigation (Amendment) Bill
(National Assembly Bills No.12 of 2021) be now read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County); Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 27 votes to Nil)

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

Second Reading

THE COMMUNITY GROUPS REGISTRATION BILL
(NATIONAL ASSEMBLY BILLS NO.20 OF 2021)

DIVISION

ROLL CALL VOTING

*(Question, that the Community Groups Registration Bill
(National Assembly Bills No.20 of 2021) be now read a Second Time,*

put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 27 votes to Nil)

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

Second Reading

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILL NO.44 OF 2021)

DIVISION

ROLL CALL VOTING

(Question, that the Special Needs Education Bill (Senate Bills No.44 of 2021) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen.

Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 27 votes to Nil)

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

Second Reading

THE COUNTY RESOURCE DEVELOPMENT BILL
(SENATE BILLS NO.45 OF 2021)

DIVISION

ROLL CALL VOTING

(Question, that the County Resource Development Bill (Senate Bills No.42 of 2021) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen.

Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to Nil)

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

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are going to read the rest of the Bills for purposes of Division.

Second Reading

THE ELECTIONS (AMENDMENT) BILL (SENATE BILLS NO.42 OF 2021)

DIVISION

ROLL CALL VOTING

*(Question, that the Elections (Amendment) Bill
(Senate Bills No. 42 of 2021) be now read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Onger, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja , Nairobi City County; Sen. Seneta, Kajiado County); Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to Nil)

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

Second Reading

THE ELECTIONS (AMENDMENT) (No.3) BILL
(SENATE BILLS NO.48 OF 2021)

DIVISION

ROLL CALL VOTING

(Question, that the Elections (Amendment) (No.3) Bill (Senate Bill No. 48 of 2021) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. (Prof) Ekal Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County); Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, these are the results of the Division.

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to Nil)

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

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

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

The Deputy Speaker (Sen. (Prof.) Kamar): Senate Majority Leader represented here by Sen. Farhiya, proceed.

PAPERS LAID

REPORT ON THE MSMEs CREDIT GUARANTEE SCHEME PERFORMANCE

Sen. Farhiya: Madam Deputy Speaker, I beg to lay the following Papers on the Table of the Senate today 22nd February, 2022-

Report on the MSMEs Credit Guarantee Scheme Performance by the National Treasury and Planning for the period 8th December 2020 to 31st December 2021;

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY EXECUTIVES/ASSEMBLIES/FUNDS/COMPANIES

Report of the Auditor General on the financial statement of County Assembly of Kisii for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of County Executive of Trans Nzoia for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Garissa County Scholarship Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Uasin Gishu County Alcoholic Drinks Control Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Nandi County Executive Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Nandi County Executive Committee Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Nithi Water and Sanitation Company for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Kabianga Tea Farm Company Limited for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Marsabit County State Officers and other Public Officers Car Loan Scheme Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Marsabit County Education Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Marsabit County Enterprise Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Embu County Executive Car Loan and Mortgage (Committee Members) Scheme Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Kirinyaga County Facility Improvement Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County – Lake Bogoria Community Grant for the year ended 30th June, 2018;

Report of the Auditor General on the financial statement of Baringo County Executive Members Mortgage Scheme Fund for the year ended 30th June, 2019;

Report of the Auditor General on the financial statement of Baringo County – Lake Bogoria Community Grant for the year ended 30th June, 2019;

Report of the Auditor General on the financial statement of Baringo County – Lake Bogoria Community Grant for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Cooperative Development Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Older Persons and Persons with severe Disability for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Youth and Women Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Executive Car Loan Scheme Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Executive Mortgage Scheme Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Baringo County Bursary and Scholarship Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Kilifi County Micro-Finance (Mbegu) Fund for the year ended 30th June, 2020;

Report of the Auditor General on the financial statement of Municipality of Malindi for the eighteen months' period ended 30th June, 2020;

Report of the Auditor General on the financial statement of Elgeyo Marakwet Alcoholic Drinks Control Fund for the year ended 30th June;

Report of the Auditor General on the financial statement of Kwale Municipality for the year ended 30th June, 2020;

(Sen. Farhiya laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.
Next order.

NOTICE OF MOTION**RECOGNIZING AND APPRECIATING THE ELDERLY
BY COUNTY GOVERNMENTS**

Sen. Nyamunga: Hon. Deputy Speaker, I beg to give Notice of the following Motion-

THAT, AWARE that in 2006, the National Government initiated the Older Persons Cash Transfer (OPCT) Programme, popularly known as *Pesa ya Wazee*, which is a non-conditional cash transfer programme to destitute elderly person above the edge of 65 to cater for their subsistence needs;

NOTING THAT the beneficiaries receive a monthly stipend of Kshs2,000, delivered every two months through appointed payment agents, and also entitled to medical insurance through the National Health Insurance fund (NHIF);

CONCERNED HOWEVER THAT the programme's credibility is marred by issues of delayed payments to beneficiaries, difficulty in processing of the payments through the stipulated agents and payments to unregistered persons;

NOW THEREFORE, the Senate recommends that the county governments compliment the efforts of the national Government and assist in resolving these challenges by-

- (i) Developing legislations and policy to protect the elderly, including ensuring all elderly persons in their counties are registered in the OPCT programme; and
- (ii) Organize value addition mechanisms such as financial training to help the beneficiaries of the programme to efficiently utilize this allowance.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja, did you press or it was a mistake?

Sen. Sakaja: Madam Deputy Speaker, it was a mistake.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you.

Next Order.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, we have statements as listed. Let us start with the Vice Chairperson, Sen. (Dr.) Ochillo-Ayacko.

DELAYED DISBURSEMENT OF EQUITABLE
SHARE TO THE COUNTY GOVERNMENTS

Sen. (Dr.) Ochillo-Ayako: Thank you, Madam Deputy Speaker. I rise to read a Statement concerning the delayed disbursement of equitable share funds to the county governments.

Madam Deputy Speaker, I rise pursuant to Standing Order No.51(1) (a) of the Standing Orders of the Senate to make a Statement concerning the delayed disbursement of Equitable Share Fund to the county governments.

Madam Deputy Speaker, the Public Finance Management Act Section 17 (6) and (7) provide that the National Treasury shall at the beginning, on every month and in any event not later than the 15th day from the commencement of the month disburse monies to county governments for the expenditure of the following month.

The disbursement should be done in accordance with the Schedule period by the National Treasury approved by the Senate and published in the gazette.

On the 9th September, 2021, the Senate considered and approved the County Governments' Cash Disbursement Schedule for the Financial Year 2021/2022.

The Schedule was approved as submitted by the National Treasury. This Schedule is indicative of the funds each county government expects to receive in a particular month thus; the county operations are planned relying on the monthly disbursement as indicated in the approved Schedule.

Article 219 of the Constitution on transfer of equitable shares provides that a county share of revenue raised by the national Government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped.

Further, Article 175 (b) of the Constitution provides as a central principle of devolution that county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively.

The Council of Governors (CoGs) has brought to my attention that the National Treasury, as at the 10th February, 2022, has failed to disburse -

- (a) Kshs10.4billion to 16 counties for the month of December, 2021.
- (b) Kshs30.8billion to 46 counties for the month of January 2022.
- (c) Kshs31.5billion to all the counties for the month of February 2022.

Thus the National Treasury in contravention of the relevant provisions of the Constitution and Public Finance Management Act has failed to transfer Kshs72.7billion due to county governments under the law.

The delay in disbursement undermines the service delivery as envisioned in Article 175 of the Constitution. Counties are unable to deliver essential services such as health during this period where county governments are on the frontline in effort to contain COVID-19 pandemic, including ensuring effective dissemination of vaccines.

Counties are further impeded from delivering other types of emergency relief services. As we are all aware, there are a number of counties, especially in the Arid and Semi-Arid Land (ASAL) regions that have been adversely affect by drought leading to devastating famine.

A delay in disbursement to these counties has and will lead to the loss of lives, poor health outcomes and food insecurity. This is antithetical to the principle of equitable development thus a cornerstone of devolution.

Further, it should be noted that any delay in disbursement of funds in counties leads to delayed payments to suppliers and service providers. Most of these suppliers and service providers are small and medium enterprises.

This occurrence threatens the existence of such businesses and a number of them have been declared bankrupt, or insolvent in the past. This is a great blow to the families which depend on such businesses for their livelihood.

The delay in disbursement also hampers execution of counties work plans. This is because county executives may hesitate to commit funds which are not available and no assurance of when such funds may be made available.

Such failures lead to poor or no execution of the work plans. This will have an adverse impact in the ability of counties to effectively discharge their functions as set out under the Constitution. This delayed spending leads to the underutilization or misappropriation of funds.

Madam Deputy Speaker, this contravenes the objects and principles of devolution and in particular Article 174 (g) which provides that one of the objects of devolution is to ensure equitable sharing of national and local resources throughout Kenya.

It is, however, perplexing that whereas counties are in dire financial strain, the Kenya Revenue Authority (KRA) has indicated that it has surpassed its revenue collection targets in the first half of the current financial year. Therefore, this begs the question as to what may be causing a snarl-up between revenue collection and the efficient disbursement county government's equitable share.

County governments are critical in ensuring the micro-economic stability of this country. Further, it is of paramount importance that the National Treasury prioritizes disbursement of equitable share to the counties due to the critical role they play in ensuring the citizens access critical services.

The Standing Committee on Finance and Budget has planned a meeting with the Cabinet Secretary (CS), National Treasury and Planning to deliberate on the matter and in furtherance of the Senates constitutional duty to protect the interest of the county governments.

The Statement is signed by Chairman, Sen. Charles Kibiru, MP, the Chairperson of the Standing Committee on Finance and Budget and read by the Vice Chairperson, being myself.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. I see Sen. Cherargei, did you want to---

Sen. Cherargei: Madam Deputy Speaker, I have heard the Senator for Migori, talk about the Equalization Fund. However, in his Statement, he has not given us an action plan of the Committee.

We know very well that there is violation of Article 219 of the Constitution. This because when the money has been disbursed under the disbursement schedule and County Allocation Revenue Act that has already been passed, the Ministry of National Treasury and Planning should not in any way violate Article 219 of the Constitution. So,

we expected the Committee to give us action plans that they have put in place to ensure that the counties get the Equalization Fund.

Madam Deputy Speaker, in Nandi County, for example, there was an increment of locations and sub-locations in Tinderet Subcounty and Nandi Subcounty. So, with that as the hindsight, it means that there are some services that were not being rendered because of lack of allocation of Equalization Fund.

I expected the Committee to guide the House on how to ensure that the National Treasury and Planning is held accountable. What are the action plans that are put in place? This should not be a bottleneck process of ensuring that devolution works.

Madam Deputy Speaker, I think that is important because several counties, including Nairobi City and other Arid and Semi-Arid Lands (ASALs), should get Equalization Funds based on Article 204. They should be advising us because we get Equalization Funds from the national Government.

There is also the issue of public debts. The Committee should advise us on what next now that the country's public debt is approaching Kshs11 trillion. Does it affect the revenue that is raised? If we raise revenue nationally, it means that we must pay our public debt. Now that the country is struggling with a public debt, does it mean that it has affected the revenue allocation given to counties, including Equalization Fund?

The Committee should guide us on the actionable plans in place because Equalization Fund is important as envisioned under Article 204 because schools, hospitals, and roads need to be constructed.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. M. Kajwang', you wanted to make a comment on this?

Sen. M. Kajwang': Madam Deputy Speaker, I rise to add my voice to the Statement that has been issued by the Senator for Migori County, Sen. (Dr.) Ochillo-Ayacko. It is indeed great disservice by the National Treasury not to release funds to county governments that this House and Parliament collectively approved. It is unconstitutional against the law and extremely bad manners.

It is unfortunate that the present head of the National Treasury is a former head of a devolved unit. We believed that having a former governor running the National Treasury would be a plus for devolution because he understands the cash flow challenges that counties have and he would be a champion for county governments.

This country is not going to develop sustainably by centralizing resources and development. That is why we wanted devolution to spread out to 47 different entities. If 47 counties work towards one objective, they can achieve it faster than when one centre is working towards that objective.

Madam Deputy Speaker, pending bills that we keep talking about in this country are not going to be resolved with delays in remittances. This is a matter that I urge the Committee on Finance and Budget, the County Public Accounts and Investments Committee (CPAIC) and the Committee on Devolution and Intergovernmental Relations to be seized of.

In the Budget Policy Statement (BPS) that we approved just the other day, the amounts of pending bills were mind boggling. The unfortunate bit is that many of the governors are coming to end of their terms.

When we have a new administration, the first thing they do is to dispute the pending bills they inherit. Many a time, you will find legitimate service providers,

contractors, youth, women and Persons with Disability (PWDs) who provided services to previous county administrations disenfranchised and they never get paid. They do not get paid because the new governor sometimes thinks that those contractors were supporters of the person who just left office.

We must ensure that by the time this House adjourns *sine die*, we have dealt with this issue of pending bills and put a minimum threshold. Even though there will be delayed remittances, let us ensure that it is only counties with proper action plans on statements of pending bills that get prioritized by disbursements from the National Treasury. That is a statutory provision, that the National Treasury has the power to withhold disbursements to counties where they have material and persistence breaches of the Public Finance Management (PFM) Act.

I encourage Sen. (Dr.) Ochillo-Ayacko, who is the Vice Chairperson of the Committee on Finance and Budget, that in as much as he is pushing---

(Sen. Malalah entered the Chamber and spoke off record)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Sen. Malalah! Somebody is addressing Sen. (Dr.) Ochillo-Ayacko. Please allow him to receive the message.

Sen. M. Kajwang': Thank you, Madam Deputy Speaker, from saving me from Sen. Omondi. He did not even bow. This is not Ugenya.

(Laughter)

(Sen. Malalah bowed to the Chair)

The Deputy Speaker (Sen. (Prof.) Kamar): That is in order. Please proceed.

Sen. M. Kajwang': Madam Deputy Speaker, I was encouraging Sen. (Dr.) Ochillo-Ayacko that in as much as he is pushing for the National Treasury to disburse funds to counties, which I fully support, counties with huge amounts in pending bills also need to provide a plan for settlement of those pending bills. Failure to which, we should encourage National Treasury to invoke the provisions of the PFM Act that empowers it to withhold funds where there are material breaches.

Finally, our workers in the counties are suffering grossly. Delayed remittances means that the NHIF deductions are not being remitted. It also means that the Kenya Revenue Authority (KRA) is not getting paid and loans and SACCO contributions are not being remitted.

The people who suffer are neither the governors nor County Executive Committee Members (CECMs). It is the ordinary health worker in a clinic somewhere in the corner of Elgeyo-Marakwet or Uasin Gishu. We need to be humane, sympathetic and empathetic.

Many people are losing lives because they are unable to raise resources to get medication. If they cannot get their salaries on time and where their NHIF contributions are not being made on time, we are signing the death warrants of our employees in the counties.

The Kenya Medical Supplies Authority (KEMSA) is not getting paid and they are also unable to supply medication to our county hospitals. This delay has a huge spiral effect on the economy, productivity, health and livelihoods of our people. If there is something that should make this Senate stop doing all other business, it is this particular subject.

Madam Deputy Speaker, I support that counties should get what is due to them constitutionally, but also with the proviso that pending bills should be given priority before the end of term of current governors.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja, did you press your button? Please proceed.

Sen. Sakaja: Madam Deputy Speaker, initially when I heard this Statement being read out, I was waiting to hear the resolution of the Committee on Finance and Budget. Ideally, this is a Statement that would have been caused by a Member asking what is happening and the Committee to give us answers.

It is true and really shocking that Kshs72 billion due to county governments has not been disbursed. We take a long process here to agree on the equitable share for counties, we haggle about the formula, counties do their budgets, but not paying the money creates a huge problem.

My county of Nairobi has a huge problem. As of the last Exchequer release record, which was end of November, out of a budget of Kshs39.6 billion, we had only received Kshs7 billion. That is half a year.

In January, because that is the last time there was disbursement, only 6 per cent of the development budget was given to Nairobi. With half a year left, how do you expect absorption of another 94 per cent of that budget? Hurried expenditure towards the end of a financial year is what creates loopholes for corruption and accounting officers not entering into contracts properly. That creates a vicious cycle.

Madam Deputy Speaker, we passed in this House a Bill that I together with Sen. Farhiya sponsored. That is The Prompt Payment Bill and many business people and suppliers are happy about it.

Many times, we put pressure on county governments. I remember there was a time the same Cabinet Secretary (CS) said that counties with pending bills should not receive the allocation, yet the reason counties cannot pay is because they have not received Exchequer releases. Today, Nairobi City County operations ground to a halt. The workers locked the Governors' Office because of lack of disbursement.

I saw the budget line for lifts in City Hall Annex. You will find sick people, the elderly and pregnant women walking up and down 16 floors. They do not have sanitary facilities because of the delays.

We have put in that law that an accounting officer who enters into a contract without a requisite budget and fails to pay within 90 days takes personal culpability. However, this must also relate to the National Treasury. If the National Treasury has not sent money, how does a county government pay the suppliers?

The other one is the issue of statutory deductions and salaries. In fact, for the first time, salaries in Nairobi City County have delayed and that is bad.

We need to put the provision that mandates because we have Article 219 that talks about what is due to counties going to counties but it is not sent. The answer is simple.

Madam Deputy Speaker, I am sure Sen. Ochillo-Ayacko knows what we have been saying. Our debt to Gross Domestic Product (GDP) ratio is at 72 percent. However, our revenue to debt ratio, which we do not look at is the problem. In this Statement, Kenya Revenue Authority (KRA) has indicated it has surpassed revenue collection targets.

However, for every Kshs100 collected, Kshs60 has to immediately go to paying debt. That is why you have heard our coalition, Kenya Kwanza, talking about this debt. It has to be halved and reduced. Otherwise, we are collecting to pay. We are taking debts to pay other debts. There is a Bill by Hon. Sakwa Bunyasi on debt management that is stuck in the National Assembly. If we do not do that - you have heard Kenyans talking about food prices - we are going to go to a crisis.

I am glad that Sen. (Dr.) Ochillo-Ayacko is listening very keenly. We would expect the Committee to summon this Cabinet Secretary (CS) who is out there campaigning. We do not see him nowadays talking about the National Treasury. We only hear him talking about *Azimio La Umoja* and the *Upya* Movement.

The CS needs to realize that Kenyans are suffering, counties are grinding to a halt, suppliers are not being paid and salaries are not being paid. He should sit in his office and be summoned to this Senate within the next 14 days.

The Deputy Speaker (Sen. (Prof.) Kamar): There is an intervention by Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you my brother, Sen. Sakaja. I just wanted to point out that this trouble-making CS did not have the courage to resign. Therefore, we will fetch him as a Committee and he will have to explain this. He did not resign officially to go and campaign. He is hiding somewhere but not out of reach of the Senate. We will agree that we issue summons.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Sakaja, please wind up.

Sen. Sakaja: Thank you, Madam Deputy Speaker, that is very good information. Let it be within the next 14 days because counties are grinding to a halt. Let us have him here and if possible within seven days. They always give excuses when we do that.

I have had trouble with him before but we found an arrangement within my Committee. That is how all former councillors finally got an allocation for their one-off honorarium. When he comes here, we need to ask him whether he has factored it in the Supplementary Budget because it has not been brought to the National Assembly considering that we need that Supplementary Budget.

Madam Deputy Speaker, with those remarks, I support the Statement and ask the Committee on Finance and Budget to let us know the date that the CS is going to come because we have specific questions with regard to our counties. In addition, invite the Controller of Budget to appear with the CS. It is important because there is a lot of blame shifting when it comes to disbursements to counties.

Thank you.

Sen. Kang'ata: Madam Deputy Speaker, I rise to give my contribution on this matter and bring to the attention of the House that there is a legal lacuna, which the Senate, the National Assembly as well as the concerned Ministry have failed to fill.

Article 203 and 204 says that Parliament will enact a law that is going to establish the framework for counties to borrow. I say so because this problem the counties are

facing would have been remedied by counties borrowing from financial institutions. Practically, they do so but legally it is untenable and illegal because under the Constitution and the requisite laws, a county can only borrow with the express permission of Parliament.

Madam Deputy Speaker, we may need to urge our colleagues in the relevant Senate Committee to craft a Bill that is going to fulfil the constitutional requirement of Parliament creating a framework that allows counties to borrow like in the present instances. We need to have created that framework so that counties can borrow to pay for salaries and also to pay for crucial flagship projects which may be pushed by various counties.

One of the crucial areas that counties need to ensure that people there have been catered for are the farmers. This is for counties that have a huge agricultural base. If cash disbursements from the national Government delay, that should not impact on poor farmers. Salaries of county employees who wake up every day at about 6.00 a.m. or 7.00 a.m. to go to work for the counties, then at the end of the month, they do not receive their salaries, their statutory deductions are delayed, they get penalized by the NHIF, NSSF and the Kenya Revenue Authority (KRA), their Sacco deductions get delayed and pay school fees for their children or cater for bills.

Madam Deputy Speaker, this is one of the areas we as the Senate have failed. As I finalize my contribution, a question will be asked as to why we Senators, individually and privately have not come up with a draft Bill. What I know is that crucial matters of the nation are usually pushed by the Executive. Therefore, such kind of a law is best brought here by the Government or the relevant Committee, so that we are able to fill that lacuna.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Point of order from Sen. Sakaja.

Sen. Sakaja: Madam Deputy Speaker, I was tempted not to raise it but from the way Sen. Kang'ata has finished, it might leave on the record that there is something that the Senate has not done.

Is Sen. Kang'ata in order to say that there is a requirement for a borrowing framework and yet the Constitution does not state that? If anything, what the Constitution provides for in Article 212 is that a county government may borrow only if the national Government guarantees the loan and with the approval of the county government's Assembly.

Madam Deputy Speaker, counties have been borrowing. If you look at many of our counties, they take overdrafts, which is a form of borrowing. In fact, the issue is that they have taken overdrafts without the national Government guaranteeing. The Laikipia County has an infrastructure bond, which has been guaranteed. Maybe it is the framework for guaranteeing but there is nothing currently stopping county governments from borrowing.

On a light note though, Sen. Kang'ata, I would be very worried if Murang'a County will borrow to pay salaries. That is the last thing we should do. We are castigating the national Government for borrowing to pay salaries but counties should never borrow to pay salaries. We should not allow that. Let us borrow for infrastructure.

However, there is no legal framework the Constitution has asked to be put in place by the Senate on borrowing that has not been done. I wanted to set that record clear.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Can you wind up. I will give you a minute to wind up because we caught you when you were doing so.

Sen. Kang'ata: Madam Deputy Speaker, allow me to read Article 213(1) of the Constitution. It states-

“Loan guarantees by national Government.

(1) An Act of Parliament shall prescribe terms and conditions under which the national Government may guarantee loans.”

When you read this sub-Article and also read Article 212, Borrowing by Counties. It says:

A county government may borrow only

- (a) if the national Government guarantees the loan; and
- (b) with the approval of the county Government assembly.

Article 212 of the Constitution gives conditions for borrowing by counties, which includes the national Government guaranteeing the loan.

Then Article 213 states that an Act of Parliament would have to prescribe the terms and conditions under which the national Government may guarantee the loans.

The construction of these two Articles is we needed to enact an Act to operationalize Article 213(1). Otherwise, all other forms of borrowing may be offending these two clauses.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja, do you have any other clarification?

Sen. Sakaja: Madam Deputy Speaker, without making it a back and forth, what Sen. Kang'ata has said is right; that an Act of Parliament shall prescribe that guarantee. That Act of Parliament exists and is called the Public Finance Management (PFM) Act, 2012. Cap 18 of the Act gives provisions in a few lines but that is the Act of Parliament envisaged. It was not going to be an Act of Parliament specifically called the National Government Guarantees Act.

If you go through the PFM Act, there is that provision. What we need to do is to streamline the process that it is being done. Sen. Kang'ata is correct that there was that requirement. I am also correct that it is already in place.

The Deputy Speaker (Sen. (Prof.) Kamar): The two of you are educating most of us. We should read further and compare the Clauses for it to be clear to us.

Hon. Senators I have two Members online. This is a very important Statement for us in this House, so I will allow them to speak.

Sen. Kavindu Muthama, you can proceed.

Sen. Kavindu Muthama: Thank you, Madam Deputy Speaker, for giving me this opportunity to contribute to this Statement by Sen. (Dr.) Ochillo-Ayacko.

This is an important Statement because Machakos County just like most of our counties lack medication in the hospital and doctors are not paid. Moreover, cleaners are never paid in time. When you question why those people are not paid, you are told that no money has been dispatched from the National Treasury. I concur with the Committee on Finance and Budget that the National Treasury must release the money in good time so, that the governors work.

The delay in cash disbursements has led to a lot of pending bills in our counties and especially in Machakos County. Sen. (Dr.) Ochillo-Ayacko can bear me witness that the last time we summoned the Governor of Machakos County to appear before the

County Public Accounts and Investment Committee (CPAIC), pending bills was a big issue. To date, those pending bills are still there.

Madam Deputy Speaker, many people have been auctioned due to pending bills. Many others have died while others are living under depression because some of those pending bills originate from 2013 to date yet those are people who had taken loans. When you question, you are told that county governments are not receiving cash disbursements from the National Treasury.

People are dying because of lack medication in hospitals and even as we continue to battle the COVID-19 pandemic. There are so many of our elderly people who live with medical conditions such as high blood pressure, diabetes, arthritis and all these other age related conditions and there is no medication in the hospitals. These people are poor, have no money yet there is no medication in the hospitals. When you question, they claim that money has not been released from the National Treasury.

I concur with the Committee on Finance and Budget that the Cabinet Secretary in charge of the National Treasury and Planning should come and answer these questions. There must be a process to ensure that even when the medication has not been paid for, the Kenya Medical Supplies Authority (KEMSA) can release the medication pending payment or the National Treasury can pay KEMSA directly so that hospitals can get medicines. Our people are dying.

I congratulate this Committee for this Statement. I pray that it shall see the light of day and whatever it takes, shall be done so that our people stop suffering. The pending bills should be paid because these governors are exiting. I do not know if the governors who will take office after the General Elections will pay these people. Our people will continue suffering in the counties.

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

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

The Temporary Speaker (Sen. Kinyua): Proceed, Sen. Mwaura.

Sen. (Dr.) Mwaura: Mr. Temporary Speaker, Sir, I support this important Statement. It is unfortunate that we have not seen Government releasing the budget for the third quarter.

This is an issue affecting Parliament as well, not just county governments and this is serious. It speaks clearly about our financial stress as a country. These are conversations that we have avoided talking about for a very long time. I am happy that I spoke about them way back in 2014 and repeated in 2020. I am happy that I have been vindicated.

There is a serious cash flow problem, because even Parliament has not received money. I wonder how Parliament is going to pay salaries for the month of February. If you have not received money for January and we are finishing the second month of the third quarter. The fourth quarter begins in the April. That means that the Financial Year is coming to an end.

There is always this issue that monies are going to be returned at the end of the Financial Year but the truth is that no monies are returned. It is just that two things happened; monies are not released on time and when released, it is done one day to the end of the Financial Year. It is a ping pong game.

The National Treasury is playing games with Kenyans but we need to have a higher conversation. Senators are talking about counties and pending bills and what have you. The truth of the matter is that the country is living beyond its means. A country like Rwanda who are our friends and neighbour in the East African Community have a coalition of the willing that we can travel using an Identification Card (ID) and not a passport.

In Rwanda, you cannot raise any expenditure in government if you have not received the money and not even having it in the budget. People are procuring using budgets, yet the budget is not released. In Rwanda, having an item in the budget does not necessarily guarantee that there is going to be money anyway because our economy is a hand to mouth economy. We collect monies and every Thursday they are disbursed

Mr. Temporary Speaker, Sir, we can do Bills here as it has been proposed but I can assure you that they will not cure anything. In fact, Bills are rendered useless by virtue that there is no money. What will a law provide for if there is no money to disburse anyway? A law would only work if there is certainty that the money is there. Laws are made with that understanding. Even if we pass the Prompt Payment Bill, the Exchequer will not be released on time because the National Treasury is spending all its money in paying debts. Why not restructure the Budget? Why not cut our cloth according to size?

This issue leads to a greater conversation that we must face. It is possible that we over devolved and that in the long run, our county governments are not sustainable. Most of county governments rely on the National Government for funding.

Mr. Temporary Speaker, if counties were functioning well, they would survive on their own source revenue but that has also not been properly mapped. The Bill to pass own source revenue has stalled and has not been passed as well. People do not want to be transparent on how they are raising their revenue. The biggest culprits are the big counties of Nairobi, Kiambu, Nakuru and Mombasa because there is real revenue being collected.

Salaries are a problem and hospitals are running down. If the situation persists, I predict that the salaries for the Members of Parliament (MPs) is going to be a problem very soon.

Mr. Temporary Speaker, Sir, it is not a question of asking the National Treasury and Hon. Ukur Yatani going to campaign for his *Upya* outfit. As a country, we need to have a conversation on our debt ceiling and how to repay debt.

We also need to talk about how to re-engineer our economy from a development model, where you have people demanding for roads, dams and schools, which end up being development corruption to productivity. Having money going into people's pockets.

That means that the Government must stop over borrowing from our banks and, therefore, crowding local investors. Basically, let us have people who have good ideas that can actually create employment and money for revenue to the Government.

It is a way of remodeling and that is why we are talking about the bottom-up economy. That is why we are talking about moving away from the trickle-down economy. That is why we are talking about moving away from people sitting in boardrooms and deciding the best priorities for people in Nyamlang'ano Village. It is the people there who know what they need to have for their own development.

It is a whole change of the economic model and also the governance model that will redraw the boundaries between the recurrent and development expenditure. If we can have people being able to produce once again, the Government can have enough revenue not only for development but to also retire the huge debt that we have.

Mr. Temporary Speaker, ---

(There was a technical hitch)

The Temporary Speaker (Sen. Kinyua): Sen. Mwaura, we cannot hear you. I think that you have muted yourself.

Sen. (Dr.) Mwaura: Yes, we can have opinion but generally, I want to have a higher and better position going forward.

Thank you.

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

Sen. Farhiya, proceed.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir. As I said before, people are very interesting in this country. Some of the Members who removed the ceiling are on top of their chairs saying that this debt is unmanageable. Did they not know that when they were passing the Bill to remove the debt ceiling? Some of them were in leadership at that time. Let us spare Kenyans hypocrisy and saying this and that thing---

The Temporary Speaker (Sen. Kinyua): What is it Sen. Cherargei?

Sen. Cherargei: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the Senate Deputy Majority Whip and the great Senator from Wajir County, to say that all Members supported removal of the ceiling, yet is on record in the HANSARD that seven Members, including me, opposed raising the debt ceiling? Can she get her facts right?

The Temporary Speaker (Sen. Kinyua): Sen. Cherargei, if I heard her correctly, she said "some of those who supported".

Proceed, Sen. Farhiya.

Sen. Farhiya: Mr. Temporary Speaker, Sir, the question of debt is interesting. A country goes to debt to do development projects, which are clearly visible. The other issue is that Kenyans are very interesting people. People do not want to pay taxes but they want roads, hospitals and all other developments that we talk about. At the same time, they tell you not to take debts but they want greater developments.

People need to understand that at the end of the day, you need money to do development. If we do not want to borrow, can Kenyans be tasked to pay more taxes? Can we have those in tax brackets voluntarily increase their taxes? If we do that, then borrowing will be a thing of the past.

Some of our colleagues who talk about the increasing debt do not even have a strategy to stop corruption. We know that there is some level of corruption. If Kenyans paid tax and there was no corruption, there would be enough money to do all the development. We just promise to do this and this but where will the money come from? I mean, let us be realistic and honest with each other and do the right thing by having a very clear strategy.

Mr. Temporary Speaker, Sir, Kenyans are intelligent. They know the problem of this country. They know why there is not enough funding for projects and where we are

borrowing from. If we want to be fair and honest to Kenyans, let us tell them a very clear strategy of fighting corruption.

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

Sen. Cherargei: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the Senate Deputy Majority Whip, to state that borrowed money was lost through corruption?

Number two, she is a representative of the Executive by virtue that she holds leadership on behalf of the majority party. She should be the one telling us what the Government is doing to ensure that the issue of corruption is adequately dealt with and the perpetrators of corruption are prosecuted.

She is taking us in circles and lamenting like an ordinary Kenyan on the street, saying that borrowed money was stolen. She is part of the Government. She should be informing us the President's agenda on the fight against corruption.

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

Sen. Kajwang': On a point of order, Mr. Temporary Speaker, Sir. Is it in order for Sen. Cherargei to refer to a Member of this House as a representative of the Executive?

From where I sit and if I recall, we were all elected to this House to represent the interests of counties and their governments. There is nowhere in the Constitution that a Senator shall at times represent the interests of the National Executive.

It is completely unfair for Sen. Cherargei to allude that Sen. Farhiya holds a leadership position in this House on behalf of the Executive. In fact, if he was going to insist that Sen. Farhiya should speak on behalf of the Executive, then Sen. Cherargei should be speaking on behalf of the Executive because he is on the same political party where the President and the Deputy come from. Of late, it is on record that he has been spending most of his time on roof tops, blasting the same Government and party that elected him.

Is it in order for Sen. Cherargei to continue sitting here, enjoying perks that he achieved by membership of the Jubilee Government, when he spends all his time bashing the same Jubilee party, Jubilee Government and subscribing to the "yellow fever" political movement?

(Laughter)

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

Sen. Cherargei: Mr. Temporary Speaker, is it in order for Sen. M. Kajwang, whose party has abandoned their role of leader of opposition and are now part of Government – to accuse us? We know very well that public debt is an issue of national concern. It is not about *Kuzimia* or the *Kenya Kwanza* movement. This is a matter for national conversation.

That is why I was telling my sister here that she has the ear of the President by virtue of being in leadership. Unless she can deny on record, she has the ear of the President by virtue of being the Senate Deputy Majority Whip. Whenever an issue of Government comes up, she is the one who prosecutes.

May I tell my brother, Sen. M. Kajwang, I know that he chickened out from running for the governor of Homa Bay County. You know *baba* there is *baba*. Let us not-

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(Loud consultations)

Mr. Temporary Speaker, Sir, I do not know why the Senate Deputy Majority Whip is agitated. She is not the Speaker. Why is she agitated?

Sen. M. Kajwang should tell his people of *kuzimia* to play their opposition role and criticize the Government. That is why we in Kenya *Kwanza* have taken up the role of questioning the national public debt. It is a public concern. That is what we are just saying.

Temporary Speaker (Sen. Kinyua): Thank you, Sen. M. Kajwang' and Sen. Cherargei. There was no point of order. It was just a point of debate.

Thank you.

Proceed Sen. Farhiya Ali.

Sen. Farhiya: Thank you, Mr. Speaker Sir. I thought Sen. Cherargei was going to articulate the strategies that they have to combat corruption when he stood up. I did not expect this.

My President was very clear in saying that there is corruption in this country. There is also a strategy to fight it because there are many people who are being taken to court.

Temporary Speaker (Sen. Kinyua): Sen. Farhiya Ali, you are not helping the situation. When you are saying, "they." Who do you mean? The last time I checked and what Sen. M. Kajwang' just said is that both of you belong to the same Jubilee party. It is even more confusing when you say, "they."

Please proceed.

Sen. Farhiya: Mr. Temporary Speaker, Sir, I was speaking about whichever party Sen. Cherargei subscribes to not the Jubilee party. This is because the head of Jubilee party was very categorical that there is corruption in this country and that they are doing something about it. The party that we support has a very clear strategy in terms of how corruption should be combatted.

In terms of the pending bills and counties not being paid, the National Treasury needs to release funds to the county governments. We have drought right now in my County of Wajir. People are starving. I am happy with our President for flagging in food for the 23 Counties that are suffering from the drought.

However, if the county government are funded, they will pay their pending bills. There will then be some money flowing within the county that will help people to reduce the impact of drought they are facing right now. I urge the Treasury to fast track the release of funds to the County so that people can be paid and the economy can move on.

Thank you, very much.

Temporary Speaker (Sen. Kinyua): Thank you. Looking at the House, Order Nos. 15, 16 and 17 are deferred because they are at Division and we do not seem to have numbers.

COMMITTEE OF THE WHOLE

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

(Division)

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

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

(Division)

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENTS (AMENDMENT)
BILL, (SENATE BILLS NO. 38 OF 2021)

(Division)

(Committee of the Whole Deferred)

Temporary Speaker (Sen. Kinyua): For Order Nos. 18, 19 and 21, the Movers requested for deferment.

COMMITTEE OF THE WHOLE

THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT)
BILL (SENATE BILLS NO. 53 OF 2021)

(Committee of the Whole deferred)

BILLS

Second Reading

THE COUNTY E-HEALTH BILL
(SENATE BILLS NO. 39 OF 2021)

(Bill deferred)

Second Reading

THE LANDLORD AND TENANT BILL (NATIONAL
ASSEMBLY BILLS NO. 3 OF 2021)

(Bill deferred)

Temporary Speaker (Sen. Kinyua): Next Order.

Second Reading

THE ELECTIONS (AMENDMENT) (NO. 2) BILL
(SENATE BILLS NO. 43 OF 2021)

Temporary Speaker (Sen. Kinyua): Sen. Olekina is not there. Order No. 20 is, therefore, dropped.

(Bill dropped)

ADJOURNMENT

The Temporary Speaker (Sen Kinyua): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until, Wednesday 23rd February, 2022, at 10.00 a.m.

The Senate rose at 5.24 p.m.