



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE SENATE

VOTES AND PROCEEDINGS

THURSDAY, AUGUST 02, 2018 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with prayer said by the Deputy Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Deputy Speaker conveyed the following Communications from the Chair:-

(i) Visiting Members and staff from the County Assembly of Murang'a

“Honorable Senators,

I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members and staff from the County Assembly of Murang'a.

I request each member of the delegation to stand when called out so that they may be acknowledged in the usual Senate tradition.

They are:

- | | | |
|-------------------------|---|---|
| 1. Hon. Lilian Kabaya | - | Chairperson, Committee on Delegated Legislation |
| 2. Hon. Duncan Muturi | - | Member |
| 3. Hon. Pelagiah Maina | - | Member |
| 4. Hon. Sospeter Nyoko | - | Member |
| 5. Hon. Peter Mweri | - | Member |
| 6. Hon. Joel Muhuha | - | Member |
| 7. Hon. Anne Kigo | - | Member |
| 8. Hon. John Wangechi | - | Member |
| 9. Hon. Flasia Chege | - | Member |
| 10. Ms. Ruth Kibithe | - | Legal Officer |
| 11. Mr. Joel Ngugi | - | Assistant Hansard Editor |
| 12. Mr. Francis Kimemia | - | Clerk Assistant |
| 13. Mr. Joseph Kiragu | - | Serjeant-At-Arms |

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(ii) Visiting students and teachers from Masubeti Primary School, Kericho County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Masubeti Primary School, Kericho County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(iii) Visiting students and teachers from St. Teresa’s Tartar High School, West Pokot County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Teresa’s Tartar High School, West Pokot County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(iv) 6th Edition of The Kenya Inter Counties Sports and Cultural Association (KICOSCA) County Assemblies Sports Association (CASA) Games

“Honourable Senators,

I have a Communication to make regarding the Kenya Inter Counties Sports and Cultural Association (KICOSCA) and County Assemblies Sports Association (CASA) games.

The Kenya Inter Counties Sports and Cultural Association (KICOSCA) and County Assemblies Sports Association (CASA) were established in 2013. The

Games are a key event in the aspect of building relations among the county assemblies and between the county assemblies and the Senate.

The 1st KICOSCA/CASA Games were held in Nairobi City County, where the Senate and several counties participated. The second (2014), third (2015), fourth (2016) and fifth (2017) KICOSCA Games were held in Nakuru, Uasin Gishu, Kiambu and Machakos counties respectively.

The 6th KICOSCA/CASA Games will be held in Kisii County from 12th to 19th August, 2018. Arrangements are at advanced stages for the participation of the Senate in the games.

Team captains have compiled lists of participants for the various sports disciplines and further communication in this regard will be given in due course.

I thank you.”

(v) Visiting students and teachers from St. Elizabeth Eruswi Primary School, Vihiga County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Elizabeth Eruswi Primary School, Vihiga County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(vi) Visiting students and teachers from Kitoto Secondary School, Makueni County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kitoto Secondary School, Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(vii) Visiting students and teachers from St. Dominic Wiga school, Homabay County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Dominic Wiga School, Homabay County County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(viii) Visiting students and teachers from Elgeyo Some Primary School, Elgeyo Marakwet County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Elgeyo Some Primary School, Elgeyo Marakwet County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

(ix) Visiting students and teachers from Kimwani Secondary school, Nandi County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kimwani School, Nandi County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

4. **PAPERS LAID**

The following Papers were laid on the Table of the Senate:-

- (i) Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the Interlinkage between Population Issues and the 2030 Agenda for Sustainable Development held in New Delhi, India from 13th – 15th September, 2017.

(Sen. Fred Outa, MP)

- (ii) Statement of the business of the Senate for the week commencing Tuesday, 7th August, 2018.

(The Deputy Senate Majority Leader)

5. **NOTICE OF MOTION** – (Sen. Fredrick Outa, MP)

THAT, this House notes the Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the Interlinkage between Population Issues and the 2030 Agenda for Sustainable Development, held in New Delhi, India from 13th – 15th September, 2017, laid on the Table of the House on Thursday, 2nd August, 2018.

6. **STATEMENT PURSUANT TO STANDING ORDER 46 (2) (C)**

The Deputy Senate Majority Leader issued a statement on the business of the Senate for the week commencing Tuesday, 7th August, 2018.

7. **MOTION – APPROVAL OF A SENATOR TO SERVE IN A SELECT COMMITTEE**

THAT, pursuant to standing orders 183, 212 and 213, the Senate approves the nomination of Sen. Rose Nyamunga, MP, to serve in the Standing Committee on Devolution and Intergovernmental Relations in place of Sen. James Orengo, EGH, SC, MP.

(Deputy Senate Majority Leader)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order 73, the Deputy Speaker ruled that the Motion did not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, pursuant to standing orders 183, 212 and 213, the Senate approves the nomination of Sen. Rose Nyamunga, MP, to serve in the Standing Committee on Devolution and Intergovernmental Relations in place of Sen. James Orengo, EGH, SC, MP.

8. MOTION – FLOOD SITUATION IN THE COUNTRY

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues to rise by the day, and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things-

- i developing and enforcing regulations for preventing the obstruction of riparian reserves and natural water courses; and
- ii preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant government agency to execute this task and submits a report to the Senate within three months of the adoption of this Motion.

(Sen. Fatuma Dullo, MP)

Order deferred.

9. **MOTION – PAYMENT OF A ONE-OFF HONORARIUM AND MONTHLY PENSION TO FORMER COUNCILORS**

THAT AWARE that National Forum of Former Councilors petitioned the Senate regarding the need for legislative interventions to address the plight and welfare of former Councilors;

FURTHER AWARE that the Senate Standing Committee on Labour and Social Welfare considered the Petition and tabled its report on Tuesday, 16th February, 2016;

ACKNOWLEDGING that the Committee’s report on the Petition made five recommendations among them that-

1. one-off honorarium of Kshs1.5 Million be paid to former councilors who served a minimum of one term since independence; and
2. monthly pension of at least Kshs30,000 be paid to former councilors.

APPRECIATING that the recommendations were based on the fact that former Councilors did not receive fixed emoluments and experienced disparities with regard to access to pension services and terms and conditions of pension schemes over the years, which made it difficult to fairly and equitably determine each councilor’s rightful benefits retrospectively;

CONCERNED that the State Department for Social Services and Security, State Department for Devolution and the National Treasury have to date not implemented the Committee’s recommendations on the Petition;

NOW THEREFORE, the Senate calls upon the Principal Secretaries to the said State Departments and the National Treasury to take necessary steps to implement the recommendations contained in the Report.

(Sen. John Kinyua, MP)

Order deferred.

10. **MOTION – ENFORCEMENT OF NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLE) REGULATIONS, 2015.**

Motion made;

THAT AWARE that the National Transport and Safety Authority (NTSA) is mandated to plan, manage and regulate the road transport system, while ensuring the provision of safe, reliable and efficient road transport services;

FURTHER AWARE that motorcycle transport services have been rapidly embraced throughout the country leading to several challenges including: rise in road accidents involving motorcycle riders, unlawfulness, insecurity and road congestion;

COGNIZANT that the National Transport and Safety Authority (Operation of Motorcycles) Regulations that came into force on January 1, 2016 have not adequately addressed the challenges associated with the high numbers of motorcycles as a mode of transport;

NOW THEREFORE, the Senate resolves that the Ministry of Transport, Infrastructure, Housing, and Urban Development: -identify strategies to enforce the National Transport and Safety Authority (Operation of Motorcycles) Regulations; in collaboration with County Governments, develop programs to sensitize and educate members of boda-boda associations and the public on the laws regulating motorcycle operations; submits a Report to the Senate within ninety (90) days outlining the short and long term strategies, and preventative measures that are being put in place to halt the rising cases of road carnage involving motorcycle riders.

(Sen. (Arch.) Sylvia Kasanga, MP)

Deferred by Leave of the House.

11. **MOTION- ADJOURNMENT OF THE SENATE PURSUANT TO STANDING ORDER 32 TO DISCUSS MOTION ON THE REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM**

Motion made and Question proposed-

THAT, pursuant to Standing Order 32 (1), the Senate adjourns to discuss Motion on the Report of the Select Committee on the Solai Dam.

(Sen. Ledama Olekina)

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 73, the Deputy Speaker informed the House that the Motion did not affect Counties.

Question put and negatived.

12. **Considered Ruling on the Matter of the Report of the Select Committee on the Solai Dam Tragedy.**

The Deputy Speaker made the following ruling:-

“Honourable Senators,

At the sitting of the Senate on 1st August, 2018, Senator Gideon Moi rose on a point of order seeking the Speaker’s guidance and ruling on grounds that the Solai dam tragedy matter was active in court and that to debate the Report of the Select Committee on the Solai Dam Tragedy would violate the *sub judice* rule as set out in standing order 92 of the Senate Standing Orders.

Several Senators while responding to the point of order raised by Senator Gideon Moi, urged the Speaker to find that the matter is not *sub judice* because the issues raised are of national importance, that the matter is one of public interest, that the inquiry by the Senate is not on criminal charges but on legislative and policy matters, and finally that the Senate started dealing with this matter long before the Director of Public Prosecutions had commenced the investigations and proffering charges. Lastly that the House is not in any way seeking to influence any court decisions.

Honourable Senators,

The Select Committee on the Solai Dam Tragedy was established by a resolution of the Senate on Tuesday, 5th June, 2018. The Committee was mandated to:-

- a. holistically investigate and establish the circumstances leading to the Solai dam tragedy;
- b. propose modalities for compensation of all the families of the deceased victims and the surviving families;
- c. ensure the Dam owner makes compensation in regard to the destroyed environment, especially trees and other vegetation and top fertile soils; and
- d. propose measures to mitigate any such eventual disasters especially for Counties that are prone to floods and landslides.

Standing Order 92 of the Senate Standing Orders provides as follows: –

92. Matters sub judice or secret

(1) Subject to paragraph (5) no Senator shall refer to any particular matter which is sub judice or which, by the operation of any law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply—

(a) criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;

(b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or discontinuance;

(c) civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;

(d) appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.

(4) A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraph (2) and (3) are applicable.

(5) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.

Honourable Senators,

In order to address Senator Gideon Moi's concern, a clear understanding of Standing order 92 is critical. Standing Order 92(1) is a general statement of the principle that a Senator shall not refer to any matter that is *sub judice* or which, by any operation of law, is secret. The general principle is that matters under adjudication in a court of law cannot be brought into debate, because no conduct ought to be prompted which is likely to prevent a case being conducted free of all matter of prejudice.

Paragraph (2) of Standing Order 92 has two limbs of *sub judice* rule. It that a matter is *sub judice* if it refers to active criminal or civil proceedings and secondly that discussing the matter is likely to prejudice a fair determination in a court of law. Thus if a matter is active criminal or civil proceedings but its discussion does not prejudice its fair determination, then it is not *sub judice*. Both must be established.

Paragraph (3) of Standing Order 92 proceeds to prescribe the parameters to be applied in determining whether a matter is active or not. For criminal proceedings, a matter is considered to be active when a charge has been made or summons have been issued and cease to be active when they are concluded by

verdict and sentence or are discontinued; while in the case of an appeal, a matter is deemed to be active from the moment leave to appeal or notice of appeal have been filed until judgement is entered or a matter is discontinued.

Paragraph (4) of Standing Order 92 impose an obligation on the Senator alleging that a matter is *sub judice* to provide evidence that the matter is active in court and that its consideration is likely to prejudice a fair determination of the matter in court.

Paragraph (5) of Standing Order 92 then gives the Speaker the discretion to determine whether to permit any matter before the Senate or a Committee taking into account paragraphs (2) to (4) of the Senate Standing Orders.

Honourable Senators,

The *sub judice* Rule has its origin to the convention of Commonwealth parliaments that restrictions needs to be placed on the discussion of matters that are “before the courts” and is known as the sub judice convention. The purpose of the convention is to balance the freedom of speech in parliament and fair trials. Both are important values. Neither can be permitted entirely to trump the other.

There are two recognized purposes of the convention. The first, is similar to the purpose of common law *sub judice* in relation to the media and the public, is to “prevent comment and debate of Parliament from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings”. The second purpose of the convention is to prevent parliamentary debate on matters sub judice so that a Parliament is not set up as an alternative judicial forum to a court, which could lead to conflict between a House of Parliament and Courts. Traditionally, the convention was applicable when cases were determined by the laymen/ non lawyers in the form of juries.

However, over time, the doctrine has been narrowed in light of the supremacy of the constitution, the human rights guaranteed in the constitution and the fact that Kenya does not have a jury system.

Honourable Senators,

Our criminal justice system is underpinned by the right to fair trial as set out in Article 50 of the Constitution. Under Article 50(2) of the Constitution, the broad right to fair trial includes a right to the presumption of innocence, adequate time and facilities to prepare a defence, public trial before a competent court, right to representation, right to refuse to give self-incriminating evidence and the safeguard against double jeopardy.

Honourable Senators, the conduct of a criminal trial is under the sole purview of the Director of Public Prosecutions under Article 157(6) of the Constitution. Article 157(10) of the Constitution provides that *the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.* Further Article 157(11) provides that *“in exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process”.* The only factors therefore that would bear upon the DPP during the conduct of any criminal trial are public interest, administration of justice and the integrity of the criminal justice system and not parliamentary debate.

Honourable Senators, this position has been acknowledged by previous Speakers of this August House. For instance, in a ruling given on 30th July, 2009, on the question of *sub judice*, Speaker Marende stated that *“the sub judice rule was not crafted to fetter the ability of the House to pronounce itself on matters of national*

importance. To interpret the sub judice rule in this matter will reduce this House to a bystander, watching helplessly and unable to intervene as the rights of Kenyans are imperiled”.

Honourable Senators, several arguments have been put forth supporting the application of this Rule in the current matter. The arguments include that; several people have been taken to court on this matter and that the matter is active in court. Secondly that the committee investigating the matter and its report may prejudice this matter and lastly that previous parliaments have restricted themselves from discussing matters pending in court.

Honourable Senators, allow me to address the issues raised. As to the matter being active in court, the Speaker is not aware that the matter is in court and it is not the business of the Speaker or the House for that matter to shop around for the business that is in court. It is the obligation of the Senator who alleges to provide the evidence. Be that as it may, the fact that criminal charges have been preferred is a matter of public notoriety. Standing order 92(3)(a) makes it clear that there must be a charge made or a summons to appear issued. Further standing order 92(4) requires that the Senator alleging *sub judice* shall provide evidence to show that the *sub judice* rule applies. The import of these standing orders therefore is that the Senator who raises a question of *sub judice* must demonstrate that a charge has been made or summons issued. This duty may be discharged for instance by transmitting to the Speaker the charge sheet, information, or the summons issued by the trial court. In the present case, no

evidence by way of copies of the charge sheet, summons or any pleadings have been availed by the Senator who raised the question of *sub judice*.

Honourable Senators, as to whether debating this matter will prejudice the fair determination of the matter in court, I am of the view that the Senator did not adduce any evidence that debate on this matter will prejudice proceedings in court. Even then, the purpose of the *sub judice* rule is to balance the freedom of speech in Parliament and protect the right to fair trial. Both are important values but neither can be permitted entirely to trample the other. It is important to note that the purpose of parliamentary debate is different from the purpose of judicial proceedings. Parliamentary processes are concerned exclusively with public policy and oversight of public officers. There will be many situations where important issues are before parliament and the court at the same time, but regard must be had to the purpose of parliamentary processes.

Honourable Senators, I am guided by the rulings made by former Speakers of this August House on this matter. In particular, in a ruling delivered on 10th September, 2009 on whether debate on the report of the National Assembly Committee on Delegated Legislation on the Re-appointment of the Director of KACC by the President, the Honourable Former Speaker of the National Assembly Kenneth Marende aptly observed as follows:-

“On the question of the likelihood of prejudice to the fair determination of court proceedings, it is useful to note that the legal term “prejudice” finds expression in many areas of the law and may be described in a myriad ways. The concept is supposed to operate to prevent procedural and substantive injustices, not to create them. Allegations of prejudice must be scrutinized carefully. The specific allegations of likelihood of prejudice should be detailed with sufficient particularity to allow the Chair to make an informed decision on the merits of the allegation”.

Therefore in determining whether discussion of a matter will prejudice its fair determination, the Speaker must satisfy himself or herself that the discussions will result in procedural and substantive injustices. Further the likelihood of prejudice must be detailed with sufficient particularity to enable the Chair make the appropriate decision. The Senator who raised the question of *sub judice* averred that there are pending criminal proceedings with respect to this matter without availing any documentary evidence.

Honourable Senators, let's remember that a criminal trial is adjudicated upon by duly appointed judicial officers who are under a duty to ensure that accused persons are accorded a fair trial in accordance with the Constitution and well established principles of criminal procedure and evidence law and must further satisfy themselves that the guilt of the accused has been proven beyond a

reasonable doubt. In this respect, I enjoin myself to the observations of Speaker Marende in the matter of the Report on the Re-appointment of the Director of KACC by the President where he observed that-

“.....court proceedings are presided upon by judicial officers properly trained in law and who have taken an oath to discharge the functions of their office without fear or favour and without extraneous influences being brought to bear on their work. In the ordinary course of affairs, judicial officers of any repute are very unlikely to be swayed by what is said in Parliament. It does not inspire confidence in the able and learned men and women who serve in our Judiciary if we allow the propagation of a view that the Judiciary are always looking over their shoulders at what parliament has said or at the view that Parliament may take on a matter before making their determinations”.

Honourable Senators, therefore taking into account the high standard of proof required in criminal proceedings, the Constitutional safeguards of the rights of an accused person including the right to fair trial, separation of powers between the different arms of government and the independent nature of the Office of the Director of Public Prosecutions, I am of the opinion that debate on the Report of the Select Committee will not prejudice the fair determination of any matter in court.

Honourable Senators, on the question of whether the present case warrants the exercise of the Speaker's power under standing order 92(5) to allow reference to any matter before the Senate or a Committee, it is important to examine briefly the nature of the *sub judice* rule. The *sub judice* rule may be described as a parliamentary convention, a self-imposed rule whose purpose is to promote comity and separation of powers between the different arms of government. In this respect, Speaker Humphrey Slade on 1st November, 1966, observed that *“...the principle is that parliaments and courts of justice must respect each other and parliaments must not interfere with or prejudice, by their own discussions, the proceedings of a court of law any more than they expect (the courts) to interfere with the proceedings of Parliament”.* However this self-imposed rule is not intended to curtail the role of Parliament in representing the interests of their constituents and in particular discussing matters of national importance.

I would observe that even if it was established that standing orders 92(2), (3) and (4) are met, I would still allow debate on the matter on grounds of public interest because-

on grounds of public interest, the right to life is sacrosanct and close to fifty people lost their lives in the Solai dam tragedy so this is a matter of public interest and I would allow debate; and

human rights, including the right to life, right to privacy and the right to property, are involved in this case. I would therefore still allow debate on this matter.

Honourable Senators, the Select Committee on the Solai Dam Tragedy was established to not only investigate the circumstances leading to the Solai Dam Tragedy but also to propose compensation modalities for the victims of the tragedy, restoration of the environment and measures to mitigate the effects of any similar event in the future. If there are criminal cases instituted by the Director of Public Prosecutions, they relate to the criminal culpability for the tragedy. The mandate of the Select Committee therefore is wider in scope and involves proposals that are likely to result in policy and legislative reform and response by national and county government officials to disasters.

Honourable Senators, for criminal charges, a conviction can be obtained only if there is proof beyond reasonable doubt. Indeed if a conviction is obtained, punishment is imposed for transgressing the law. Parliamentary processes are therefore markedly different from criminal proceedings.

In a ruling delivered on 10th September, 2009, Speaker Marende further stated that *“I am clear in my mind that in a matter of immense public interest, where there is a doubt, unless sound grounds are advanced, a presumption should exist in favour of allowing debate in the House as opposed to the application of the sub judice rule to suppress debate”*.

Honourable Senators, going forward I wish to observe that people should not rely on the *sub judice* rule to defeat the law, the Constitution or even to gag Parliament from debating matters of national importance and public interest. Further, I urge Honourable Senators to stop trivializing Senate business. Every Senator has a right to raise issues of concern and Senators should therefore desist from imputing improper motive on Senators if they raise questions on points of order.

Finally, it is my considered opinion that debate on the Solai dam tragedy is not likely to prejudice the fair determination of any criminal proceedings instituted by the Director of Public Prosecutions. This matter is therefore not *sub judice* and is not in any way likely to prejudice the fair determination of any pending or impending criminal proceedings.

I so rule.”

13. **MOTION – REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY**

Motion made and Question proposed-

THAT, this House adopts the Report of the Select Committee on the Solai Dam tragedy, laid on the Table of the House on Thursday, 26th July, 2018.

(Chairperson, Select Committee on the Solai Dam Tragedy- 1.8.2018)

Debate interrupted on Wednesday, 1st August, 2018 resumed;

Debate arising;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Judith Pareno) adjourned the Senate without Question put, pursuant to the standing orders.

14. **SENATE ROSE** - at thirty minutes past six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, August 07, 2018 at 2.30 p.m.*

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