

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 19<sup>th</sup> February, 2019

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

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

### PRAYER

### PAPERS LAID

**The Speaker** (Hon. Lusaka): I do not see Sen. Were in Chamber. The Senate Majority Leader can proceed.

**Sen. Kihika:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Tuesday, 19<sup>th</sup> February, 2019:-

#### REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY FUNDS

Report of the Auditor-General on the Financial Statements of the Vihiga County Assembly Car and Mortgage Loan Fund for the Year ended 30 June, 2017.

Report of the Auditor-General on the Financial Statements of the Homa Bay County Executive Staff Car and Mortgage Loan Fund for the Year ended 30 June, 2016.

*(Sen. Kihika laid the documents on the Table)*

**The Speaker** (Hon. Lusaka): Next Order.

### NOTICES OF MOTIONS

**The Speaker** (Hon. Lusaka): Seemingly, Sen. Were and Sen. (Rev.) Waqo are not in the Chamber.

*(The Speaker consulted with the Clerk)*

Kindly proceed, Sen. (Dr.) Musuruve.

CREATION OF DISABILITY INCLUSIVE SCHOOL  
CLUBS IN ALL PUBLIC SCHOOLS

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I am sorry for the mix up, and thank you for the opportunity.

Mr. Speaker, Sir, I beg to move the following Motion---

**The Speaker** (Hon. Lusaka): Order, Senator! It is a notice of Motion.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you for the intervention.

Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, WHEREAS Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) affirms the equal right of all persons with disabilities to live in a community, with choices equal to others, equal access to services and facilities that are responsive to their needs;

AWARE THAT societal perception of disability is negative, mainly due to lack of socialization and integration during the formative years;

COGNIZANT THAT participation in school clubs provides important life skills that prepare children holistically for their future and plays a major role in transforming students' lives as they transit to various professions in adulthood;

CONCERNED THAT no policy exists addressing inclusivity in school clubs for persons with disability in the public school system;

NOW THEREFORE the Senate calls upon the coordinated effort of the National Government through the Ministry of Education, and the County Governments through the Council of Governors (CoG) to develop policy that would ensure inclusiveness of special needs learners in school clubs in public schools beginning at the Early Childhood Development (ECD) level up to and including Secondary School level.

Mr. Speaker, Sir, I beg to move the Motion.

**The Speaker** (Hon. Lusaka): Order, Senator! You are supposed to give notice of the Motion and not move it.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I beg to give notice of the Motion.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Were.

**Sen. Were:** Thank you, Mr. Speaker, Sir. I apologise for the delay.

I wish to give a notice of Motion on the Report of the Parliament of Kenya Delegation to the 49<sup>th</sup> Commonwealth Parliamentary Association (CPA), Africa Region Conference.

**The Speaker** (Hon. Lusaka): Order, Sen. Were! Kindly hold on.

*(The Speaker consulted with the Clerk-at –the-Table)*

Sen. Were, kindly approach the Chair.

*(Sen. Were approached the Chair)*

Order, Hon. Senators! I have a Communication to make.

### COMMUNICATIONS FROM THE CHAIR

#### VISITING CLERK FROM WEST POKOT COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of the visiting Clerk from the County Assembly of West Pokot.

I request Mr. David Karugutiang, Clerk of West Pokot County Assembly to stand, so that he may be acknowledged in the Senate tradition.

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

I thank you.

Kindly proceed, Sen. Poghisio.

**Sen. Poghisio:** Mr. Speaker, Sir, I would like to join you in extending the welcome that you have extended to the Clerk of the West Pokot County Assembly. This is a place that he can learn a lot in order to bring the County Assembly of West Pokot to a level where it understands its roles.

I also ask that the leadership of the county assembly works on the peace between us and our neighbours. Let them be the leaders that bring the change that we desire, which is a peaceful region. With proper understanding of the laws and the law making process, I wish him well; that he may then be able to guide the county assembly in making those laws, especially in a situation like now when we need peace and stability.

Thank you, Mr. Speaker, Sir. I welcome him.

#### VISITING DELEGATION FROM DIAMOND ACADEMY SCHOOL, MACHAKOS COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I have another Communication. I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers of Diamond Academy School Athi-River in Machakos County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I welcome and wish them a fruitful visit.

I thank you.

**Sen. Dullo:** Mr. Speaker, Sir, I take this opportunity to welcome the visiting students. However, I did not just stand because of that.

Mr. Speaker, Sir, last week, you ruled that the Petition on Isiolo County should be tabled today. I would like to know what the position is from the Committee on Health.

**The Speaker** (Hon. Lusaka): I will give a Communication on that.

Kindly proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I stand to welcome the girls who are in the Public Gallery this afternoon and wish them well. This is the Senate of Kenya that looks after counties and takes care of their matters and interests. As they watch the proceedings, I hope that they will take up leadership in their rightful place as young women because Kenya needs them to do exactly that.

Mr. Speaker, Sir, as they watch us debate this afternoon, I wish to inform the girls that their ambitions should be building up; their thirst to grow and lead should be building up. All will be well with them if they work hard.

I thank you, Mr. Speaker, Sir.

REQUEST FROM HEALTH COMMITTEE ON  
EXTENSION OF TIME FOR PETITION

**The Speaker** (Hon. Lusaka) Hon. Senators, I have received a letter from the Chairperson of the Committee on Health seeking for an extension of time for Consideration of the Petition by Sen. Dullo to next week on Wednesday. The matter was also discussed in the House Business Committee; and we agreed to give them one week to enable them finalize a few areas that they are tying up.

**Sen. Dullo:** Mr. Speaker, Sir, this information was canvassed at the House Business Committee but I hope come next Wednesday, we are not going to ask for an extension. Thank you.

**The Speaker** (Hon. Lusaka): Sen. James Orenge.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, this Petition was requesting for a special intervention and this Report has been awaited for a long time, the Committee has been indulged on several occasions. The patient was breathing when this matter went to the Committee, now the patient is dead. We are planning for the funeral and then they are going to come with recommendations that should be applied to a living patient when we are already burying the patient.

I hope that the indulgence that was going to be given to that Committee will be accompanied by an apology because, many places I have gone to, governors keep on asking about this Petition in relation to their own situations. So, I hope since this is the Committee on Health, and anything relating to health must be handled expeditiously. I agree with you that they should be given time so that we look at that Report they will table before the House. I hope that Report is going to revive the patient because the patient is already dead.

**The Speaker** (Hon. Lusaka): Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. Although you have agreed on the extension, my problem with your extension is that the Committee on Finance and Budget is now considering the Budget Policy Statement (BPS), which has the figure that is going to be allocated to the issues that Sen. Dullo has raised, and I hope this is the one on medical leasing equipment.

The extra seven days you have given this Committee will do two things-

(1) It will not inform our Report on the Budget Policy Statement, or alternatively;

(2) The Committee is going to postpone the inevitable so that we are unable to make a decision.

Sen. Orenge has said that this matter is dead and this Senate cannot be an undertaker for purposes of medical equipment leasing. On this one, I believe that you should have castigated the Committee because this matter has become very notorious and chances are that we will rally the Senators to reject the Medical Leasing Conditional Grant this financial year.

**The Speaker** (Hon. Lusaka): Sen. Olekina Ledama.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I am concerned about the period of time that it takes for a Petition to be processed by this House. I want to speak to my brother, the Chairperson of the Committee on Health. We have serious issues and currently, the issue is not only limited to Isiolo County. So, with all the amount of work, if it is a challenge, we can have a further discussion on how we are going to deal with this issue of health. I remember last time, this entire House converted itself into a Committee on Health to look at the issue of the medical leasing equipment. I think that it is now time, from where you sit, you become very strict on timelines.

Last Session, I was very disappointed because I brought in a request that was dealing with the issues of barley farmers in Narok. Until today, I have never received any response to that matter.

It would help this country if you take your position there and we stick to the Standing Orders; the time given for a Report to be given in this House should be adhered to. Your colleague in the other House threw out other Petitions when the time lapsed. So, this issue of wasting so much time is not going to be useful. If the Committee is getting issues of raising the quorum, then I think the Standing Orders are very clear, that our Committees are not just set out there so that you can become a Committee member; it is for you to work.

Mr. Speaker, Sir, I think in future, you should not allow that extension of another seven days. I am completely against that because we need to deliver on our mandate. The issue of extending time is going to make people there suffer. Currently, the nurses are on strike. We have issues of universal healthcare, how is it going to help us?

I hope that the Committee on Health will actually use the seven day extension and make sure that they give us a Report, which can help us deliver justice for the people of Isiolo County.

**The Speaker** (Hon. Lusaka): Sen (Eng.) Ephraim Maina.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. We all respect your decision but I wish to remind you that when this matter came up on the Floor of the House, I asked that it be expedited. We are aware of the status of the health sector in this country and the issues Sen. Dullo has been raising.

You are aware of her position, Mr. Speaker, Sir, and you have listened to her. She is really feeling down because of this matter. It is not just her alone but you will notice that it is becoming a big question whether devolving health means anything; and whether devolving health has not meant that the money that should be serving the small dispensaries end up in wrong places. I would urge you to invoke your powers and follow up this matter so that this country gets the justice it needs.

Mr. Speaker, Sir, the nurses are on strike and the health sector in this country is in a fragile state. That is the real truth. We read in the media about the status of various hospitals and I think what Sen. Dullo was raising is not just about Isiolo County. This matter of Isiolo County should be looked at in detail and quickly. It is of no use that this House should take so long such that by the time the matter is reported, it is already stale.

I urge you to use your powers properly and see what you can do.

**The Speaker** (Hon. Lusaka): Are you suggesting that I am not using my powers properly?

*(Laughter)*

**Sen. (Eng.) Maina:** Not really, Mr. Speaker, Sir. I believe that you have wisdom that you can apply.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. Wambua.

**Sen. Wambua:** Thank you Mr. Speaker, Sir. I want to join you in welcoming the visiting students from Machakos County and also to urge them to use their time in this Chamber to learn a few things about legislation and be inspired in their endeavors to join leadership at some point in their lives.

Having said that, I want to join my colleagues by saying that the ruling of the Speaker on any matter should be taken very seriously by everyone, including the Chairpersons of both Standing and Sessional Committees. It is getting a bit worrying when you rule from your Chair; you give a date when action should be taken on certain matters and on that date, nothing happens. Instead we get requests for extensions after extensions.

Last week, you directed that the response to Sen. Dullo's issue be brought to the Floor of the House today; now, we are extending it again by another seven days. The import of that is that the matter that was raised by Sen. Dullo is not exclusive to Isiolo County. That matter affects all the counties in this country; we represent those counties and the response to that matter would be useful in dealing with similar issues in all the 47 counties in this country.

As it has been said, the health sector in this country is in the Intensive Care Unit (ICU). That is the truth of the matter. It is so serious that even His Excellency the President intervened on this industrial action, but we know more nurses across the country are on strike.

Mr. Speaker, Sir, let me not take the route taken by the Senator for Nyeri County that you are not using your powers properly because I know you are. However, I urge that you consider that extension. Secondly, I urge that you demand of Chairpersons of Committees that once you make a ruling, it has to be followed without excuses or reservations.

I thank you, Mr. Speaker, Sir.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. Matters of health are very crucial to all of us. This issue is not exclusive to Isiolo County, but it affects many of our counties. Therefore, at the end of the day, we need a solution to it.

Health is one of the key devolved functions in this country. If we do not address it properly, the conversation about it being taken back to the national Government will continue to be louder and popular. Therefore, we need to act as fast as possible.

The Senate Committee on Health is working on this matter. It is not our intention to take a lot of time on it. However, we may take more time because we need to table a concise, elaborate and conclusive report to the House, so that when we take a position, it benefits all Kenyans.

We should continue addressing health issues with the seriousness they deserve because our intention is to see Kenyans getting proper medical attention.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I had the privilege and honour of briefly chair a joint Committee of the House that deliberated on the same issues. It was reported to you that the issues before us are very weighty. Right from just basic legal issues, Sen. Mutula Kilonzo Jnr. and Sen. Orenge will tell you that most of the reports we were given here, some of the copies which we have, do not pass the test of a legal intern. For example, looking at signatures alone and the witnessing of those documents, it cannot pass the test of a legal intern.

Mr. Speaker, Sir, this thing is serious. As I speak, in Elgeyo-Marakwet, one of the hospitals that was supposed to have received the equipment is Chebiemit District Hospital. You are very much aware of it because you lived in Chebiemit District.

The equipment has been there more than six months or so, but it is not in operation; nobody is using it. These are the real integral and serious issues that must be addressed by this Committee.

I am to telling the Committee that we will not accept on the Floor of this House a report that is mutilated or does not say that truth. The only thing that will set the health sector free is to have a report that contains the truth, the whole truth and nothing but the truth. This is because all the stakeholders, county governments, citizens and health workers are all waiting for that report. It must contain transparency, accountability and proper use of public resources in this project called medical equipment leasing. I particularly want to know why every year the money is escalating and the structure that was provided in place.

Mr. Speaker, Sir, I beg to support you and ask the Senate Majority Deputy Leader to indulge the Committee for one week. The Committee should know what we expect of them. The Chairperson is here. The Senate expect the report which will be tabled here to meet certain standards.

**The Speaker** (Hon. Lusaka): Hon. Senators, I appreciate the weighty matters raised in that report. We are expecting a comprehensive report. It is not my intention to keep extending time. However, I expect the Chairperson, Senate Committee on Health to come up with a comprehensive report. On 26<sup>th</sup> February, 2019, we are expecting that the Chairperson will present a comprehensive report.

I also ask other chairpersons to, please, observe the timelines. The Chairperson, Senate Health Committee is from a county. The county and Kenyans are watching how

we are treating some of these reports that come to us. Apart from just being a Chairperson, you also come from a county. Therefore, you must take your work very seriously.

Before we continue, I have another Communication to make.

VISITING DELEGATION FROM THE PARLIAMENT  
OF SERBIA

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, of a visiting delegation from the Parliament of the Republic of Serbia led by Her Excellency Ms. Maja Gojkovic, Speaker of the National Assembly. Ms. Maja, who is my colleague, is a Member of the Preparatory Committee of the 5<sup>th</sup> World Conference of Speakers of Parliaments of the Inter-Parliamentary Union (IPU). It is important to note that she will also be the host of the 141<sup>st</sup> Assembly of IPU, which will be held in Belgrade, Serbia in October, 2019.

She is accompanied by the following delegation. I request each member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

They are-

- (1) Hon. Professor (Dr.) Zarko Obradovic - President of the Foreign Policy Committee
- (2) Hon. Dragomir Karic - President of the Parliamentary Friendship Group with Uganda
- (3) H.E Dragan Zupanjevac - Ambassador of the Republic of Serbia
- (4) Mr. Milan Varadinovic - Deputy Head of Mission, Embassy of the Republic of Serbia
- (5) Mrs. Dragana Djurasinovic Radojevic - Advisor in the Cabinet of the Speaker
- (6) Ms. Marjana Jeremic - Advisor for Media in the Cabinet of the Speaker
- (7) Ms. Dragana Pokrajac - Translator
- (8) Ms. Jasminka Urosevic - Senior Protocol Officer
- (9) Mr. Darko Milanovic - Security Officer to the Speaker
- (10) Ms. Danica Kostic - Journalist, Serbia Television Station, RTS
- (11) Mr. Dejan Popovic - Journalist, Serbia Television Station, RTS

The delegation is here to sign a memorandum of understanding with our counterparts, the National Assembly, geared towards enhancing Parliamentary Diplomacy between the two Chambers. After their meetings in Parliament, they are scheduled to meet Amb. Monica Juma, Cabinet Secretary, Ministry of Foreign Affairs.

On behalf of the Senate and on my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

I thank you.

*(Applause)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, for about 56 years, Kenya has had a very good working relationship with Serbia and it has been supportive of the progress of our country. That was the case even during the Yugoslavian days. Last year, they gave our students six or eight scholarships for them to go study in Serbia. I, therefore, join you to welcome Madam Speaker and her delegation. I realised that she is a lawyer just like me and she comes from a family of lawyers. Her father was a lawyer and she is a practising advocate interested in children's rights. She also chairs a Committee that is related to matters of child welfare. We look forward to the great relationship.

Currently, we have a few players in the Serbian League and one notable one is Richard Odada who joined the Red Star Belgrade. In future, I believe that we will have better players play in the Serbian league. As we export athletes to go and run in Serbia, we hope to get technical support in the football side for our national team to do better and play like Nemanja Vidić and other players who play in the Manchester United and other big teams in the world. I hope that our players in the Serbian League will get greater support and other players in our teams in Kenya such as Gor Mahia, Abaluhya Football Club (AFC) Leopards Sports Club and Tusker can get an opportunity to ply their trade in such a great country.

I beg to support.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. On behalf of the people of Narok County, I would like to welcome the Speaker and the Ambassador, who is a great friend of mine, to Kenya. I hope that with due time, we can interact well. I love the agricultural sector in Serbia and I am sure that we can learn a lot. Narok is a great County and please make a point of visiting Maasai Mara for you to see how beautiful a country, a culture and a people we have.

Kenya is a great country and out of all the counties that you can visit, please visit Narok County. When I was a young journalist, 18 years old, I was taught by a Serbian guy called Pedja Stanisic. He taught me editing. I would like to extend the same invitation. They should go and visit the Maasai Mara where they will enjoy the great wildlife migration.

I support your statement.

**The Speaker** (Hon. Lusaka): Thank you. Just for the record, we were born the same year with Madam Speaker.

**Sen. Mutula Kilonzo Jr.:** Thank you, Mr. Speaker, Sir. The rules are that you do not disclose the age of a lady.

I join you in welcoming the group from Serbia. You forgot one very important guest in the gallery who comes from my county and is also in the Speaker's Panel, Hon. Jessica Mbalu from Kibwezi East Constituency.

I would also like to recognise and appreciate our guests. When I served as a special rapporteur for the Inter-Parliamentary Union (IPU) on matters gender parity, I realised that Kenya needs to learn a lesson by having a Speaker who is a lady. When we are speaking about the two-thirds gender rule, most of the countries in the Nordic region

are doing 50 per cent and I speak this with a lot of authority. I hope that when the Bill on actualising Article 81, where we are to have one third of either gender represented in the National Assembly, we will support it in view of what is happening out there in the world. We have waited for too long. We are too far behind and Serbia is leading the way.

We welcome you to Kenya. It is a good job and we hope that our delegation at IPU, through Sen. Kihika, will continue propagating the views that have been done by one of our own. The women Atlas produced by IPU recognises Sen. Beth Mugo, who sits here, for the work that she does of fighting to have women of this world recognised as equal human beings to men.

## STATEMENTS

### DELAY BY THE MINISTRY OF EDUCATION TO DISBURSE MONEY TO PUBLIC SCHOOLS

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity.

I rise to seek a Statement from the Committee on Education on the delay in disbursement of money for free primary and secondary education.

Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Education on the delay by the Ministry of Education in disbursement of money to public schools.

In the Statement, the Committee should-

(1) Explain the reasons for the inordinate delays by the Ministry of Education in the disbursement of funds for free primary and secondary education.

(2) Enumerate the number of public schools that have so far received the funds vis-à-vis the number of public schools in the country.

(3) State when the funds will be released to the remaining schools.

(4) State the measures being undertaken by the National Government to develop a sustainable framework to address the issue of delay of the disbursement of funds to public schools.

I am a Member of the Committee on Education and, thus, will be part of the Senators who will be doing this investigation but it is important for it to go into the Hansard. It should be on record that there is concern for money to be disbursed in schools at the right time for the sake of ensuring that head teachers and principals are able to manage their schools.

There has been an outcry that some head teachers are not able to manage the day to day running of the schools simply because the funds have not been disbursed in good time. A school as an institution has its own issues. You will find that a school has many bills to clear such as electricity and water bills and children are also in school. Without money at the right time, it will be difficult for head teachers and principals to run the school on a daily basis.

**The Speaker** (Hon. Lusaka): Order. You have already made your Statement. I do not know what you are explaining. You are bordering on being out of order.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir. I was emphasizing the need for the Ministry of Education to disburse the money in good time. There is need for investigation so as to bring to a stop this kind of delay.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Musuruve, you may request the next statement.

IMPLEMENTATION STATUS OF POLICY FOR  
LEARNERS/TRAINEES WITH DISABILITIES

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you very much for another opportunity that you have given me to request for a statement on the status of implementation of the sector policy for learners and trainees with disabilities that was launched in May, 2018.

Mr. Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a statement from the Chair of the Standing Committee on Education on the status of implementation of the sector policy for learners and trainees with disabilities that was launched in May, 2018. In the Statement, the Chair should explain the status of implementation of the sector policy for learners and trainees with disabilities that was launched, indicating any challenges and successes encountered so far.

I acknowledge the fact that I am a Member of the Committee on Education and I should be part of the team that will be working on this. There is need for the Committee to work with speed and see to it that learners with disabilities are included in day-to-day activities in school and the society.

I thank you.

POWER PURCHASE AGREEMENT BETWEEN LAKE TURKANA  
WIND POWER COMPANY LTD AND THE GOVERNMENT OF KENYA

**Sen. Wetangula:** Mr. Speaker, Sir, towards the end of the last term, I sought a statement in relation to the activities of Lake Turkana Wind Power in Marsabit County and the loss or misapplication of resources between that company, the Ministry of Energy and the Kenya Electricity Transmission Company (KETRACO), a parastatal in the Ministry. You directed that the statement be made available as soon as it was practically possible and then we went on recess. Now that we are back and we are in the second week, I would like to know from the Chair of the Committee if the Statement is ready and when it can be presented to the House, so that we interrogate the content.

**The Speaker** (Hon. Lusaka): I thought I saw the Chair of the Committee who is Sen. (Eng.) Maina. Now that he is not here, maybe the Vice Chair or any Member of the Committee with information can say something.

**Sen. Olekina:** Mr. Speaker, Sir, this is an issue that we have been dealing with in the Committee. I want to inform the distinguished Senator for Bungoma that because of all those changes which took place and because of the long recess we have had, there is certain information that we could not get. However, the Committee on Energy will sit

next week on Tuesday. I request the Senator to give us time so that we find a response to his statement.

**The Speaker** (Hon. Lusaka): What is it, Sen. Wambua?

**Sen. Wambua:** Mr. Speaker, Sir, I am rising on a point of order in relation to the purported response from the Senator for Narok. A few minutes ago, the Senator for Narok was really furious about a petition that was supposed to be presented last week but it was not. Now he is here defending his committee for committing the same offence and seeking more time to give the statement. Is he in order?

**Sen. Wetangula:** Mr. Speaker, Sir, if you listened to the distinguished Senator for Narok, he was just engaged in unhelpful polemics because he did not say anything. All he said is that the matter is with the Committee and they have been busy with too many issues.

Mr. Speaker, Sir, you directed that the response to the Statement be made in two weeks. We have been on recess for two months and since we resumed, we have had two weeks. So, the knife that sliced the distinguished Senator for Trans Nzoia should be the same knife that should slice the distinguished Senator for Narok.

**Sen. Olekina:** Mr. Speaker, Sir, if you look at the Order Paper for today, after having been amended by the Senate Business Committee (SBC), you will see that we have two very important legislations. The first one is on energy and the other one is on petroleum. These are very important Bills that we will deal with.

I do not mean that what the distinguished Senator for Bungoma requested is not important. However, I remember very well that during that time, when the distinguished Senator for Bungoma requested that statement, I rose and stated clearly that we were dealing with the issue of that transmission line. We had the Cabinet Secretary for Energy appear before our Committee and we received the information.

I would like to repeat what I said so that the distinguished Senator understands. I said that we were seized of the matter, we had received information and we did not want to bring half-baked information to this House.

The distinguished Senator represents the people of this country and he has to get full information. However, if the distinguished Senator wants half-baked information, I can commit to consult with my Chair and present the information that we have tomorrow.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. The line that the Senator for Narok is taking is not only condescending but also disrespectful to this House. In fact, it is not Sen. Wetangula or this House that is no trial but the authority of the Speaker.

What does it mean to this House when the Speaker orders two weeks? It means something. Therefore, if every committee displays the same unremorseful and unrepentant manner or if every committee answers in the same way like the Senator for Narok has done, then we will not have a House that keeps time and is faithful to the people of this Republic and the Senators.

So, Mr. Speaker, Sir, in my opinion, you should rule the Senator for Narok completely out of order and give a final, authoritative and enforceable order that will apply to the Committee.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, there is a famous saying that what's good for the goose is also good for the gander. Sen. Olekina cannot speak from both sides of the mouth or blow hot and cold because that is not allowed. More importantly, there is no rule under the Standing Orders of this Parliament where time stops running after we go on recess. Therefore, it means that even if Senators work outside this Chamber, we are not all on recess. Therefore, that is not an excuse.

Similarly, Sen. Wetangula who requested for the statement is owed a report, whether interim or otherwise. A progress report is not a contradiction. Therefore, I agree with the Senate Majority Leader. Sen. Olekina should not say he will bring us half-baked information. This is the Senate of the Republic of Kenya. We are not in some outdoor place where you bring half-baked information.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. I enjoin my distinguished colleague from Elgeyo-Marakwet and urge the Speaker that it is not open to a Chair of a Committee or anybody representing him to tell this House and in particular the Chair, that when you demand observance of the orders of the Chair, then he is entitled to bring half-baked information. That does not work in this House or any House for that matter. When the Chair says two weeks, it means two weeks.

At the end of the recess, one would have expected some courtesy and decency on the part of the Committee to tell you in person or on the Floor of this House that they have not met the two-week deadline so that you give them extra time. To say that if you push them they will bring us half-baked information is taking this House a little too casually and too pedestrian.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. When Sen. Wetangula rose to ask the question, he was very specific; and I listened to him. He asked two questions; one, is the report ready; and, two, when will that report be tabled in the House for adoption? When the Senator from Narok County rose, he said all manner of things, but said nothing. What I am trying to say is that, can you direct that if a Member of a Committee has no answer to a question relating to statements or petitions, they should desist from attempting to respond to questions whose answers they do not have.

Thank you, Mr. Speaker, Sir.

*(Sen. Olekina stood up in his place)*

**The Speaker** (Hon. Lusaka): Senator, you will answer all of them together. Just hold on.

Proceed, Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I have listened to the Senator for Narok County and in my view, he does not have the authority to speak on behalf of the Committee. Would I, therefore, be in order to ask you to refer the matter to the Chairperson and stop the Senator for Narok County from consuming time that would otherwise be useful to other Members?

*(Laughter)*

**Sen. Hargura:** Thank you, Mr. Speaker, Sir. If my memory serves me right, when Sen. Wetangula asked for that Statement, the Speaker was very clear and if I am not wrong, he even gave 14<sup>th</sup> February, 2019, as the day on which the reply should be brought. Therefore, it was very specific. Even for Sen. Olekina to say that they were working on that Statement--- I thought that before they could bring a report, they would also have invited Sen. Wetangula together with the Cabinet Secretary (CS) for Energy so that he can clear issues there so that we do not also waste a lot of time interrogating things on the Floor of the House. I, therefore, think that they should be serious and we should get the report. They should also invite the CS, together with the interested Senator for us to clear these issues in that Committee meeting so that we can save the time of the Plenary.

*(Sen. Olekina stood up in his place)*

**The Speaker** (Hon. Lusaka): Sen. Olekina, do you want to make things worse?

*(Laughter)*

**Sen. Olekina:** First of all, Mr. Speaker, Sir, let me correct my dear brother, the distinguished Senator for Migori County. I do have authority because the Speaker called out the Chairperson, who was not there. He then called out the Vice Chairperson, who was also not there. The Speaker then asked for any Member of the Committee and, of course, I said yes; I then stood up and responded clearly. I will not take back my words. What I said – for me to make it very clear for the distinguished Senator for Kitui County to get it – it is not that I stood here and just emitted gas; I stood here and gave facts.

I am glad that we are finally bringing this House to a House of debate, and I am willing to take this issue head on because when you have facts, facts are very stubborn. I indicated clearly---

**The Senate Majority Leader** (Sen. Murkomen): This man is wasting time!

**Sen. Olekina:** Mr. Speaker, Sir, protect me from the Senate Majority Leader. You need to speak through the Speaker; you cannot just say, “this man is wasting time.”

*(Laughter)*

Mr. Speaker, Sir, I stood here and I will stand here again and say it. Let me break it down for my dear brother here and for the whole House to understand---

**The Speaker** (Hon. Lusaka): Order! Order!

**Sen. Olekina:** Mr. Speaker, Sir, we worked on the report. We met---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order! Sen. Olekina and your Committee; I am directing that you provide a response next week on Thursday. I also want to tell the other Chairpersons who are here not to make the Speaker’s work difficult. Make the Speaker’s

work easy, and if you are going to continue in the manner that you are doing, it is not going to be business as usual. I also want to ask the Senate Majority Leader, who hosts most of the Chairpersons, to talk to all your Chairpersons to up their game. Otherwise, it is not going to be business as usual.

**Hon. Senators:** Yes.

**The Speaker** (Hon. Lusaka): Next order.

### COMMITTEE OF WHOLE

*(Order for Committee read)*

*[The Speaker (Hon. Lusaka) left the Chair]*

IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Lelegwe) in the Chair]*

#### THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO.46 OF 2017)

**The Temporary Chairperson** (Sen. Lelegwe): Order, hon. Senators! We are now in the Committee of the Whole, considering the Irrigation Bill (National Assembly Bills No.46 of 2017). The Chairperson of the Senate Committee on Agriculture, Livestock and Fisheries is ready to move the amendments.

*Clause 3*

**Sen. Ndwiga:** Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 3 of the Bill be amended in sub-clause (1) by deleting the words “as more specifically provided in the Act for” appearing immediately after the words “Act shall apply” and substituting therefor the words “to matters relating to the”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end.

*Clauses 4 and 5*

*(Question, that Clauses 4 and 5 be part of the Bill, proposed)*

The Division will be at the end.

*Clause 6*

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**Sen. Ndwiga:** Mr. Temporary Chairperson, Sir, I beg to move:  
THAT, Clause 6 of the Bill be amended —

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause —

(1) The Cabinet Secretary shall, in consultation with the Council of County Governors, regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

(b) in sub-clause (2) by—

- (i) inserting the words “in consultation with the Council of County Governors” immediately after the words “Cabinet Secretary shall” in the introductory clause;
- (ii) deleting the word “facilitate” appearing at the beginning of paragraph (d) and substituting therefor the word “promote”; and
- (iii) deleting the word “Parliament” appearing immediately after the words “report to” in paragraph (h) and substituting therefor the words “the National Assembly and the Senate”; and

(c) by inserting the following new sub-clause immediately after sub-clause (3) —

(3A) The Cabinet Secretary shall consult the county governments of all counties affected by an irrigation scheme before issuing a licence under subsection (2)(f).

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end.

*Clause 7*

*(Question, that Clause 7 be part of the Bill, proposed)*

The Division will be at the end.

*Clause 8*

**Sen. Ndwiga:** Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 8 of the Bill be amended in sub-clause (2) by inserting the words “safe storage” immediately after the words “promote the marketing” in paragraph (k).

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end.

*Clause 9*

**Sen. Ndwiga:** Mr. Temporary Chairperson, Sir, I beg to move:  
THAT, Clause 9 of the Bill be amended—

- (a) in sub-clause (1) by—
  - (i) deleting the words “State Department of” appearing immediately after the words “the Principal Secretary” in paragraph (b) and substituting therefor the words “responsible for”;
  - (ii) deleting the words “five other” appearing at the beginning of paragraph (f) and substituting therefor the word “two”;
  - (iii) inserting the following new paragraph immediately after paragraph (f)—
    - (g) four persons nominated by the Council of County Governors and appointed by the Cabinet Secretary, taking into account the various stakeholder interests in irrigation development and management as defined in subsection (2).
- (b) in sub-clause (2) by deleting the words “include two representatives of county governments nominated by the Council of Governors and shall” appearing at the beginning of paragraph (b);
- (c) by inserting the following new sub-clause immediately after sub-clause (2)—
  - (2A) The Council of County Governors shall, for purposes of subsection (2)(b), nominate and submit to the Cabinet Secretary, the names of eight persons out of whom the Cabinet Secretary shall appoint four.
- (d) by deleting sub-clause (4).

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end.

*Clause 10 to 13*

*(Question, that Clauses 10 to 13 be part of the Bill, proposed)*

The Division will be at the end.

*Clause 14*

**Sen. Ndwiga:** Mr. Temporary Chairperson, Sir, I beg to move:  
THAT, Clause 14 of the Bill be amended—

- (a) in subclause (1) by deleting the words “an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations” appearing immediately after the words “carrying out of” and substituting therefor the words “its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule to the Constitution”; and
- (b) in subclause (2) by deleting the word “Parliament” appearing immediately after the words “and approved by” and substituting therefor the words “the National Assembly and the Senate”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end.

*Clause 15*

*(Question that Clause 15 be part of the Bill proposed)*

*Clause 16*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT, clause 16 of the Bill be amended in subclause (6) by inserting the words “and the impact the irrigation scheme is likely to have on the environment” immediately after the words “and fish producers”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clause 17*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT clause 17 of the Bill be amended in subclause (1) by—

- (a) inserting the words “in consultation with the Council of County Governors,” immediately after the words “Cabinet Secretary shall” in the introductory clause; and
- (b) inserting the following new paragraph immediately after paragraph (b)—
- (c) in consultation with the Water Resources Authority, for the handling of irrigation water effluent.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clauses 18 and 19*

*(Question that Clauses 18 and 19 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clause 20*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT clause 20 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

(3) An association may, with the approval by the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers' association for the establishment, expansion, implementation, improvement, modernization, operation or maintenance of a scheme.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clauses 21 to 24*

*(Question that Clauses 21 to 24 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clauses 25*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT clause 25 of the Bill be amended in subclause (1) by inserting the word "intra-scheme" immediately after the words "scheme development, management,".

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clauses 26 to 33*

*(Question, that Clauses 26 to 33 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*Clause 34*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT clause 34 of the Bill be amended-

(a) in subclause (1) by inserting the words “and with the approval of the Senate and the National Assembly” immediately after the words “with the county governments” and,

(b) in subclause (2) by deleting paragraph (e) and substituting therefore the following new paragraph-

(e) the requirements, procedures and forms for licensing of irrigation schemes;

*(Question of the amendment proposed)*

*Clause 35*

*(Question that Clause 35 be part of the Bill proposed)*

*Schedule*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT the schedule to the Bill be amended in paragraph 3 by deleting subparagraph (5) and substituting the following new subparagraph—

(1) The chairperson shall preside at every meeting of the Board of and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

*(Question of the amendment proposed)*

*Clause 2*

**Sen. Ndwiga:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT clause 2 of the Bill be amended by —

(a) deleting the definition of the word “irrigation” and substituting therefor the following new definition—

“irrigation” means any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees;

(b) deleting the definition of the word “license” and substituting therefor the following new definition—

“licence” means a license issued by the Cabinet Secretary or such other person as the Cabinet Secretary may authorize;`

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

*The Title and Clause 1*

*(Question that the Title and Clause 1 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Division will be at the end.

**Sen. Wetangula:** On a point of order, Mr. Temporary Chairman, Sir

**The Temporary Chairperson** (Sen. Lelegwe): What is your point of order, Sen. Wetangula?

**Sen. Wetangula:** Mr. Chairman, Sir, as a matter of procedure, I noticed that the distinguished Chairman, the Senator for Embu County is just standing at the Dispatch Box after moving a Clause. As you propose and put the question, he is just transfixed at the Dispatch Box. That is not part of the procedure of this House. Every time he finishes with one Clause, he has to take his seat and wait for the Chair to dispose of the question then, he comes again to deal with the next.

*(Loud Consultations)*

**The Temporary Chairperson** (Sen. Lelegwe): Order, Hon. Senators. It is the Chair who allowed the Chairperson to make amendments while standing because he will be making many of them.

Hon. Senators, we will now report progress of the Committee of the Whole. We are in consideration of The Irrigation Bill (National Assembly Bills No. 46 of 2017)

Proceed, Mover.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, pursuant to Standing Order No. 142, I beg to move that the Committee do report progress on its consideration of The Irrigation Bill (National Assembly Bills No. 46 of 2017) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### PROGRESS REPORTED

THE IRRIGATION BILL  
(NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)

**Sen. Lelegwe:** Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered The Irrigation Bill (National Assembly Bills No. 46 of 2017) and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to move that the Senate do agree with the Committee on the said report.

I ask Sen. Ndwiga to second.

**Sen. Ndwiga:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

### COMMITTEE OF THE WHOLE

(Order for Committee read)

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Lelegwe) in the Chair]*

THE URBAN AREAS AND CITIES (AMENDMENT)  
BILL (SENATE BILLS NO.4 OF 2017)

**The Temporary Chairperson** (Sen. Lelegwe): Order, Hon. Members. We are now in the Committee of the Whole to consider the National Assembly Amendment to The Urban Areas and Cities (Amendment) Bill Senate Bills No.4 of 2017).

*Clause 19*

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

THAT, Clause 19 of the Bill be amended in the proposed new FIRST SCHEDULE under the heading marked “City” by inserting the following new services immediately after

“Organised Public Transport”-

“Information, Communication and Technology services”  
“Telecommunication services”

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Lelegwe): Order, Hon. Senators. Since we do not have the required numbers, we will do division tomorrow.

We will now report progress of the Committee of the Whole on consideration of the National Assembly amendment to The Urban Areas and Cities (Amendment) Bill (Senate Bills No.4 of 2017).

Mover, proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, having agreed with the amendment as proposed by the National Assembly, and pursuant to Standing Order No. 148, I beg to move that the Committee of the Whole do report progress on its consideration of the National Assembly amendment to The Urban Areas and Cities (Amendment) Bill (Senate Bills No.4 of 2017) and seeks leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **PROGRESS REPORTED**

#### THE URBAN AREAS AND CITIES (AMENDMENT) BILL (SENATE BILLS NO.4 OF 2017)

**The Temporary Speaker:** (Sen. Pareno): Chairperson, proceed.

**Sen. Lelegwe:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the National Assembly amendment to the Urban Areas and Cities (Amendment) Bill (Senate Bills No.4 of 2017) and seeks leave to sit again tomorrow.

**The Temporary Speaker:** (Sen. Pareno): Mover, proceed.

**The Senate Majority Leader** (Hon. Murkomen): Madam Temporary Speaker, I beg to move that the House do agree with the Committee of the Whole on the said report and ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

## MOTION

REPORT OF THE *AD-HOC* COMMITTEE  
ON THE MAIZE CRISIS IN KENYA

**Sen. (Prof.) Kamar:** Madam Temporary Speaker, pursuant to Standing Order No. 57, I beg to move the following Motion in an amended form-

THAT, this House adopts The Report of the *Ad-hoc* Committee on the Maize crisis in Kenya laid on the Table of the House on Tuesday, 27<sup>th</sup> November, 2018, subject to the following amendments-

(a) by deleting the words “the Cabinet Secretary, the National Treasury and Planning and the Cabinet Secretary, Ministry of Agriculture and Livestock” appearing in paragraph 3 on page 11 of the Report and substituting thereof the words “Inter -ministerial Committee on Food Security.”

(b) by deleting the words “CS, National Treasury and CS, Agriculture appearing in Column 1 of Recommendation Seven on Page 111 of the Report and substituting therefore the words “Inter-ministerial Committee on Food Security.”

(c) By deleting the words “CS, National Treasury and CS, Agriculture appearing in Column 3 of Recommendation Seven on Page 111 of the Report and substituting therefor the words “Inter-ministerial Committee on Food Security.”

Madam Temporary Speaker, the reason I am bringing these amendments even as we delve into the Report itself is the fact that we have received minutes of what transpired both for the gazette notices and some of the most sweeping decisions that this Committee did. We thought that singling out the two would leave out the Chair of the Committee, who was the Head of Public Service and the Cabinet Secretary for Devolution, who were deeply involved in this. To be able to capture the recommendations of the Committee, we found that---

*(Sen. Cherargei and Sen. Kang'ata consulted loudly)*

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Cherargei and Sen. Kang'ata! Kindly, let us allow Sen. (Prof.) Kamar to make her submissions.

**Sen. (Prof.) Kamar:** It became very important that we capture all the minutes and the sweeping recommendations that they made. To capture all that, it was important to take into account the Food Security Committee. Members will be able to see that in the documents that they have and the minutes in the annexures that they have been given.

Madam Temporary Speaker, having said that, on 8<sup>th</sup> August, 2018, the Senate passed a Motion to establish the *Ad-hoc* Committee to investigate the maize situation in the country. In the Motion, the Senate resolved to inquire into the maize crisis in the country, specifically on the following-

(1) To investigate or inquire on why farmers who have delivered their produce to the National Cereals and Produce Board (NCPB) had not been paid as of that date.

(2) To inquire on the quantity of duty-free maize imported into the country during the duty-free window which was to end on 15<sup>th</sup> October, 2017, and why the period was extended.

(3) To inquire on the challenges facing the maize farmers and the NCPB and make recommendations on how to resolve the challenges.

(4) To inquire on the maize received by the NCPB in the year 2017-2018 season and to establish the suppliers.

(5) To inquire on the criteria for identifications of millers and business persons involved in the importation of maize into the country.

Madam Temporary Speaker, from the onset, the importation of duty-free maize was shrouded in mystery. Each of the Government agencies that came before the Committee gave conflicting statements and figures.

The maize crisis that led to the flooding of duty-free maize imported into the country seems to have been -- by both the public and private sector players -to profiteer from distortions of the maize value chain.

It is good to note that the Kenya Gazette notice that was given which triggered the importation was No. 3575 dated April 13<sup>th</sup> 2017 and which was---

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Order, Sen. (Prof.) Kamar; there is a point of order.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Madam Temporary Speaker. This Motion is being moved in an amended form. Whereas that is regular, we do not have a copy of the amended Motion nor has it been posted out there. I think now we have gone digital. For us to have the full tenure---

In fact, we are hearing her talk about the amendments that are being brought at this late hour today as the Motion is being moved. I was straining to hear the reason those amendments are being brought today without notice.

Although that may be justifiable, could I be in order to ask for that amended Motion either in hard or soft copy to be made available so that we do not speak to a Motion whose notice was not even given? The Motion is in the Order Paper. However, what she is moving is an amended version of the Motion.

If I heard her correctly, the full tenure of that amendment is not inconsequential. Would I be in order even for the people who will come to contribute to this Motion that as it is being moved now be available in one form or another because anybody coming into the House now will be debating the wrong Motion?

**An. Hon. Senator:** We only have a small amendment!

**The Senate Minority Leader** (Sen. Orengo): No, no, what I heard is something very drastic, not small.

**Sen. Mutula Kilonzo Jnr.:** On point of order, Madam Temporary Speaker.

**Sen. (Prof.) Kamar:** Madam Temporary Speaker---

**The Temporary Speaker** (Sen. Pareno): Order, Sen. (Prof.) Kamar. There is a point of order from Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, the second concern other than the one Sen. Orengo has raised is as follows:-

The recommendations are moved in an amended form which means that the Committee agreed on them. That will, therefore, necessitate another report that would have the signatures of the people who approved the amendments. I have been trying to look for it and I cannot unless the Chair can direct because it is not part of this bundle that has been given to us.

We are having difficulties following the amendments on the recommendations.

*(The Senate Minority Leader (Sen. Orengo) stood in his place)*

**The Temporary Speaker** (Sen. Pareno): Sen. (Prof.) Kamar, let us have the points of order and then you can respond.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, if I heard her properly--- In fact, I am not delaying. I am coming with guns blazing. I have just started. The effect of the amendment to that Motion must be borne out by the Report itself. If that is the truth, then the amendment needed consideration by the Committee to move or table an amended Report which is signed. This is because the original Motion is accurate in so far as the recommendations are concerned.

I have looked at the recommendations and the original Motion is in accord with them. However, what she is now moving in an amended form is not quite in accord with the recommendations. The recommendations are just three pages and are well laid out in the matrix. When you begin to see things being changed on such Motions the last minute, we need to know the motivation for some of these things.

**The Temporary Speaker** (Sen. Pareno): Sen. (Prof.) Kamar, you may respond to these concerns.

**Sen. (Prof.) Kamar:** Thank you, Madam Temporary Speaker. I wish to respond to the concerns of the Members. It has not changed the form but has increased the dragnet. This is because the minutes that came to us as the evidence of why we wanted to deal with the Cabinet Secretary(CS) for Agriculture and Irrigation, and the Cabinet Secretary for National Treasury, we discovered that the meeting that authorised the importation of duty free maize was chaired by the Head of Public Service where the three CSs were present--- If you look at the minutes of June 21<sup>st</sup> and November, you will find that if you concentrate on two members, you will have left the real gist of what happened.

This is therefore, to help Members understand. In fact, my fear was that you were going to amend it to include that because the Members of that Committee are the ones who made the sweeping recommendations that flooded the country with maize. It was not a decision of two people and the only evidence we have are minutes. We, therefore, met as a Committee and relooked at the minutes because we got those of November later. They are more damaging than those of June that we had used on our earlier recommendations.

There is nothing we have removed from the recommendations except to expand the number of people that we need to be investigated.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Sen. M. Kajwang'.

**Sen. M. Kajwang'**: Madam Temporary Speaker, I have chaired a Committee and tabled reports in this House. The sanctity of a report, once tabled, is not absolute because there are amendments that are allowed but they must follow some logical sequence.

Madam Temporary Speaker, recommendations are based on observations and findings. Once a report is tabled, one cannot start introducing new evidence in the form of minutes. If those minutes were not seen by the Committee and the observations made, it is a little bit dangerous to say that after their report was tabled, we came across certain minutes and realised that it was an inter-ministerial Committee and not just two CSs that were responsible for this. Could you rule her out of order because she is attempting to bring in new facts and evidence once this Report has been tabled?

**Sen. Orengo**: Madam Temporary Speaker, she is now just gotten into the landmine. If you look at the report, the matrix on recommendations says Cabinet Secretary (CS) Ministry of Agriculture and Irrigation should do this. However, but when it comes to the CS, the National Treasury and Planning, it is very damning. It says he should take full responsibility as CS, National Treasury.

In regard to the other CSs and the people who are in the Inter-Ministerial Committee, the Committee made general recommendations and observations. However, when it comes to the question of responsibility, the Report puts that squarely on one person who is the CS, the National Treasury and Planning. I have no problem with that. However, what you are trying to do now is not bound by the recommendations you have made. What do we do with these recommendations? You are telling us to condemn people that you have not condemned in the Report. If I understand the English language very well, what you are trying to do is an afterthought which is not bound by the report.

Look at this matrix and you will find what you are trying to do is giving a general cover to somebody you have already trailed your guns at. Whether your evidence supports that position, I do not know. However, you should be faithful to the Report and not try to introduce amendments to it by amending the Motion.

**The Temporary Speaker** (Sen. Pareno): Senate Majority Leader, do you still want to pursue your point of order?

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, the interest of this House is the truth, the whole truth and nothing, but the truth. Therefore, any amendment that enhances the access to truth must be supported. I understand the Chairperson of the *ad hoc* Committee to mean that even though by the time they initially adopted their Report, they had come to the conclusion that two people were culpable---. I understood her to be saying, if I got it right because I would also ask that question, it is not just two, but two plus.

It is in the interest of this House to pursue, not just two people, but plus the ones that have been identified by the document. If we, as a House, are interested in not

covering up for anybody, we should be willing to accommodate the Committee's evidence if it leads to culpability of more than two people.

For me, we are the ones who actually should be commending the Committee for going the extra mile to include that evidence that enhances the information regarding the persons of culpability than being the ones who are trying to undermine. Otherwise, we would be seen to be working at the behest of certain people who would like their names not to be included.

**Sen. Omogeni:** Madam Temporary Speaker, I was privileged to serve as Member of this Committee. I am taken by surprise because we made these recommendations after serious deliberations. We did not just plug the name of the CS, the National Treasury and Planning from the air. It was after analyzing the evidence that was presented before the Committee. I have tremendous respect for Sen. (Prof.) Kamar who was our Chairperson. However, we, as a Committee, have not met to change the recommendations that we arrived at.

I want to plead that we should be careful---

**Sen. (Prof.) Kamar:** On a point of order, Madam Temporary Speaker. He was absent.

**The Temporary Speaker** (Sen. Pareno): Order, Sen. (Prof.) Kamar. Let him conclude with his point of order.

**Sen. Omogeni:** Madam Temporary Speaker, we should be careful to ensure that we leave the integrity of this House intact.

The time that we, as a Committee, were given to arrive at the recommendations, lapsed long time ago. What would be the basis for us to change recommendations that the Committee had already made during the life of that Committee?

Madam Temporary Speaker, I want to invite you to rule that my good friend, the distinguished Senator for Uasin Gishu is out of order and the Committee's recommendations should remain as they are. If at all we need to add more meat to these recommendation, then it should be to add on top of the recommendations that touch on a particular CS. Not to delete, but to say in addition to the recommendation that touch on that CS, we can add. We do not have to delete any of the recommendations.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. I was in the meeting that deliberated on these amendments. I hope Sen. Omogeni might have been away serving his county issues. Anything that brings justice to farmers, we will support fully. I want to thank Sen. (Prof.) Kamar for extending the dragnet to ensure more people are held responsible. These decisions were made after listening to many people.

We want to table a comprehensive Report. Therefore, we must improve on it and extend dragnets so that many people should be responsible for any decision that led to the maize crisis in this country.

I am a Member of the *ad hoc* Committee on maize. I did attend the meeting when Sen. (Prof.) Kamar called all of us. Some of us were absent. If any Member was absent, he must have sent an apology to that Committee. However, it is not fair to come to the Floor of this House and make major allegations that there was no meeting. Some of us attended that meeting and agreed in principle with the Report that was brought here by the Chairperson of the *ad hoc* Committee.

**Sen. Were:** Thank you, Madam Temporary Speaker. I am also privileged to be a part of this Committee. I was at the meeting that looked at the amendments. We agreed with the amendments, but not to delete the CS, the National Treasury and Planning. We also agreed to include the Inter-Ministerial Committee. We are including, but not deleting. We are expanding the culpability not deleting any of those recommendations.

If the Chairperson, Sen. (Prof.) Kamar, calls for deleting some of the recommendations in this Report, that is where the issue is.

Secondly, are we arguing whether the amendments are okay or not. If at all they are okay, then we should be looking at the process of tabling them before this House. Have we followed the process or not?

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I raised this issue. It is a question of process on how these amendments have been done. We appreciate that you can amend and delete, if you want. However, this Report will face this Senate for purposes of decision. If it goes out there, it is also going to face the problem of whether or not there is a process that was followed.

Listening to some of the Committee Members, I am of the view that, maybe, this ought to be stepped down because the public is watching, so that these small issues can be corrected by the Committee.

If a meeting was called where Sen. Cherargei was seated and Sen. Omogeni was missing. Whatever they did, why is it so difficult to present that in addition to this information, so that as we contribute, we understand where the Committee is coming from? We are not challenging the Committee. We are just asking them to provide us with more information, so that we can support the Report whether to add, delete or substitute your recommendations. As far as this is concerned, it is not here. That is what we were asking.

**The Temporary Speaker** (Sen. Pareno): We will have the last point of order from Sen. Wetangula.

**Sen. Wetangula:** Madam Temporary Speaker, I am the Vice Chairperson of this Committee and we did a lot of good work. The country was happy and confident. The mood that this Committee has brought this House can be captured in the meeting with the farmers in Eldoret where they literally told the Committee, in the presence of our Speaker and other Members including the Senate Majority Leader and the Senate Minority Leader, that they saw hope in the resolution of maize issues through this Committee.

The meeting may have been called but I was unable to attend but I want to agree with Sen. Mutula Kilonzo Jnr. and I know that lawyers, like the Senate Majority Leader and the distinguished colleagues behind me, will agree that justice is not what the judge does. It is what the public thinks that the judge is doing. I want to encourage my sister that the headwinds we appear to be running into may not be helpful.

In my view, we will amend the Report to add the culpable group, the inter-ministerial committee. This is not coming from out of the blues. If you get the whole volume of our proceedings, we have the minutes that were Tabled by the National Treasury and the Cabinet Secretary for the Ministry of Agriculture and Irrigation and they are part of the proceedings. It is that inter-ministerial committee that made callous recommendations like ordering the immediate release of a ship loaded with maize at the

port without the Kenya Bureau of Standards report or anything and it is not held culpable in the Report. We can amend because they are part of the proceedings and bring them into the net. It is the same group that tells the Government to buy 1.5 million bags of maize from Kenyan farmers but imports 4 million bags from Mexico at harvest time and you will find that in the Report. It is the same committee.

I want to agree with Sen. Mutula Kilonzo Jnr. and what Sen. Orengo has said. Procedurally, we need to bring a properly drafted amendment that will then place on record the widened net of culpability and also bring on board a group called inter-ministerial committee on food crisis that created a crisis instead of solving the crisis.

**The Temporary Speaker** (Sen. Pareno): We will have the last one from Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, the history about amending Motions and reports is as old as this Parliament. Do you remember the JM Kariuki Report? Do you know that I was here? The Report that was agreed by the Committee was not the one that was presented in the House. The same applies to the Kennedy Kiliku Report. We can go to so many of those reports. Historically, they are very important, particularly when the Chairperson is Sen. (Prof.) Kamar who will decide that being a Senator is being a scholar. I have a Report here of a commission of inquiry on maize that took place in 1965 and if you look at that Report, it is as true as it was then as it is today.

If you look at the Report adoption list, the Senator for Nandi County, who is making a lot of noise, was not there.

*(A Member spoke off record)*

No, I am just saying. He was not there. Faithfully, minutes of every meeting of the Committee are attached. Where are the minutes of this other meeting? This is what we are asking so that in the future, we will not be judged harshly. It is still there.

**The Temporary Speaker** (Sen. Pareno): I need to make a ruling on this. Can we--

*(Sen. Murkomen spoke off record)*

Sen. Murkomen, you will have one minute, then Professor will respond before I make a ruling.

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, just for the record. If you look at the Report that was Tabled in the House, a lot of the minutes are attached to it and they show that Sen. Omogeni and Sen. Cherargei gave apologies. Therefore, it will be unfair to say that it is only Sen. Cherargei who missed. On the day of adopting the Report, both of them were missing. I did not want an attack.

*(A Member spoke off record)*

That is for the record. I did not want Sen. Orengo to mislead the House that it was only Sen. Cherargei.

On a more serious note, there is a valid argument being presented by Sen. Mutula Kilonzo Jnr. and seconded by Sen. Wetangula. Sen. Orengo said many things but the way forward was mentioned by Sen. Mutula Kilonzo Jnr. in terms of standing down the Report for the Committee to present us with all the evidence of adoption that is required.

Those of us who come from the maize growing region and the country are watching. It must be known that our people are anxious. They are not just anxious but they are also angry. In as much as this Report captures the way forward, we must approve it in this House for us to find ways of over-sighting those institutions in so far as the way forward is concerned. As we speak, the farmers are unable to deliver their maize to the NCPB and they have no guarantee of getting subsidised fertiliser. As we speak, those who supplied their maize last year have not been paid.

Even as we stand down the Committee Report, I beg you to order that this Committee goes to meet now, put their things in order for us to meet here tomorrow. This week should not pass without this House having ventilated on this Report and agreed on its way forward. Some of us have been asked so many questions on what the Senate is doing. It is not just an individual Senator but us; the House, that would get out there and say that we provide leadership and that we were present and available. That is why I did not move from my seat because of the importance of this Report to all of us, who are maize farmers.

If we leave it the way it was, some people would say that some are saving others and some are including others which is not a good spectacle having in mind where we are going. Let the Report be Tabled tomorrow or latest Thursday for us to debate.

*(A Member spoke off record)*

Tomorrow, Madam Temporary Speaker.

*(Sen. Orengo spoke off record)*

**The Temporary Speaker** (Sen. Pareno): Sen. Orengo, you are not on record. You will have one minute.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I am happy with what the Senate Majority Leader has said. I want to make it clear that when I was reading this Report, I was very excited about it. I think that they did a very good job. I was coming here to commend the Committee for the work they have done only to arrive and be confronted with the amendments which are not supported by the Report.

Otherwise, nobody should mistake me in terms of the product of this Report. Knowing the Members of this Committee, it is not without a reason as to why this is a good Report. We had very good people in this Committee. In substance, the Report is a report of a House of honour and dignity, like this Senate. I hope that it will be done tomorrow. Making and amendment is not difficult if it is just amending the Motion. We

could still debate this Report tomorrow. I agree that the farmers have been waiting for a long time for this Report to be considered by the Senate.

**The Temporary Speaker** (Sen. Pareno): You have one minute, Sen. Wetangula.

**Sen. Wetangula:** Madam Temporary Speaker, I enjoin what the Senate Majority Leader said. In fact, when we were in Eldoret, farmers told him that he is a very good speaker and that he should speak about maize. I am happy that he has spoken about maize and farmers here today.

Madam Temporary Speaker, for avoidance of doubt, this Committee sat and conducted its affairs with absolute integrity, and we laud Sen. (Prof.) Margaret Kamar for chairing the Committee. She never missed any meeting except once or twice, when she was out of the country; neither did I.

Madam Temporary Speaker, I agree that you prioritise this report to be debated tomorrow. In fact, as we are sitting here, farmers from all over are sending Short Message Services (SMSs), looking to this House to give them some form of solution. Therefore, let me dispel any anxiety that may be there. We had Professor here; we had Senior Counsel Omogeni, Madam Milgo, Madam Petronilla, and Lawyer Cheragei. We had a good team, they did a good job and we visited--- You will be shocked by the rot in this country. We went to a place in Kisii, where the National Cereals and Produce Board (NCPB) delivered seeds, which were bought by farmers and not a single one has germinated; yet money has been frittered away.

I, therefore, want to urge you, Madam Temporary Speaker, to give this report top priority, and to disabuse any Member from thinking anything different. We will bring an amendment – as Sen. (Prof.) Kamar had proposed – that captures more people, and not reduces the culpability of anybody.

**The Senate Minority Leader** (Sen. Orengo): And not in a general way!

*(Laughter)*

**The Temporary Speaker** (Sen. Pareno): Sen. (Prof.) Kamar, can you give a quick response?

**Sen. (Prof.) Kamar:** Thank you, Madam Temporary Speaker. I want to appreciate the contributions that have come in; I think they have given us an insight of how we should bring in amendments in a procedural manner. I am also impressed that this was a meeting of seven lawyers in this room, and we are very rich when it comes to that. I am, therefore, very happy and we can go and introduce that.

Madam Temporary Speaker, there is no introduction of anything new. These are minutes that were given to us; and you can find them in the annexures. From them, you will discover that the committee called the Inter-Ministerial Committee on Food Security which is composed of the Cabinet Secretary (CS) of Treasury and Planning, the CS of Agriculture, Livestock, Fisheries and Irrigation; the CS of Devolution and all their Principal Secretaries; and the Principal Secretary of Internal Security. Therefore, the reason I was using the word ‘delete’ was basically because all of them are inside this one Committee.

We will be able to mention all 15 of them. The main reason that we thought we must relook at this is the fact that there are more sweeping recommendations that we were given in November, when maize had been harvested and four million bags of maize were being imported immediately from Mexico, which was an immediate action for 9 million bags.

We, therefore, just want this thing to be very accurate and perfect so that it does not distort the message. In fact, I would have been surprised that the same Members would not pick out that we need an amendment. That amendment would have been introduced by them. That is why when we sat down, we said, 'let us do this.' I guess it is procedural, because the procedure was wrong. What I was made to understand was that we can actually move it in an amended form, which is allowed in the House, and that is why we did what we did.

Therefore, yes, we will go and sit now, correct whatever must be corrected and we will be back here tomorrow.

Madam Temporary Speaker, I thank you.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, I need to make a ruling in view of the debate we have just had. I want to start by invoking our own Standing Order 57, which says:

“The Speaker may permit a Senator to move in an amended form a Motion of which notice has been given if in the opinion of the Speaker, the amendment does not materially alter any principle embodied in the Motion.”

Having heard all the concerns that have been raised and the debate that has followed, in my view the issues that have been raised could materially affect or impact on what this Motion is all about. I have heard that we have not seen the amendments; and we have not seen any signatures that may support the amendments from the Members. In fact, from the submissions of the Members, it looks like they do not agree on what was really agreed on.

As the Motion for amendment was being done, I heard Sen. (Prof.) Kamar talking about deleting, while another Member of that Committee said, “We did not say ‘delete’”. Others said, “We said ‘add.’” Therefore this, to me, are material factors that need to be relooked at.

I also note that an *ad hoc* Committee is not permanent; the life ends when you do your report and table it. Therefore, there is no *ad hoc* Committee in existence as we sit now. Therefore, my ruling is that Sen. Kamar, we will have you defend your amendments before the House. Amendments can always be brought in at the time of debate, and it is for the Members to accept or talk against your amendments. Therefore, my ruling would be that this matter be prioritised tomorrow. The best you can do is to defend the amendments that you have proposed.

On that note, you should also supply the amendments and probably the signatures supporting your amendments. You should also defend the procedure under which you arrived at those amendments. This House is not against a good report, but we would want to know the procedures that were used to bring in those amendments. Therefore, the

matter goes in for defending tomorrow. You will defend your amendments before this House and the report can be amended on the floor of the House.

We all note that the maize issue is a real issue, and it is properly so called; and we need to handle it carefully but honestly. That is my ruling.

*(Applause)*

**The Temporary Speaker** (Sen. Pareno): Next Order!

## BILL

*Second Reading*

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL  
(NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)

*(Sen. Murkomen on 29.11.2018)*

*(Resumption of debate interrupted on 4.12.2018)*

**The Temporary Speaker** (Sen. Pareno): I note that when this matter was last on the Floor, Sen. Kihika had a reminder of 13 minutes. I note that she is not here and, therefore, it is open for debate.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Cheragei Samson Kiprotich.

**Sen. Cheragei:** Madam Temporary Speaker, I was still on the maize issue; so I think my point of order has been overtaken by events because I had already contributed to this Bill.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Mutula.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. I rise to support the Bill. I note, with some element of disappointment, that the said Bill is not on this machine and, therefore, I am unable to access it here.

Madam Temporary Speaker, I am aware that there is a lot of interest in this Bill. The idea of merging the two entities that are managing this portfolio is being resisted so much that it has been very difficult to arrive at a consensus as to how to move this matter forward. Our voice must be heard on what appears to be a contest between this two major retirement benefits schemes; the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND). Those who resist the merger can only do so on the basis of personal interests and not interests of the people who will benefit from this scheme.

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Madam Temporary Speaker, during the Annual Legislative Summit held in Mombasa, we heard that the amount of money involved is billions of shillings. Therefore, the fact that we have two Bills; one from the Senate and the other from the National Assembly, and we are now repeating the debate on something we had done, tells you something. That tells you that we need to get to the bottom of this matter before passing this Bill as we did during the debate on the Bill by the Senate. In my view, the difference between this Bill and the one that the Senate passed is negligible. We must go back to the nature of determination of Bills.

The reason we are in this quagmire is because we have been unable, as Parliament, to find an amicable method of doing our work. If matters concerning counties are resident in the Senate, why then did we have to insubordinate ourselves to a Bill from the National Assembly on county matters? Every time a question of jurisdiction of the powers of the Senate becomes very hot when we agree to be in-subordinated by the National Assembly. They do not do the same when it comes to matters which they think or perceive concern money Bills.

Madam Temporary Speaker, these are concerns which must be raised. To that extent, the original version of this Bill passed by the Senate should have been given priority. However, since we agreed not to give it priority, the Bill as tabled before us from the National Assembly which has tremendous interests from very many quarters must be given priority and must come for voting as soon as possible.

I was in this Senate when this Bill came here and I know the interests that were involved. I know the people both for and against this agenda. The people who did not want this Bill to pass finally had their way. They should not have their way and this must be put to rest as soon as possible so that we have a common way of dealing with retirement and the benefits thereafter.

There are many people who seek either pensions or retirement benefits after leaving office and they find so many bottlenecks and the reason is, we do not have a framework. We were asking this question recently. Now that one commissioner is here, the question must be answered. Why is the pension of Members of Parliament (MPs) resident in the national Treasury as opposed to the Parliamentary Service Commission? Why do MPs have to queue at the national Treasury when we can easily manage ourselves? Figure this out. If Members of the National Assembly and the Senate go through this, how worse does it get for any other person who is covered under this retirement benefits scheme?

If the Parliamentary Service Commission is managing our budgets as a kitty, they should manage our pensions together with that of the staff of Parliament, so that once you leave here, you do not have to go to the national Treasury. That Fund should be administered and invested here to benefit Members but more importantly, it should be paid promptly upon retirement. On the day one retires, they should be given a package and go home.

I am aware that a lot of these funds have been invested in buildings. There is a building along Ngong Road with nine floors where they collect money. Without the benefit of this Bill, these things become ambiguous.

There is a 5 per cent levy that is used for administration. You do not want to even do the calculation of 5 per cent of the billions of shillings that are in the retirement benefits schemes, both in Local Authorities Provident Fund (LAPFUND) and Local Authorities Pensions Trust (LAPTRUST).

Those people are like cartels or mafia. They are even prepared to pay bribes so that these Bills do not go through because they get money. We must get to the bottom of this Bill and this Bill must see the light of day.

In conclusion, as I support the framework, Members of this Senate must interrogate why the National Assembly is interested in this Bill to the extent of coming up with The County Governments Retirement Scheme Bill (National Assembly Bills No.10 of 2018). That is a contradiction and dereliction of Article 96 of the Constitution of Kenya because this is our work and jurisdiction and this Bill should have originated here.

Madam Temporary Speaker, we should not have agreed to those Motions and the people who thought that the National Assembly should have had sway in a Bill that we had debated, conducted public participation and spent a lot of resources on. A day will come when these people called the mafia will not see the light of day.

I support.

**Sen. Ochillo-Ayacko:** Thank you very much, Madam Temporary Speaker. I totally agree with Sen. Mutula Kilonzo Jr., that what has been going on is a manifestation of serious vested interests from many quarters with the sum total effect that the mandate of the Senate is being negated.

There are interests out there because I have heard whispers and rumours. There are interests of people who do not want a single entity to manage the retirement benefits of county workers. The interest of these people is the fees and profits that they get from managing these funds and to ensure that they continue living on the sweat of the exploited county workers.

I come from Migori County where the county workers are miserable and I believe that other counties also have workers that are miserable. If you look at the skills and competencies, you will see that they still have people with skills like those that people had during times of local authorities. The people who have been hired lately are cronies of powers that be. Lately, I noticed that enforcement officers are being hired and my county wants to hire 350 officers.

We do not have nurses or clinical officers and Early Childhood Development Education (ECDE) educators or tutors in those areas. Those are critical devolved functions. We are bereft of staff but we continue hiring people like enforcement officers because in political hard times, we use them to fight our battles.

To add insult to injury, issues of pensions are not being addressed. As I speak today, Members of the County Assembly (MCAs) who had the misfortune of not being re-elected in Migori County have not received their gratuity. I know that problem is replicated in many other counties. People who served in dignity and built humble facilities are now paupers walking all over the place looking for alms from us. A Bill of this nature is an important Bill that will ensure that there is continuity and decency in the lives of people who have given service to this nation.

Madam Temporary Speaker, when cartels and faceless characters hide somewhere and introduce interests that we do not understand, if we do not stand with the public interest as a House, we will not know happiness on earth and heaven. This is because we are here to transact good pieces of legislation for our nation now, tomorrow and the future, since we are the ones who have the privilege today.

The vested interests that we are talking about today have infiltrated our sister House, the National Assembly, and a Bill which is competing in jurisdiction to our jurisdiction, has been introduced in that House with the sole purpose of trying to steal the thunder that belongs to this House on matters county. I want to agree totally with my brother, Sen. Mutula Kilonzo Jnr., that it is high time that this House stood firm and shook off attempts by vested interests to piggyback on very humble people who sweat it out, get rained on when we get elected, and are excited when we seek votes from them.

Madam Temporary Speaker, where there is departure from what this House took time to deliberate, debate and agree on – that is manifested in the Bill that our sister House has put in place – we, as a House, have no option but to ensure that our position is the one that prevails. It was in the wisdom of Kenyans in 2010 to have given us the responsibility of defending and protecting the interests of counties and the people who live in them. The other House was given other responsibilities, and it is the responsibility of all of us including the Chair and those who believe in constitutionalism, to stand firm and ensure that we are the House speaking for the interests of counties and their employees.

Madam Temporary Speaker, matters to do with pension are very sensitive. In my earlier life as a Member of Parliament, I had to sit out there for a few years to wait for my pension, and it was not a nice experience. I had to complete various forms and seek information from people behind the counter to get my pension at that particular time. It is not an experience that you would enjoy. At the time you are serving and contributing to your pension, you want to have a smooth and comfortable life.

In any event, life expectancy in Kenya is about 57 years, and if you look at the average age of Members of this House, all of us are close to death. In fact, many of us are living on borrowed time. Therefore, if we look at the life expectancy of Kenyans, matters pension should be taken seriously. Kenyans do not live for very long because we are stressed, politically very hot, our blood pressure is very high, and our sugar levels are wild. Therefore, pension reliability and security of pension consistency is something that all of us should talk about and know that it touches on the lives and future of our people.

I want to end my remarks there and urge my colleagues who are coming after me to stand firm for the dignity of this House. They should not forget that it is the mandate of this House to ensure that interests of counties and their staff are protected and held dear.

Thank you.

**The Temporary Speaker** (Sen. Pareno): Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker for this chance. I will begin on a very interesting note where the Senator who has spoken before me has urged us--- When contributing to Bills, the normal tradition is to share your thoughts on what

you think about the Bill that is before the House. You either agree or disagree with the thinking.

However, so passionate is the Senator for Migori that he has urged us to put the interests of the county workers first. Earlier on, he mentioned why he considers pension to be a very serious matter. Having gone through the experience himself, he knows that it is something that we need to treat with a lot of care and caution. I take his advice seriously because it is said that it is better to learn from the mistakes or experiences of others, other than go through it yourself, especially during difficult and hard moments. Therefore, the advice by the Senator for Migori County is heeded.

Madam Temporary Speaker, the history of this Bill, as explained very ably by Sen. Mutula Kilonzo Jnr., is very interesting because for those of us who have had an opportunity to sit through the last Session of Parliament, were able to read through the intrigues of what is being brought to fore. By and large, it is a competition of two entities that are primarily supposed to take care of the interests of the county government workers.

The truth of the matter is that industry reports will inform you that while one faction has run away with the executive of county governments, the other one has gone with the county assemblies. That is why during our two or three Legislative Summits that we have had before, you will realize that one of the entities is always a constant member. The diaries that we are given and the notebooks that we carry out of the Summit are sponsored by these organizations.

Madam Temporary Speaker, when we go to the Devolution Conference, which leans more towards the executive, you will realize that all the diaries and notebooks that will come towards that are brought by the competing firm. This Bill intends to ensure that the pensions of staffers who work with our county governments are safely secured. This will ensure that in future, when one eventually retires after having served in our county governments, they will be able to earn a decent living and enjoy the benefits of their sweat decently, just like any other person who worked in Government or parastatal.

Madam Temporary Speaker, I can see that Sen. Mutula Kilonzo Jnr., has crossed the Floor, and it is good for his party leader to note that he now sits on this side of the House. I agree with his framework of thinking, but do not share his view that anybody who would have a different view to the merger can do so based on the words that he used; 'vested interests'. I do not think that is accurate. We must always encourage the principles of democracy that appreciates that at different times, we may hold different views, but it is not necessary, due to vested interests. It is just about who we are, and maybe that has a lot to do with your training as a lawyer as opposed to those of us who come from a social science background, where we know that human beings are different and their perception and appreciation of life issues varies from one to the other.

I have taken time to read and also listen to the explanation being given by those who are opposed to the merger of the two entities. The major point that they raise, unfortunately, though not tried in Kenya, but in other jurisdictions where pension funds are left to compete with each other, so that you ensure that there is maximum return on those that have invested. Of course, when you pull together resources as this Bill is proposing---

The crux of the matter is that there are those who are saying: “Let us pull resources together, so that we have one strong institution that can ensure that the workers enjoy and reap as much as possible from their pension, so that the Fund continues to grow and they earn more.” Those are the centralists.

Madam Temporary, Speaker, then there are those who are pro-separation whose argument is that the only way in life that human beings get better is when they compete with each other. I think it is a very informed debate to me. The only thing that I agree with Sen. Mutula Kilonzo Jnr., is that time has come for us to make a decision. We cannot continue with this endless debate for too long. That much, I agree with him. The bit that I did not agree with him on was on what the motivation for those who want a merger of the two entities will be.

Therefore, the framework that is being proposed on this Bill is generally agreeable to me. I think by and large, it captures the feelings and the ideas that staffers and people who work with county governments would wish to see in a properly functioning workers’ scheme. Let us not forget about the National Social Security Fund (NSSF).

For those of you that are quick to point fingers and those who are saying: “Do not merge”, just look at the NSSF with its history as an institution. In fact, somebody was wise enough to note and let us know during the deliberation, that the only reason that the NSSF has never collapsed is because of how liquid it is. This is an organisation that by law, every month, has billions of shillings checking into its account. Otherwise, if it was just a general business like any other where you have to sustain it with cash flow, it would have collapsed.

Madam Temporary Speaker, we keep reading about scandal after the other. Imagine what would have happened if pension workers of such institutions had been grouped and separated where you have maybe secretaries and dock workers, each with their own independent pension fund? Would it have been more beneficial for them or would it have been difficult? Will the workers suffer based on that decision?

The only reason why I am more inclined towards the merger and agree with this Bill is based on our history and my understanding of our society as a Kenyan people. That many of the times, we are not so good at keeping institutions alive. To the contrary, most of our parastatals and Government institutions, as are being suggested here, end up collapsing because of mismanagement and people trying to profiteer and do things that are not ordinarily right.

However, given the safety gaps that have been put in place and the proposal that is being made on how they will merge and ensure that those who have invested in either of the funds, have their investments assured and that they will continue to profit even after the merger, then I tend to lean towards being convinced that the merger of these institutions will be a good thing.

The most important thing is that at the end of the day, we are talking about funds of people who later on in their 60s, perhaps you do not have any other place to turn to other than to wait for that simple coin that comes to you at the end of the month for the years that you were able to work.

Madam Temporary Speaker, societies continue to evolve. Culturally, as a people, we still thrive on dependency model of family dwellings where you know by the time you are 50 or 60 years, you have taken your kids to school and are, therefore, working. Each time you are sick, they are able to send you money. The truth of the matter is, as society continues to evolve – we can learn this from other democracies or countries that are older than us – people will get to a point where they no longer care.

It will come to a point where it is possible that you are 70, your children are working and they are comfortable but they do not just give a damn about you. It is the truth. It has happened in other jurisdictions. The same could be possible about us. Much as our African culture at the moment at least has a good social safety net where the elderly are well taken care of, as we make this legislation, it is good to remember that society is moving towards a place where people need to know that they do not have to depend on others for them to survive.

*(Sen. Madzayo motioned Sen. Cheruiyot to conclude)*

With those very many remarks, I am willing to conclude. I can see Sen. Madzayo hurrying me. Having been the Chairperson of the Committee that first brought this Bill to this House in the last Parliament, I am sure that there are things that he wants to tell the House. In that respect, I want to conclude and listen to his wisdom.

**Sen. Madzayo:** Asante, Bi. Spika Wa Muda, kwa nafasi hii nami nitoe maoni yangu. Kwanza, ninakubalina na ndugu zangu wote, Maseneta walionitangulia kuongea, akiwemo Sen. Mutula Kilonzo Jnr., Sen. Ochillo-Ayacko – ambaye sijui kama ametoka ama yuko kule nyuma – na vilevile, Sen. Cheruiyot.

Kwanza mimi nilikuwa Mwenyekiti wa Kamati hii ya kuangalia hasa zaidi mambo ya wafanyikazi wa kaunti katika Bunge lililopita. Ukizingatia zaidi, utaona kwamba ni jambo la aibu hivi sasa tunapongea. Ni aibu kubwa sana kwa Bunge la Seneti kujadili Mswada huu ambao haukuanzia hapa katika Bunge la Seneti. Ni kwa sababu haiwezekani kuwa tutakuwa na mambo yakiendelea katika serikali za mashinani hasa ikizingatia sana pesa za wafanyikazi ambao wamestaafu. Hicho ni kitu ambacho lazima kianzie hapa.

Bi. Spika wa Muda, mimi mwenyewe nikiwa Mwenyekiti, nilianzisha Mswada huu hapa na tukaenda nao mpaka mwisho. Wakati ukatupata na kukawa na vikwazo vile ambavyo ndugu zangu wamesema, ya kwamba kunazo *interests* tofauti ama kunao watu wenye nafsi zao tofauti, na tulifika pale karibu na Mto Jordan halafu tukaona mamba wengi sana. Ikabidi sasa haiwezi kuvukika.

*(Laughter)*

Hayo yote ni kwa sababu kulikuwa na watafunaji ambao wako na nafsi zao za kibinafsi.

Kitu muhimu katika Mswada huu ni sisi sote kama Wakenya na Maseneta ndani ya Bunge la Seneti, kuzingatia ya kwamba sisi tukilumbana au kushindana, watakaoumia ni wafanyikazi ndani ya serikali za mashinani katika kaunti. Lengo la Mswada huu ni kuona kwamba tumeweka pesa zao sawa sawa na kuwa kuna mikakati bora ya kuona

kwamba pesa za wafanyikazi zimewekwa mahali ambapo kila wafanyikazi wanapofanya kazi na ikifika wakati wa kustaafu, wanaona pesa zao ziko katika hali madhubuti na wanaweza kuzifikia, kuzitoa na kuzitumia.

Jambo la kuaibisha zaidi ni kwamba, kumekuwa na majabali wawili wakipigana kuhusikana na mambo haya ya pesa za wafanyikazi za kustaafu. Na sijui ilikuwaje wakati huu ikaonekana kwamba Mswada huu ni lazima uanzie katika Bunge la Kitaifa. Jambo hili ni makosa makubwa.

Niliweza kulisema jambo hili na kuliweka wazi katika Kamati yetu. Ninashukuru ndugu yangu Mwenyekiti yuko hapa. Nilipinga sana na nikasema si haki kwa Mswada huu kuanzia katika Bunge la Kitaifa. Mswada huu ni lazima uanzie katika Bunge la Seneti.

Lakini kama tunavyoelewa, wakati ule kulikuwa bado hakuna *handshake*. Kwa hivyo ilikuwa ‘wengi wape’. Na ikapita ikaendelea. Leo tunajadili Mswada huu ukiwa ulipitishwa na Bunge la Kitaifa kisha kuletwa hapa. Sisi ni kama ambao tumeambiwa ‘jadilieni yale yaliyoko sasa.’

Wafanyikazi katika kaunti zetu ni binadamu kama sisi. Wanaweza kucheleweshwa malipo yao ya kustaafu ama ya uzeeni. Utakuja kuona ya kwamba, wakati wa kustaafa, utashangaa kama mtu huyu alifanya kazi hapo awali ama hakufanya kazi kabisa, kwa sababu atakuwa amecharara na hali yake ya maisha ya baadaye yanakuwa mabaya sana. Watoto wake pengine hawataendelea na masomo kwa sababu ya ukosefu wa karo. Wakati mwingine mabibi wao wanawatoroka na wanaishi maisha ya upweke.

Mswada huu ni muhimu sana kwa Bunge hili la Seneti. Tunahitajika kujadiliana na kutafakari kwa undani sana ili tuweke matakwa ya wafanyikazi wa kaunti mbele wanapostaafu. Wakati huo, watoto wao watakuwa wameajiriwa kazi kwa sababu watakuwa na umri wa zaidi ya 20.

Kwa hivyo, ni lazima tuhakikishe kwamba watakapostaafu wapate pesa zao bila matatizo yoyote. Ikiwa mtu atastaafu, basi apewe haki yake mapema ili pesa hizo zimsaidie katika maisha yake ya baadaye. Pesa hizo zitamsaidia kupata matibabu anapogonjeka, kuwaelemisha watoto na wajukuu na pia kujikimu kimaisha kama watu wengine.

Jambo la kusikitisha ni kwamba tuna ndovu wawili wanashindana. Lakini kama walivyosema hapo awali, wakati huu ni muhimu tuweke nafsi zetu kando tuone ya kwamba huu Mswada umepita ili wafanyikazi wa kaunti zetu wafaidike. Kwa sababu hapa tusiweke nafsi zetu binafsi halafu zinaleta mtafaruku fulani ili Mswada huu usiweze kujadiliwa.

Wakati huu, hakuna kurudi nyuma. Mswada huu lazima ujadiliwe hapa. Kuna ndugu yangu hapa, Mwenyekiti wa Kamati ya Wafanyikazi, na ni sharti aone ya kwamba ikiwa sisi tulisema tutajadiliana na kukubaliana kama vile tulivyoafikiana ndani ya Kamati, kwamba ijapokuwa wameuleta Mswada huu hapa, tutaujadili vilivyo.

Kwa hayo machache, ninaunga mkono Mswada huu. Ni lazima tujadiliane na tukubaliane wakati huu, usiwe tena na mtafaruku wa aina yoyote.

**Sen. Halake:** Thank you very much, Madam Temporary Speaker, for giving me the chance to lend my voice to the discussions on The County Government Retirement Scheme Bill, 2018. I rise to support it.

However, as my colleagues said, I have concerns around Bills that were before this House that then ended up coming back to us from the National Assembly and they are many. However, my brother has said that we should not let this be about ourselves, which I think is correct.

Again, while I was reading this Bill, at the end of it, it says this Bill concerns counties and it is not a money Bill. If that is the case, and this House had a similar case that we debated, I wonder why then our Bill was swept under the carpet and then we are now discussing it as a Bill emanating from the National Assembly.

Madam Temporary Speaker, each time a Bill is a money Bill, the National Assembly is quick to point that out and make sure that it goes to its rightful place. Fair enough. In this case it seems that the Senate has chosen to just give up on a very good Bill that we had in this House that has now been overtaken by events.

This Bill is taking care of senior citizens. For a very long time, retirees have suffered at the hands of some of these funds. People have spent every single thing they have from the time they retire to the time they die just chasing to get the little amount that is due to them.

I do not see much by the way of implementation and ensuring that problem has been resolved in this Bill. One of the things, perhaps in the regulations that the Cabinet Secretary (CS) will come up with is to ensure that there is robust implementation of some of the provisions of this Bill with regard to how people access their money and how their transition to this Bill will happen. This is because many people have suffered at the hands of some of these schemes, whereas, they should not continue to suffer.

Madam Temporary Speaker, many people have had to make several trips to come to the National Social Security Fund (NSSF) or to Nairobi County to claim very little amounts. Sometimes they have spent so much money they do not even have, to begin with.

My prayer then is that as we debate this Bill and ensure that it sees the light of day, we must ensure that the regulations that follow it are going to be useful and will take care of the gaps that exist in the other scheme that we have had, where our retirees have suffered immensely at the hands of some of these schemes.

Madam Temporary Speaker, as a child or a retiree myself, I know how many times my father and other members of my family have had to come to Nairobi County to chase their dues which they have not got up to today. Some of them continue to do this. However, my worry with this Bill is that because this is not a Bill of this House, I do not know how much power we may have over what will happen next. I am not sure that if we pass this Bill, we will have our say in what happens next.

We have beautiful laws in this country. It is not for lack of laws and legislation that people suffer, but lack of implementation. In my opinion, this Bill is a bit---

**Sen. Sakaja:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Halake. There is a point of information from Sen. Sakaja.

*(Sen. Halake nodded)*

**Sen. Sakaja:** Madam Temporary Speaker, the Senator who was on her feet needs to agree to be informed, but I have seen she has responded to the affirmative. I just want to inform the Senator and maybe the rest who are listening, that, yes, in as much as this Bill did not originate from us, what happened is that we had already brought such a Bill that passed at Second Reading. The Government copied and pasted our Bill, save for a few grammatical errors. The fear you have that it may not ideally cover what you would have wanted ideally should not be there, because it is just the same thing we passed.

However, we still have an issue with why the Senate was bypassed. We just decided for the sake of the workers, not to dwell on an ego fest with the National Assembly so that we have another Bill that goes all the way there and comes back. However, in terms of form and content, it is 98 per cent the same Bill that we had passed earlier.

**Sen. Madzayo:** Hoja ya Nidhamu, Bi. Spika wa Muda.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Madzayo.

**Sen. Madzayo.** Asante Bi. Spika wa Muda. Nina Hoja ya nidhamu. Je itakuwa sawa kwa Mwenyekiti kuweza kufafanua kwa kutumia lugha inayoeleweka anaposema kwamba haina haja ya Sen. Halake kuuliza ni kwa nini huu Mswada ulianza katika Bunge la Kitaifa na kuja Bunge la Seneti na tukaukubali? Hilo ni swala ambalo ni sharti bwana Mwenyekiti alijibu sasa hivi au katika mchango kwa huu Mswada. Je ni haki kwetu kujadiliana Mswada huu ambao hatukuanza? Tunataka kujua ni kwa sababu gani.

**Sen. Sakaja:** Bi. Spika wa Muda. Nitajibu kwa Kiswahili. Ningependa kumweleza Sen. Madzayo ya kwamba, sikuwa na shida wala hoja ya nidhamu wakati Sen. Halake alisimama. Ilikuwa ni kumpa maelezo zaidi. Katika Bunge la Seneti tuko na shida kwa sababu Mswada huu ulikuwa ushajadiliwa hapa na tukaupitisha, ilhali ulianzishwa tena katika Bunge la Kitaifa. Lakini ukiangalia yaliyomo ndani ya Mswada huu ni sawa na yale tuliyoypitisha. Nilikuwa nampa maelezo zaidi.

Mswada huu umeletwa na Kiongozi wa Walio wengi na sio Mwenyekiti wa Kamati. Kwa hivyo, sitakuwa na nafasi baadaye ya kujibu.

**Sen. Were:** Madam Temporary Speaker, I rise on a point of order in agreement with Sen. Madzayo that we had canvassed this Bill in the Senate. It starts with the word "county". Therefore, it should have originated from this Senate. We would like the Chairman of the Committee to tell us why we had to drop our Bill to support the one from the National Assembly.

*(Sen. Sakaja spoke off-record)*

**The Temporary Speaker** (Sen. Pareno): Sen. Sakaja, can you have your microphone on?

**Sen. Sakaja:** Madam Temporary Speaker, my microphone is on. It is interesting that both Members are Members of my Committee. Within the Committee, we have been very clear that our Bill has not been dropped; it is still there and sometimes, it comes up

on the Order Paper. However, the Committee deliberated and agreed that since this Bill has come from the National Assembly, we can still proceed with it. We have had public participation and we are retreating as a Committee to do our report on this specific one so that we do not ignore it yet there is still need for a Bill to be passed for the same purposes.

We decided to be pragmatic in as much as we are very upset that the National Assembly - which is something I have said on record - chose to bypass this Bill, not for any good reason and not because it was a money Bill or anything. In fact, they said that it is not a money Bill. It is not for the difference in content; it is the same content but it is possibly because of disdain towards the Senate.

We said that in the bigger interest, since it is the same thing that we have done, instead of us waiting to finish ours which is still in abeyance, to go again to the National Assembly to start at First Reading, Second Reading and Committee Stage to come back here, the person suffering in the ego fight would be the workers. Therefore, since this one has gone through the process, Members will vote on the specific provisions and if they feel it is a bad Bill, they are at liberty to drop it and go on with ours, which is still the same Bill. The same applies if Members feel that we need to reduce the time being spent on it.

Many county governments owe workers billions of shillings. For example, Nairobi County owes workers Kshs16 billion. They are using it as an excuse saying that the Senate has failed to provide a legal framework for them to pay. So, let us deny them that excuse and deal with the Bill which will be faster if the content is the same.

Sen. Were will have time as a ranking, royal Member of my Committee to go through the variances that might exist between this and what we had done before.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Madam Temporary Speaker. It now occurs to me that we have a crisis that my good brother, Sen. Sakaja, has not addressed himself to.

The fact that this Bill has originated from the National Assembly means that we have no control over it. Therefore, in prioritizing it in the pretext that it is a Government Bill, once we pass it, it will go to them, and we have no guarantee that they will pass it. Meanwhile, assuming that we disagree with its content----

*(Sen. Halake consulted loudly)*

**The Temporary Speaker** (Sen. Pareno): Sen. Halake, if you want to talk, kindly do the necessary.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, the veto power of the Bill will be moved from the Senate to the National Assembly if we pass it the way it is. Now, assuming that what Sen. Sakaja, the Chairperson is saying is correct, that the Bill which they are discussing is still pending, Sen. Halake has brought an interesting question; what will happen when we pass their Bill before we pass ours? Will we hold on to ours or theirs or pass both and send to them? That direction is important.

As the Senate Minority Whip, I will seriously whip Members, unless direction comes as to how we will move on with this Bill. Is this part of the scheme by the cartels

to ensure that we have this confusion about these Bills so that they never see the light of day? That assurance is important because if it does not happen, the cartels that I have spoken about are having a field day clapping as they watch us in this confusion.

**The Temporary Speaker** (Sen. Pareno): The Mover of this Bill is the Senate Majority Leader. I wish he would have been here to shed more light on this matter. However, I am sure that Sen. Sakaja, being the Chairperson of the Committee, will give us some insights to the questions asked.

**Sen. Sakaja:** Madam Temporary Speaker, these are concerns that we all had with this process. In fact, it is interesting for my good friend, Sen. Mutula Kilonzo Jnr., to say that we would then schedule this Bill as a priority and leave ours, yet I do not sit in the Senate Business Committee (SBC) where he sits.

The decision that had been made in the SBC was that if, indeed, the Bill is the same in content and character, and we do not agree, we will go to mediation because we have amendments and we have sat for full day sessions with more than 17 institutions.

We have a lot of amendments that we want to bring to this Bill. We have also discussed with the National Assembly and told them the kind of amendments that we have. If they decide that once we have passed it to not pass it, then the Bill is lost. If the Bill is lost, we still have our Bill. Our interest is to make sure that the workers of the county governments ultimately get a retirement scheme. However, if we decide to hold this one in abeyance as well and then deal with the other one, we will be the ones perpetuating that confusion. Those cartels who wanted the confusion wanted us to have two Bills of the same content, form and character debated at the same time so that we extend that process. We are fighting them by shortening and finishing a Bill whether it is this one or ours.

Madam Temporary Speaker, the SBC is at liberty. If they say we drop this Bill, I will be happy. In fact, I will be happier because I would rather push a Bill where I am the Mover; I am not a Mover of this one. The other one has passed the Second Stage and is at the Committee of the Whole Stage. We can look at the amendments that are there.

I have decided not to look at my interests as a Mover of a Bill. In the best interest of the workers, we should pass this Bill as soon as possible. I would like to persuade the Senator because he knows the legislative process that the fastest route is this Bill which is the same as what we had and has gone through First Reading, Second Reading, Committee Stage and Third Reading and has come to the Senate where we are at the Second Reading. If we pass it with our amendments, have mediation and agree, in less than a month, our workers will have a Bill.

If we do not, the longer route is to go on with ours; finish it with amendments, send it there for First and Second Readings, Committee Stage and then it comes back here for concurrence. But whichever way the Senate decides, we are comfortable as a Committee; I think we have had it for far too long and we are comfortable whichever way.

*(Sen. Cherargei stood up in his place)*

**The Temporary Speaker** (Sen. Pareno): Sen. Cherargei, do you have an intervention?

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. It has always been our interest that this issue should be resolved for the benefit of the county government workers. I want to agree with Sen. Mutula Kilonzo Jnr. that this confusion is not good. I wish, through your office, that we can agree such that we do not have two Bills at the end of the day. They have agreed that it is not a money Bill, yet it involves counties, and that cannot be allowed.

Therefore, I have expressed reservations on this, and the Chairperson is fully aware on the same. This confusion could be an intentional way to serve some partisan and selfish interests with an aim and bid to undermine the rightful interests of all county workers across 47 counties. So long as a legal framework is not in place, the cartels will continue to have a field day in this confusion because they will take advantage of the non-availability or the lack of a legal framework.

Therefore, these issues are real, because how can it be that there is this Bill and then we had our own at the Senate? Then there was one from the National Assembly, and we have agreed that it is not a money Bill. Those are some of the issues that we need to agree on. I have heard my Chairperson saying that even if we go for mediation and they refuse with our amendments, or they refuse at the mediation level, it will mean that we will still go back. This will be unfair to everybody and every worker in this country in terms of the interests that are there in LAPFUND and LAPTRUST. Moreover, any people who have dipped their hands in the cookie jar, both in the LAPFUND and the LAPTRUST will not sleep and see these things coming to a success.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Farhiya.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker. I think we all agree on the same thing, and yet disagreeing. In my view, if the cartels want the lack of a framework, the fact that we had our Bill first and it went through, then these people put another Bill through the National Assembly, through all that, all they want is to cause confusion and we should not allow them.

We owe it to the workers of the county governments that they have something to retire to and look forward to when they are in the age where they cannot generate income. Let us not allow the cartels to win by dropping this Bill; let us just pass it.

In addition, if there are amendments that we are unhappy with---. I looked at both Bills and ours was much more superior. I am also proposing some amendments and I think I took all my time when I was contributing to this Bill, because it had a lot of issues. Regardless of that, we owe it to the employees of counties for these Bills to pass. This is because if they have two running systems, then remember that the costs are also too high. This is in terms of having two fund managers, two administrators and two actuaries.

Therefore, all that cost is as a result of these two institutions. These people have their interests at heart and because of that, they do not want these Bills to pass. Therefore, as the Senate, let us take responsibility and pass it. We cannot afford to play supremacy battles on the lives of employees.

Thank you.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Mutula Kilonzo Jnr.

*(Sen. Halake stood up in her place.)*

**Sen. Mutula Kilonzo Jnr.:** I am on a point of order, Madam Temporary Speaker. What we are doing is called tautology; it amounts to nothing; it is the same. If we have debated this Bill and it is similar to our previous Bill, I would propose that we move our Bill with its amendments; include our amendments on this Bill and then forward it at Third Reading.

Otherwise, what we are debating now, we have already debated without a good reason why we are regurgitating our debate.

Therefore, if we have own amendments and we are of the view that ours is superior, it is time to play hard ball and show Kenyans that we will not play to something that is akin to kindergarten games. Bring our Bill with its amendments at Third Reading, and pass it. Include our amendments on the Bill filed by the National Assembly and then return it to sender. When it arrives at the National Assembly, they have the Bill by the Senate and the Bill by the National Assembly.

What the Senate Majority Leader has done in this Bill is to reverse this thing to the extent that Sen. Sakaja, the minute you finish this Bill, you will not be able to bring back your Bill by the Committee. You cannot put this Senate to that sort of work. Otherwise then, we are going to waste taxpayers' money by sitting here to do something that we have already done.

Thank you.

**The Temporary Speaker** (Sen. Pareno): Hoja ya nidhamu kutoka kwa Seneta Madzayo.

**Sen. Madzayo:** Asante, Bi. Spika wa Muda. Kuna jambo moja tu ambalo nilikuwa nataka kujua: Ikiwa kuna Mswada ambao tunaujadili kutoka katika Bunge la Kitaifa; na vile vile Kamati yetu ya Seneti imetengeneza Mswada kama huo, nataka kumwuuliza ndugu yangu, Mwenyekiti, ambaye anasema kwamba ni sharti ule Mswada wake utakuja kujadiliwa, kwamba, Kiongozi wa walio Wengi ndani ya Bunge la Seneti hatoweza kukubali kabisa ikiwa yeye ndiye aliyeleta Mswada huu hapa.

Hivi leo, Mwenyekiti wangu anatuambia kwamba atakuwa na uwezo wa kuleta Mswada huo huo; maneno ni hayo hayo, sheria ni hiyo hiyo, na kila kitu ni hicho hicho. Hatutamkubalia Kiongozi wa Wengi wa Seneti, Sen. Murkomen, hapa ndani ya Bunge hili la Seneti. Huo ndio ukweli wa mambo.

Kwa hivyo, tusifichane kilugha hapa; tuambiane wazi wazi iwapo Mswada alio nao ataendelea nao, ama atauwacha. Halafu tuangalie tutashika lipi na tuache lipi kuliko kuleta mkanganyiko. Hivi sasa, kuna Mswada unaozungumziwa katika Bunge la Kitaifa, na pia kuna mwingine unaozungumziwa hapa katika Bunge la Seneti, na hiyo sio sawa. Iwapo tutafanya hivyo, lazima tuzingatie kwamba ndovu wakipigana, nyasi ndizo huumia. Hapa tunaendelea kupigana sijui ni Bunge la Kitaifa, na Bunge la Seneti; tunagombana kwa sababu ya pesa za wafanyakazi. Wanaoumia hapa ni wafanyikazi. Hatukuletwa hapa kuonea wafanyakazi; tuliletwa hapa kuwasaidia wafanyikazi na sheria. Hii sio haki!

Kwa hivyo, Bi. Spika wa Muda, lazima Mwenyekiti afafanue kinaga ubaga.

*(Laughter)*

**The Temporary Speaker** (Sen. Pareno): Sen. Cherargei, do you still want to make an intervention?

*(Sen. Sakaja stood up in his place)*

**The Temporary Speaker** (Sen. Pareno): Chairperson, I will give you an opportunity after they have made their interventions.

**Sen. Cherargei:** Madam Temporary Speaker, we agree that we need to resolve this matter, for all intents and purposes. If there is a way we can consolidate both Bills and ensure that we agree and go forward---. However, if as a Senate, we must make a decision to drop---

I have read both Bills and ours, which was moved by Sen. Sakaja, my Chairperson of the Committee on Labour and Social Welfare, is much better and superior than the one of the National Assembly. I, therefore, do not know why my Chairperson is retreating and standing behind a Bill which is half baked from the National Assembly, and there is nothing we can do more than that.

I, therefore, think that the Chairperson needs to take a position on behalf of his own workers' interests, who are on strike. The other day the workers of Nairobi City County were on strike, and these are part of the labour rights that the workers are looking for, both in spirit and substance of Article 41 of the Constitution of Kenya.

Madam Temporary Speaker, we must, therefore, take a position and agree on which way forward to ensure that we save the hard-earned money of county workers across the 47 county governments in this country.

Thank you.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Sakaja.

**An hon. Senator:** No; it is Sen. Halake.

**The Temporary Speaker** (Sen. Pareno): Sorry, proceed, Sen. Halake. Sen. Sakaja will have a right to respond as the Chairperson, thereafter.

**Sen. Halake:** Madam Temporary Speaker, while I am happy to have sparked debate, is it in order for me now to lose all my time?

**The Temporary Speaker** (Sen. Pareno): Your time is not being used by anybody; it will be utilized by yourself.

**Sen. Halake:** Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): These are just points of order.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Madam Temporary Speaker. Clearly, this discussion is emitting more heat than light because we are going around the same circle. We are all clear about the interests of the Senate. Apart from putting our foot down, it is really to get this legislative framework done.

I will give you an example of what will be the faster route. Hon. Members are at liberty to decide and the Senate Business Committee (SBC), where I do not sit, can schedule both Bills.

I am sympathetic and I like the proposal by Sen. Mutula Kilonzo Jnr., because the Senate will pronounce itself in terms of amendments. We can put all the amendments we want, as a House, in both the Bills. However, let it not be that this House has killed any of the two Bills that is providing rights for our county government workers. We must decide to push both; we can push the one we did to them, and this one they have done with the amendments we want as a Senate. However, ultimately, there must be a legislative framework.

Madam Temporary Speaker, it is up to Sen. Mutula Kilonzo Jnr., the Senate Minority Leader, the Senate Majority Leader and those who sit in the Senate Business Committee (SBC) to decide to pause this one and prioritise ours, so that we go to the Committee with our amendments. We can then now do this one to Committee with our amendments, so that both go there. If they agree at mediation, that decision is what we call tactical out of the abundance of caution, because we know how they have been behaving before.

Madam Temporary Speaker, I am neither the Mover of this Bill nor part of those to schedule it. So, the ball lies squarely in the court of the SBC. I would be very happy with my Committee---. In fact, I have looked for quorum for months and have found it in the Plenary. I have four Members here right now.

*(Laughter)*

I sat here for an entire day, from 8.00 a.m. to 5.00 p.m., for the third time on the same Bill; same amendments with more than 18 organisations. I am more than ready for us to finish this. Whichever way, the Senate must pronounce itself and get this done.

**The Temporary Speaker** (Sen. Pareno): We have another intervention by Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, I have listened to my colleagues' debate on this and I am just wondering about all those county government employees who were seconded to the county governments.

*(Sen. Halake raised her hand)*

**Sen. Olekina:** Madam Temporary Speaker, I am on the Floor.

**The Temporary Speaker** (Sen. Pareno): He is on a point of order. Let him conclude it.

**Sen. Olekina:** Madam Temporary Speaker, I have listened to the debate and the direction it is taking. Whether the Bill originated from here, we canvassed it at the SBC, where I sit, and agreed to proceed with it. Now, I am a little baffled as to why we are now arguing and asking what happened to the Bill that was introduced in this House. I think it is about time that we conclude debate on this Bill.

The truth is that, we have two interested parties here. They agreed but one attempted to renege. You will forgive me for saying this, but it is the truth. There are lots of special interests here. With all these forces going around, it is time that this House pronounces itself and we conclude this Bill. Let the county government workers prepare their way to retirement.

**The Temporary Speaker** (Sen. Pareno): That does not look like a point of order. I now go back to Sen. Halake.

**Sen. Halake:** Thank you, Madam Temporary Speaker. I think the point is made and it has sparked quite a bit of debate. However, one thing that disturbs me is this: I have heard our Chair say that we need a legislative framework so that our counties can start executing the retirement scheme.

Is this House saying that given that this Bill concerns counties and is not a money Bill as it states, and originated in this House, it is not in a position to provide the right framework? Are we saying that we can only provide a framework from something that has come from the National Assembly when, in fact, we had debated this and were almost done?

I know that there are concerns that perhaps when it goes there it will be stood down, but this is happening with all the Bills. I know in my Committee on Information and Communication Technology (ICT), for instance, we did the Data Protection Bill that was threatened for another data protection Bill to come, but we stood our ground and said that we would move on with it. If there is any need for harmonisation, why is it not that the Senate framework is the one that then accommodates the harmonisation rather than the other way round, where we are throwing out our own Bill?

I know that from the discussion and arguments I have heard, it may sound that now we are trying to fight and, therefore, the grass is what will suffer. Why should this House continue to be, if that will be the order of the day for us? Are Kenyans not right when they say that the Senate should be done away with as it not useful to them going by this?

In fact, despite all the other points I wanted to make, I think I will give my time until such a time as this House decides that we either are able to provide the framework---

**The Temporary Speaker** (Sen. Pareno): I notice that the Senate Minority Leader has an intervention.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I have a lot of sympathy with what is coming out from the House. However, there was a Chinese leader who said that he did not care whether the cat was black or white, so long as it can catch mice. That was the secret behind why China is slowly becoming the biggest economy in the world.

I think the most important thing to realise is that probably we will never be able to resolve it; it will just be lamentations. I think we should look at the fact of the matter that in the last year up to now, there are only three Bills from the Senate that have gone through the National Assembly. Only one Statute for the whole year that has originated from here has become part of the law of Kenya. The only Bills that have become the law of Kenya concern the allocation of the revenue and all that.

I think it is better to look at the bigger picture. Probably, this should go back to the SBC to have a final word on it. However, I am pleading with the Senate that we better look at the bigger picture. Such sibling rivalry is all over the world. If you look at what is going on in the United States of America Congress there is constant rivalry, where people are fighting for space. Parliaments have fought for space even with the executive.

Most of the times we better look at what the people need out there. If they are crying for something, and because of rivalry, we are not able to provide it, then I think we will lose the---

We have lost the script already. People out there think that Senate is the one that is sitting on everything, and all we can do is just thump our chest and say that we are the bigger House. The courts have decided, but Bills go to the President and he assents without caring whether it has passed through Senate.

Sometimes it is better to be pragmatic instead of saying---. The whole of this year, I can assure you that there will be only three Statutes that will be passed by this House and become part of the Law of Kenya. The leadership of the Senate should sit with that of the National Assembly and the Executive and resolve this matter once and for all.

In fact, it was said out there that we are generating more Bills, but not a single one has become part of the laws of Kenya. The problem is not about this Bill but this House. Are we asserting ourselves?

I think even a meeting with The President is important. This is because when a Bill goes to the President, he should look at it and decide whether that law can be called an Act of Parliament. This is because an Act of Parliament means that it has gone through the Senate and National Assembly. However, the tendency is that any Bill is being assented to whether you like it or not.

Madam Temporary Speaker, let us be pragmatic and look at the bigger picture. I like what the Chinese leader said; that we should not care about the colour of the cat so long as it can catch mice. Eventually, we will gain this space. Right now, I do not think we are succeeding.

In respect of this Bill, I agree with you entirely. Let it go back to the SBC as a priority and we make a decision once and for all. However, the problem is bigger than this Bill. I think the Chairperson, Sen. Sakaja knows that the problem between the National Assembly and the Senate will not be resolved by fighting over Bills.

**The Temporary Speaker** (Sen. Pareno): Sen. Halake, I need to make a ruling in view of the submissions that have been done.

*(Loud consultations)*

**Sen. Halake:** Madam Temporary Speaker, are you saying I proceed?

**The Temporary Speaker** (Sen. Pareno): No, please. Order!

Sen. Mutula Kilonzo Jnr.

## MOTION

## ADJOURNMENT OF DEBATE UNDER S. O. 105(1)

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. I rise under Standing Order No.105(1), and beg to move:-

THAT the debate on The County Governments Retirement Scheme Bill (National Assembly Bills No.10 of 2018) appearing on the Order Paper be adjourned and referred to the Senate Business Committee (SBC) for a determination in view of the counter-arguments that have been raised this afternoon which have not shed any light.

**The Temporary Speaker** (Sen. Pareno): Where is your seconder?

**Sen. Mutula Kilonzo Jnr.:** Sen. Were, will second my Motion.

**Sen. Were:** Thank you, Madam Temporary Speaker. I second the adjournment of debate on The County Governments Retirements Scheme Bill (National Assembly Bills No.10 of 2018).

*(Question proposed)*

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, whereas I agree that this matter should not proceed beyond the Second Reading, in the last meeting of the Senate Business Committee, we had agreed that this Bill should go through the Second Reading and then we will defer the Third Reading when we are dealing now with the amendments. If those amendments that will emanate from both sides of Parliament will not be in agreement, then the Bill will not be read a Third Time.

Considering the amount of time we have spent debating this Bill, I suggest that we conclude the Second Reading and then things will take their course on the Third Reading. For now, I propose that we proceed with the conclusion of the Second Reading.

**The Temporary Speaker** (Sen. Pareno): Sen. Mutula Kilonzo Jnr., do you have an intervention?

**Sen. Mutula Kilonzo Jnr.:** No.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, this being a debate that does not affect counties, I put the Question---

**Sen. Sakaja:** No, we want to debate it further.

**The Temporary Speaker** (Sen. Pareno): Sorry, I do not see the requests here, the requests I have are---

**Sen. Sakaja:** Thank you, Madam Temporary Speaker. In as much as I consider Sen. Mutula Kilonzo Jnr. to be wise, I know Sen. Orengo is wiser even if it is just longevity in the profession. He has appealed to us to be pragmatic. I think there is wisdom because the questions that have been put on us discussing this Bill are not legal questions.

Legally, Article 109(1) says Parliament shall exercise legislative power through Bills passed by Parliament and assented to by the President.

Article 109(2) says that any Bill may originate in the National Assembly.

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Article 109(3) says a Bill not concerning county governments is considered only in the National Assembly and passed in accordance with Article 122 and Standing Orders of the Assembly.

Article 109(4) says a Bill concerning county governments may originate in the National Assembly or Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses.

The question we are talking about is not a legal question that would need a ruling on the admissibility of this Bill as it is. It is actually a question of how we are positioning ourselves as a House, what we feel about the fact that this Bill was brought from the other side. I think there is wisdom in it being dealt with at the Second Reading even without putting it to a vote but let us finish the debate at the Second Reading and the SBC will determine the tactics around it.

I have liked the proposal that both my Bill through these amendments and the other Bill with amendments continue being prosecuted. Even if they are the same in the Title, form and content, they are not the same.

**The Temporary Speaker** (Sen. Pareno): Order Sen. Sakaja. The debate now is whether we should adjourn or not. Let us restrict ourselves to the adjournment Motion.

**Sen. Sakaja:** Exactly, Madam Temporary Speaker. If you listened to me carefully, I am responding to what the Minority Leader has said; that there is wisdom in us not adjourning debate on this Bill.

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Sakaja. Are you saying that the Temporary Speaker is not carefully listening?

*(Laughter)*

**Sen. Sakaja:** No, Madam Temporary Speaker. I am not saying anything beyond what I have said on the microphone. If it has been implied that I have said that, I want to be clear that I know the Speaker is always listening and listening carefully, for that matter.

In fact, I should have said since you are listening carefully, not if you are listening carefully---

**The Temporary Speaker** (Sen. Pareno): That is better for the record.

**Sen. Sakaja:** Madam Temporary Speaker, let us not necessarily adjourn this debate. Let the SBC deal with it administratively once we have finished debate on Second Reading, then we can agree which one to schedule at whatever point and we will accept the wisdom of the SBC scheduling either this, the other or both Bills.

**The Temporary Speaker** (Sen. Pareno): Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, I thank you for giving me this opportunity. I am of the view that it will serve us right and give us an opportunity to determine the matters that we are debating here at SBC if we allow this debate to go on and be concluded at the Second Reading as we had earlier on agreed so that we can now look at Sen. Sakaja's Bill and then from that point, look at both Bills and agree on the way forward.

I am only saying that because I do not think it will help us when we are the House which is supposed to protect the interest of counties. Although most county government employees are working, they do not know if they will get pension in future after retirement.

I want to support the sentiments of both the Senate Minority Leader and Sen. Sakaja, that, instead of postponing the debate on this Bill, we might as well conclude and let it pass the Second Reading. We can then sit down at the Senate Business Committee and agree on the next move. This is because it still has to be read a Third Time. There, we will let wisdom dictate the future of this Bill from the National Assembly and the future of the Bill which was being introduced by Sen. Sakaja.

Kindly allow me one more minute. I remember that Sen. Sakaja was very passionate about his Bill proceeding but it was stopped all of a sudden. Since this is where we are, it will be better to put some wisdom on the fights between the two Houses. I would be happy if the National Assembly passed my Bills. I have a lot of Bills here but I think that the only way to do our job properly is by concluding the Second Reading.

**Sen. Were:** Thank you, Madam Temporary Speaker. I think that we are saying the same thing; that this Bill should go back to the Senate Business Committee but the issue is when. Should it go now or later? If it is the same Senate Business Committee, the faster they deal with the matter, the better. It should be taken now and not later. We should not conclude the debate under the Second Reading. It should be dropped and taken back to the Senate Business Committee.

**Sen. (Prof.) Kamar:** Thank you, Madam Temporary Speaker. I was going to support what Sen. Orengo said. We do not need to delay the conclusion. Who knows how many people are remaining? We may be having two people or so. It will be neater for us if it goes to the Senate Business Committee when we have finished the Second Reading. We only defer because of the Mover, which means that we will defer the response and then a decision is arrived at that point.

I support the Chinese saying that we do not want to concentrate on our fights with the 'Lower House' because we are the 'Upper House'. In any function, it is always the last person who is considered to be the most senior. Therefore, let them do what they want to do, we will mutilate, amend or even do what we want to do with it. If we concentrate on our relationship with the 'Lower House', we might delay a lot of things in this House. I think that we are the 'Upper House', let us take it.

**Sen. (Rev.) Waqo:** Thank you, Madam Temporary Speaker. I feel that we should continue with the debate because we are the 'Upper House' and wisdom should guide us. I agree with what Sen. Orengo has proposed that we conclude the debate today and let the Senate Business Committee guide us in future. We have consumed a lot of time on this and many people have already given their views and debated on it.

The other issue that should guide us is the need on the ground. I suggest that we conclude the debate today and be guided by the Senate Business Committee.

**Sen. Cherargei:** Madam Temporary Speaker, when you look at Standing Order 105, it says there are some reasons as to why you can adjourn. Are we debating for the sake of it or we want to have a Bill for the purpose of achieving the interests of the county workers? Do we just want to push the process?

In my own opinion, it is better if we suspend or adjourn this debate until the Senate Business Committee (SBC) sits. We are lucky because many of the Members who sit in SBC are here with us. They can push in their meetings to ensure that this matter is prioritized and is dispensed with. By the time we are concluding on this issue, we should agree whether we are just debating for the sake of the process or we are debating to have quality process, at the end of the day.

Madam Temporary Speaker, let us suspend or adjourn this debate until the SBC gives direction on this. We are happy that the Members who sit in the Senate Business Committee are men and women of serious intellect and Solomonian wisdom. I am sure they will give proper guidance to this “Upper House” by the time we conclude the debate.

I have heard the National Assembly Members claim that we have sat on their Bills. It is not that we have sat on their Bills intentionally, but most of the Bills from the ‘Lower House’ lack wisdom and intellect. That is why we take time to look at them.

**The Temporary Speaker** (Sen. Pareno): Sen. Halake Abshiro, you may proceed.

**Sen. Halake:** Thank you, Madam Temporary Speaker. As you make your determination whether or not to continue with the debate, on my part, it is neither here nor there; for it to continue or not. It looks like either way, we may just end up having to go back to the drawing board. I would like to speak to a little bit of the Chinese wisdom.

In this particular case, and with all due respect to Sen. Orengo who is one of the people I respect immensely in this House, is that going with this Bill right now may look like wisdom, but it is a very short-term wisdom because of the existential issue of this House. The fact that legislatively we are sort of on our knees; it looks like we have failed to take our mandate of legislation for the people and for counties.

If we fear that we cannot push through our legislation, and it has been said very well that there are only three legislative pieces passed because of this, then this House is admitting to the fact that legislatively we have failed. As we all know, in terms of oversight, we have been immobilized. What are we saying as this House?

This is not just about this Bill, the existential issue of this House and going forward whether this House will be useful to protecting counties, and legislative for counties will come to question. It is through these “small issues” like this that we are going to put our foot down to take our place to the future, not just for this bit of the Bill.

This Bill points to other leadership and long-term issues that this House, if we admit now, that let us do it because we cannot do it with ours; it will point out the usefulness and use of this House.

**Sen. Sakaja:** Madam Temporary Speaker, before you put the question, because Sen. Mutula Kilonzo Jnr. has already moved, I want to draw his attention to Standing Order 105 (4), and I want to persuade him to withdraw his adjournment.

I am sure he is even consulting his leader. It says:

(4) A Senator who has moved or seconded a dilatory Motion which has been negatived may not subsequently move or second another such Motion during the same debate, whether in the Senate or in Committee of the Whole.

I am persuaded even once the SBC gives the determination to this matter, that Sen. Mutula Kilonzo Jnr., will still have things to say on this specific debate. We are in

consensus; yes, it will go back to SBC. There is no need to leave it out there in abeyance whereas if there is still anybody who wants to debate, they can. Let us leave it for the Mover to reply when he comes back or when the Mover has given anybody else a chance to do so.

Before we move on to the Third Reading, it will be very nice because now both this Bill and my Bill will be at the Third Reading Stage as we go to Committee then we will make a determination as SBC.

So, I persuade him just to abandon his Motion to adjourn debate on this Bill. Let us see if there is anybody else who wants to contribute. It is unfair to adjourn the debate yet there could be somebody who might still want to contribute to this Bill.

**The Temporary Speaker** (Sen. Pareno): We have not closed the debate but I can see there are no further interventions. I will, therefore, proceed to put the question.

*(Question put and negatived)*

So, we will proceed with the debate. Sen. Halake, you were on the Floor and you have 10 minutes.

*(Debate on the Bill resumed)*

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

**The Temporary Speaker** (Sen. Pareno): Sen. Mutula Kilonzo Jnr., if you want to communicate, you should do the necessary.

Sen. Halake, you may proceed.

**Sen. Halake:** Madam Temporary Speaker, I am glad that I can now finish because I was about to say.

Just to continue from where I left when I was on my feet a few minutes ago, I do not want to appear like I am trying to belabour the fact that there is rivalry, but history must judge us as well. How can a Bill concerning counties originate from the National Assembly and not from the Senate? It is not because we did not bother to do something but because for some reason, the leadership of the House chose to give up on their Bill. If everything takes that trend, it will not be long before people start questioning the need of this House if it cannot legislate to protect or to advance the interests of counties.

Hon. Members, as you know, we have had issues when it comes to oversight because we do not have resources to oversight. Now we have issues with legislations because we have a “Lower House” that seemingly would not let us do our work.

I would like to appeal to the leadership of this House not to just look at this as a Bill but what it means when our House cannot legislate or oversight, to execute its mandate. There is the debate around the Building Bridges Initiative (BBI) and whether we need two Houses or one. If you ask me, if this trend continues, I will be the first person to say, perhaps, that we do not need to be here. We may think that we are the “Upper House” by just saying that our people should get what they deserve. What are we

implying if it is the National Assembly that should determine what our people should get?

For me, this is the gist of the matter. I do not want to appear like I am trying to entrench the rivalry but the rivalry has a bigger implication and especially this Bill. It may appear just like a Bill but from where I sit, this is one Bill too many.

We come up with fantastic Bills even in our committees. I am talking from experience. For example, the Data Protection Bill is one of the best pieces of legislation that this country will ever have because we have seen to it that every aspect of it is looked into. However, you will find the Executive coming up with something else that will be introduced in the National Assembly and we will face the same crisis which is being created.

Madam Temporary Speaker, if we do not make a decision now, there may be short term pain but trust me, there will be long term gain for this House, for the people of this country and especially for devolution if this House is to take charge of its mandate.

Thank you very much. I am not sure if I support; I actually do not support.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, I see no further interventions and debate. I am also informed that the Mover of this Bill is not here to reply. I, therefore, defer this matter. In the meantime, before the Mover is called in to reply, I direct that this matter be placed before the Senate Business Committee to iron out the issues that have been debated today.

*(Applause)*

*(Putting of the question on the Bill deferred)*

Next order.

*Second Reading*

THE COUNTY STATUTORY INSTRUMENTS BILL  
(SENATE BILLS NO. 21 OF 2018)

**The Temporary Speaker** (Sen. Pareno): I have been informed that the Mover is not in and I, therefore, defer this matter to another date.

*(Bill deferred)*

Next order!

*Second Reading*

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL  
(SENATE BILLS NO. 28 OF 2018)

*(Sen. Olekina consulted the Temporary Speaker)*

**The Temporary Speaker** (Sen. Pareno): Upon consultations with the Mover of this Bill, I also defer it to another date.

*(Bill deferred)*

Next Order!

*Second Reading*

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT  
OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILLS NO 27 OF 2018)

**Sen. Halake:** Madam Temporary Speaker, I beg to move-

THAT, the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, Senate Bills No. 27 of 2018, to be read a second time.

As I move this Bill, I would like to bring to the attention of this House a few fundamental things that have informed it. The implementation of the rights and fundamental freedoms under Articles 21(1) and (2) of the Constitution impose an obligation on the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms as set out in the Bill of Rights. This Bill, therefore, gives effect to this Article and to many other Articles within our Constitution with regard to the Bill of Rights.

Further, this Article states that:

“The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.”

Madam Temporary Speaker, just to allude a little bit to the rights and fundamental freedoms to which this Bill gives effect, I would like to give a little bit of statistics and Kenya’s extreme inequalities.

Madam Temporary Speaker, we have a very unequal society and the reason this Bill is very important is the statistics that I would like to share a little bit. While a minority of super rich Kenyans is accumulating wealth and income, the fruits of economic growth have not trickled down to the poorest and the most vulnerable in our society. Extreme inequality is out of control, as you know, despite an impressive economic growth since the year 2000. Poverty has continued to persist especially for the poorest of the poor.

The minority of wealthy individuals and investors – not really investors, I call them “importers of air” – are skimming off the cream of the yields of the country’s economic performance. The richer are capturing the lion’s share of the gains and benefits from the economic growth that we have seen in the last few years, while the poorest

individuals are becoming poorer. It is, therefore, the obligation of the State and this House to legislate and put a framework in place that will ensure that these inequalities are addressed.

This Bill speaks to this. It ensures the right to shelter, health, access to education, quality water, information and all other things. If not achieved immediately but progressively, this Bill will see to it that these things do not continue, and we do not just stand by and observe as the gap between the poor and the rich continues to become unnatural and extremely untenable.

Madam Temporary Speaker, with regard to the share of the benefits, while millions are being left behind---. Out of the 47 or 48 million people – I am not sure what our latest statistics are – 44 million people live in poverty. This is not acceptable. Let us look at the numbers. Less than 0.1 per cent of the population, which is 8,300 people, own more wealth than the bottom 99.9 per cent. That is more than 44 million people in this country that are living in poverty, while the 0.1 per cent continues to accumulate wealth in enormous ways that cannot be explained. This is because we do not see the economic activities that are happening, yet we find this 0.1 per cent – the 8,000 people – owning almost everything in this country.

The richest 10 per cent of the people, on average, have 33 times more than the poorest 10 per cent. That is unacceptable and this is what the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill 2018 (Senate Bills No.27) will address. As this House, it is up to us to legislate and put a framework in place that will make sure that we are not just leaving everybody behind and the 8,000 people go into super rich status and make these inequalities become untenable.

The number of the super-rich in Kenya is one of the fastest growing in the world. When you look at the economic activities that are creating these super rich individuals, nothing is showing on the ground. This is why this new found prosperity is not trickling down. If people become rich because of the economic activities in the country, then the trickle down effect can be felt. However, because there is no economic activity for this 8,000 people, there is nothing that will trickle. Therefore, it is up to this House to legislate and ensure that the dignity of the 44 million Kenyans is preserved and the right systems and in place.

The preservation of human dignity is set out under Article 19 of the Constitution, where it talks about realisation of economic and social rights. Article 43 of the Constitution seeks to ensure the social and economic rights of these 44 million people. This House should see to it that the economic and social rights that have been negated, where the super-rich have continued and the gap is becoming untenable, should be ensured. This is because that is not good for our security, health or anything.

Now, let us look at the corporate tax, for instance. Corporate tax dodging is again undermining the same rights of the people. The super-rich are dodging corporate tax. So, the tax base for the country is eroded and we are losing more than Kshs1.2 billion every year in tax exemptions and incentives almost twice what the Government spends on its entire health budget.

Madam Temporary Speaker, I do not know whether this House is aware that we only use 6 to 7 per cent, because the statistics I have are of 2017, so let us say 7 percent

of our entire Gross Domestic Product (GDP) on health, and the people that cannot afford that health care are the poorest. If then we have only 7 percent being spent on health in a country where mothers face one in 40 chances of dying during child birth, so we are spending the least on life saving sectors like health but at the same time, we are losing Kshs1.2 billion equals to the amount that we could have used on health care in tax exemptions and tax dodging for the ultra-rich.

There is unequal access to opportunities such as health care, education, and nearly one million children---. I would like to congratulate the Ministry of Education and the President for the 100 percent transition that we are trying to do but there are many children who are not accessing education as we speak and the reason being, there are a lot of things other than school fees that children need to stay in school.

With so many children out of school at the moment - I hope that this 100 percent transition works, and I am happy for the Government to have put its efforts behind this - we are the 9<sup>th</sup> country in the world where children were not accessing the transition and, therefore, I am glad we are doing something about it.

However, that goes to show that there is a lot more that needs to be done, including legislation from where we sit as legislators to ensure that the social, economic and rights of the children are ensured through frameworks that ensure that there is equal access and the rights of every human being are taken care of in our country and we do not leave anyone behind.

Therefore, our level of spending in education has gradually fallen. As much as we are saying 100 percent transition, if you look at the trend since early 2000, we are spending less and less on education and health, instead relying more and more on donors that are coming in to fill these gaps. It is about time our country puts its own resources, strategies, legislation and mechanisms for ensuring that our children and citizens access the rights enshrined in the Constitution as per Articles 21, 43 and many other Articles in the Constitution to which the Bill gives effect.

If you look at the Government spending, and we have talked about that, about 2.6 million people fall into poverty or remain poor due to ill health each year. I know we have talked about people going to India and other many places and that quality health care may not even be available, now, we thank the Government for the push to have National Hospital Insurance Fund (NHIF) cover the poor and all of us so to speak but again, these are areas guaranteed in our Constitution under Article 43, that we need to ensure that we start legislating and making sure there is framework for these.

Madam Temporary Speaker, I do not want to go to gender inequality; its prevalence as you know, and economic policies. I am not saying that our policies are creating poverty, but inequality is holding back the economic empowerment of women and others will definitely continue to perpetuate these inequalities.

Despite 96 percent of Kenya's rural women population working on farms, only 6 percent of women in Kenya hold titles to land. In terms of economic empowerment of women, 96 percent work, and 6 percent ownership. Again, are women being paid for the work they are doing?

So, this Bill is going to try and ensure that we start to correct some of these statistics, inequalities and injustices, for different cadres of people that have suffered this.

Extreme poverty is not evitable. It can be legislated; systems and policies can be put in place and this is what this Bill does. It ensures that it provides a framework for counties and national governments to put in place frameworks and mechanisms for the realization of the economic and social rights as set out in Article 43 of the Constitution.

It also imposes an obligation to prepare county strategic plans which will provide the county governments with a framework for the implementation of economic and social rights. These rights are tied to functions and powers of the county governments and conferred on them under part of the Fourth Schedule of the Constitution including agriculture, health, services, county planning and development, provision of pre-primary and vocational education and public works including water and sanitation services. It is in the efficient and effective carrying out of services that the county governments will work towards ensuring the realization of these economic and social rights as set out under Article 43.

Madam Temporary Speaker, I know we have legislated many Bills that seem to give economic power. However, this Bill will not just give fish to our citizens; it will give our institutions tools to make sure that our social and economic rights are enforced, monitored, quantified and implemented because something that is measured will be implemented.

Madam Temporary Speaker, we have provisions in different parts with regard to how grants that are received will be handled towards achievement of economic empowerment and social rights. Again, there are systems for approving county strategic plans. Many counties are saying that they do not have ways to do this. Therefore, this Bill seeks to provide for those ways, strategic planning, prioritizing and focusing on the right things that would ensure that the real statistics that I have provided here start to be dealt with as part of the reform that we need in our country and as part of the obligations of this House.

We have to ensure, as we go forward, and as our counties start to establish themselves and take advantage of the economic resources, that it is not just left in a vacuum. Everybody will be considered and counties will focus on the right things.

This Bill speaks to both the national Government and counties. Therefore, it will ensure that they plan for economic empowerment of all citizens. For example, if 96 per cent of the workforce on farms are women, what strategies do counties have in place to ensure that the work is quantified and paid for appropriately?

Madam Temporary Speaker, I know that I am running out of time. I hope that I will get more time tomorrow to expound on these things. There are many Articles in our Constitution that this Bill gives effect to. It seeks to provide a framework to give effect to all these Articles. It will also ensure the preservation of the dignity of all persons and communities in line with Article 19 of the Constitution and seek to provide the framework to facilitate the enforcement of these rights.

Madam Temporary Speaker, Clause (6) (2) of this Bill provides that:-

“The national and county governments, shall, pursuant to subsection (1)-

(a) take measures to create the opportunities and an environment in which the economic and social rights are realised;

(b) adopt comprehensive strategic plans that ensure the protection and promotion of economic and social rights;

(c) integrate, within their respective policies, strategies, actions and such other measures as it would consider necessary for the realisation of the economic and social rights under the Constitution;---

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Halake, you will have a balance of 43 minutes.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday 20<sup>th</sup> February, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.