



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - THIRD SESSION

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, APRIL 03, 2019 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The proceedings were opened with prayer said by the Speaker.

3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

a) **On visiting students and teachers from Mpeketoni Secondary School, Lamu County**

“Honourable Senators,

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

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

I thank you.”

b) **On visiting students and teachers from St. Peter's Minor Seminary, Mukumu, Kakamega County**

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting students and teachers from St. Peter's Minor Seminary, Mukumu, Kakamega County.

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

I thank you.”

4. MESSAGES

The Speaker conveyed the following Messages from the National Assembly –

a) **MESSAGE FROM THE NATIONAL ASSEMBLY REGARDING THE DECISION OF THE NATIONAL ASSEMBLY ON THE SENATE AMENDMENTS TO THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2017)**

“Honourable Senators,

I wish to bring to the attention of the Senate that, pursuant to Standing Order No. 41 (3) of the Senate, a Message has been received from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate Amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 41 (1) and 149 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly: -

Whereas the Senate amendments to the Kenya Roads Bill, 2017 (National Assembly Bill No. 47 of 2017) were forwarded to the National Assembly for consideration on February 21, 2019;

*And whereas, by a resolution made on 14th March, 2019, the National Assembly **negatived** the Motion to consider the said amendments in the Committee of the whole House;*

*Now, therefore, in accordance with the provision of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby **convey** the said decision of the National Assembly to the Senate.”*

Honourable Senators,

Article 112(1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. Further, Article 112(2) (b) of the Constitution provides that if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Honourable Senators,

I would also like to inform the House that, I have, vide a schedule accompanying the Message under reference, received communication that the Speaker of the National Assembly has appointed the following Members to

represent the Assembly in the Mediation Committee that will attempt to develop a version of the said Bill that both Houses will pass-

1. The Hon. Adan Duale, EGH, M.P.;
2. The Hon. Junet Mohamed, M.P.;
3. The Hon. Cecily Mbarire, MGH, M.P.;
4. The Hon. David Pkosing, CBS, M.P.; and
5. The Hon. Thomas J. Kajwang', M.P.

Honourable Senators,

I am in the process of appointing Senators to represent the Senate in the Mediation Committee in respect of the Bill, in accordance with Article 112 (2)(b) of the Constitution and Standing Order 160(2) of the Senate, and will shortly be communicating the names.

I thank you!"

- b) **MESSAGE FROM THE NATIONAL ASSEMBLY REGARDING THE DECISION OF THE NATIONAL ASSEMBLY ON THE SENATE AMENDMENTS TO THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2017), THE IRRIGATION BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2017) AND THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2018)**

“Honourable Senators,

I wish to bring to the attention of the Senate that pursuant to Standing Order No.41 (3) of the Senate, a Message has been received from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate Amendments to the Physical Planning Bill (National Assembly Bill No. 34 of 2017), the Irrigation Bill (National Assembly Bill No.46 of 2017) and the Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 41 (1) and 149 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly: -

Whereas the Senate amendments to Physical Planning Bill (National Assembly No. 34 of 2017), & the Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018) were forwarded to the National Assembly for consideration on 21st February, 2019, while Senate’s amendments to the Irrigation Bill (National Assembly Bill No. 46 of 2017) were forwarded on March 5th, 2019;

*And whereas, the National Assembly **agreed to part** of the Senate’s Amendments to the said Bills and **rejected part** of the said amendments as indicated in the First, Second and Third Schedules accompanying this Message;*

*Now, therefore, in accordance with the provision of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby **convey** the said decision of the National Assembly to the Senate.”*

Honourable Senators,

Article 112(1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. Further, Article 112(2) (b) of the Constitution provides that if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Honourable Senators,

I would also like to inform the House that, I have, vide a schedule accompanying the Message under reference, received communication that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committees that will attempt to develop versions of the said Bills that both Houses will pass-

Mediation Committee on the Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018) and Physical Planning Bill (National Assembly No. 34 of 2017)

1. The Hon. Adan Duale, EGH, M.P.;
2. The Hon. John Mbadi, EGH, M.P.;
3. The Hon. (Dr.) Rachael Nyamai, M.P.;
4. The Hon. Caleb Kositany, M.P.; and
5. The Hon. Mishi Mboko, M.P.

Mediation Committee on the Irrigation Bill (National Assembly Bill No. 46 of 2017)

1. The Hon. Adan Duale, EGH, M.P.;
2. The Hon. (Dr.) Chris Wamalwa, M.P.;
3. The Hon. Joseph Wachira Kabinga, M.P.;
4. The Hon. Daniel Tuitoek Kamuren, M.P.; and
5. The Hon. Florence Mutua, M.P.

Honourable Senators,

I am in the process of appointing Senators to represent the Senate in the Mediation Committees in respect of the Bills under reference, in accordance with Article 112 (2)(b) of the Constitution and Standing Order 160(2) of the Senate, and will shortly be communicating the names.

I thank you!”

5. **PAPER**

The following Paper was laid on the Table of the Senate:-

Statement on the Business of the Senate for the week commencing Tuesday, 9th April, 2019.

(The Deputy Senate Majority Leader)

6. **STATEMENTS****a) Statements Pursuant to Standing Order No. 47 (1)**

- i) The Senator for Makueni County (Sen. Mutula Kilonzo Junior, MP) made a statement on a matter of national concern regarding the state of affairs in Samburu County.

The Senator highlighted the fact that the Governor of Samburu County, who had been under investigation by the Ethics and Anti-corruption Commission (EACC) over suspected fraud had been arrested and charged in court. The Senator stated that, apart from the Governor, 13 senior County officials, including the Deputy Governor, the County Secretary, the Chief Finance Officer and other Chief Officers were either due to be charged or under active investigation by EACC.

The Senator further stated that, should the officials be charged in court, it was reasonable to expect that they would step aside and expressed concern that the net effect of the forgoing was that there was legitimate and real apprehension over the continuation of services in the County of Samburu with the risk of *wananchi* being unable to access services.

The Senator observed that the events in Samburu County had the potential of precipitating a crisis of monumental proportions that should nudge the President to suspend the County Government, pursuant to Article 192 of the Constitution, arguing that there was ground to institute a Commission of Inquiry to investigate the County Government as contemplated in Article 192 (2) of the Constitution.

The Senator urged the concerned authorities, including the EACC, the Directorate of Criminal Investigations (DCI), the Director of Public Prosecutions (DPP) and the Judiciary to handle the matter judiciously and expeditiously with a view to ensuring that services at the Samburu County Government offices do not grind to a halt.

Following comments by Senators, the Speaker referred the matter to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and directed that a report be tabled in the House in two weeks' time.

- ii) The Senator for Nairobi County (Sen. Johnson Sakaja, MP) made a statement on the audit queries raised by the Office of the Auditor-General regarding the financial statements of the Nairobi City County Government for the Financial Year 2017-2018.

In the Statement, the Senator stated that the report of the Auditor-General for the stated period revealed that the Nairobi City County Government had not maintained financial prudence or fiscal discipline as stipulated in Article 201 of the Constitution on Principles of Public Finance. The Senator highlighted that revenue collection had declined by 7.5% as compared with previous years and that the Auditor General had questioned why the county government only declared the Ksh.8.3 billion that had been collected via the Jambo Pay platform but failed to disclose the revenue collected through the MPesa Paybill numbers.

The Senator brought to the attention of the House, that only Ksh.1.4 billion out of a supplementary budget of Ksh.33.65 billion that was passed by the County Assembly was used on development activities. He further informed the Senate that the Auditor General's report had revealed contravention of the Public Finance Management (County Government) Regulations (2015) and there were numerous queries pointing at possible loss of public funds which had negatively impacted on service delivery to the residents of Nairobi City County.

The Senator concluded by urging the Sessional Committee on County Public Accounts and Investments to investigate the matter and to obtain satisfactory explanations to the issues raised in the Auditor General's report.

b) Statements pursuant to Standing Order No. 48 (1)

The Senator for Nandi County (Sen. Samson Cherarkey, MP), sought a Statement from the Standing Committee on Agriculture, Livestock and Fisheries on the Roundup herbicide which is used by farmers to kill weeds in Kenya.

c) Statements pursuant to Standing Order No. 51 (1)

The Chairperson of the Standing Committee on Finance and Budget made a Statement on the County Government Exchequer monthly releases by the Office of the Controller of Budget.

d) Statements pursuant to Standing Order No. 52 (1)

The Deputy Senate Majority Leader issued a Statement on the business of the Senate for the week commencing Tuesday, 9th April, 2019.

7. **THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO 31 OF 2018)**

(Sen. (Dr.) Agnes Zani, MP)

(Second Reading)

(Resumption of debate interrupted on Wednesday, 27th March, 2019)

(Division)

Order deferred.

8. **MOTION – REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET ON THE COUNTY GOVERNMENTS’ INFRASTRUCTURE PROJECTS**

(Chairperson, Standing Committee on Finance and Budget)

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments’ infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers’ residences, laid on the Table of the Senate on Thursday, 29th November, 2018.

(Resumption of debate interrupted on Thursday, 28th March, 2019)

(Division)

Order deferred.

9. **COMMITTEE OF THE WHOLE**

THE COUNTY EARLY CHILDHOOD EDUCATION BILL (SENATE BILLS NO. 26 OF 2018)

(Chairperson, Standing Committee on Education)

(Resumption of debate interrupted on Wednesday, 27th March, 2019)

(Division)

Order deferred.

10. **COMMITTEE OF THE WHOLE**

THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO. 4 OF 2018)

(Sen. Amos Wako, MP)

(Resumption of debate interrupted on Wednesday, 27th March, 2019)

(Division)

Order deferred.

11. **COMMITTEE OF THE WHOLE**

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILLS NO. 22 OF 2018)

(Sen. Judith Pareno, MP)

(Resumption of debate interrupted on Wednesday, 27th March, 2019)

(Division)

Order deferred.

12. **COMMITTEE OF THE WHOLE**

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL (SENATE BILLS NO. 23 OF 2018)

(Sen. Fatuma Dullo, MP)

(Resumption of debate interrupted on Wednesday, 27th March, 2019)

(Division)

Order deferred.

13. **MOTION-** (The Senate Majority Leader)

THAT pursuant to Standing Order 159, the amendments by the National Assembly to the County Governments (Amendment) (No.2) Bill (Senate Bills No. 7 of 2017) be now considered.

Order deferred.

14. **COMMITTEE OF THE WHOLE**
THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2017)

(The Senate Majority Leader)

(Consideration of National Assembly Amendments)

Order deferred.

15. **COMMITTEE OF THE WHOLE**
THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2018)

(Sen. Ledama Olekina, MP)

Order deferred.

16. **COMMITTEE OF THE WHOLE**
THE IMPEACHMENT PROCEDURE BILL (SENATE BILLS NO. 15 OF 2018)
(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

Order deferred.

17. **COMMITTEE OF THE WHOLE**
DATA PROTECTION BILL (SENATE BILLS NO. 16 OF 2018)
(Chairperson, Standing Committee on Information and Technology)

Order deferred.

18. **COMMITTEE OF THE WHOLE**
THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)

(Sen. Samuel Poghio, MP)

Order deferred.

19. **COMMITTEE OF THE WHOLE**
THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 27 OF 2018)

(Sen. Abshiro Halake, MP)

Order deferred.

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

(Sen. Ledama Olekina, MP)

Order for Second Reading read;

Motion made and Question proposed-

THAT the County Oversight and Accountability Bill (Senate Bills No. 28 of 2018) be now read a Second time.

(Sen. Ledama Olekina – 27.03.2019)

Debate interrupted on Tuesday, 2nd April, 2019 resumed;

There being no other Senator wishing to contribute;

The Mover replied;

Raising a point of Order, the Senator for Narok County (Sen. Ledama Olekina, MP) requested that the putting of the Question be deferred to a later date, pursuant to Standing Order 61 (3).

And the Temporary Speaker (Sen. Rose Nyamunga, MP), acceding to the request, deferred the putting of the Question to Tuesday, 9th April, 2019.

21. **THE DETERMINATION OF THE NATURE OF BILLS (PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)**

(Sen. Mutula Kilonzo Jnr., MP and Sen. Sakaja Johnson, MP)

Order for Second Reading read;

Motion made;

THAT, the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018) be now read a Second Time.

(Sen. Sakaja Johnson, MP)

Debate arising;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Rose Nyamunga) interrupted the proceedings and adjourned the Senate without question put, pursuant to the Standing Orders.

22. **SENATE ROSE** – at Thirty Minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, April 04, 2019 at 2.30 p.m in
the National Assembly Chamber for a joint sitting.*