

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 12th May, 2020 – Afternoon Sitting**

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

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

PRAYER

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Serjeant-at-Arms, there is a lot of noise outside the Chamber.

Order, Senators!

PAPERS LAID

The Deputy Speaker (Sen. (Prof.) Kindiki): I direct that we skip that particular order for the time being.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Members! This afternoon, we have quite a number of Statements. If you look at your Order Papers---

Sen. Halake is not in. The Statement is deferred.

Sen. Madzayo: She is here.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is she?

Order, Sen. Madzayo!

Sen. Halake is not here. The Statement is deferred.

**ALLEGED MARGINALIZATION OF MUSLIMS FROM
ACCESS TO FINANCES BY GOVERNMENT
INSTITUTIONS**

(Statement deferred)

The next Statement is from the nominated Senator, Sen. Were, pursuant to Standing Order 47 (1).

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IMPACT OF COVID-19 PANDEMIC ON THE PREVENTION AND
CONTROL OF MALARIA AND OTHER DISEASES

Sen. Were: Thank you, Mr. Deputy Speaker, Sir. I rise to make a Statement pursuant to Standing Order 47 (1) on the adverse impact that the COVID-19 outbreak situation is having on the prevention and control of Malaria and other diseases of public health concern such as HIV/AIDS and Tuberculosis (TB).

Mr. Deputy Speaker, Sir, pursuant to Standing Order 47(1), I beg to make a Statement on an issue of general topical concern namely: the adverse impact that the COVID-19 pandemic is having on the prevention and control of Malaria and other diseases of public health concern, such as HIV/AIDS and Tuberculosis (TB).

Allow me to, first, start by recognizing and applauding the extraordinary efforts that the Government, more particularly, the Ministry of Health, under the leadership of the Cabinet Secretary, Hon. Mutahi Kagwe, has made in leading Kenyans with response to the COVID-19 pandemic.

Mr. Deputy Speaker, Sir, I speak for most when I say that, given the magnitude of the problem and the sheer scale of time and resources required to mount an effective response to the COVID-19 outbreak situation, so far, the Ministry of Health has done a commendable job. To the Cabinet Secretary and his team at the Ministry, congratulations.

Mr. Deputy Speaker, Sir, even as we strive to confront the COVID-19 pandemic, we must not lose sight of the diseases that have historically posed the greatest threats to our health, such as Malaria and other diseases of public health importance, like HIV/AIDS and TB.

Mr. Deputy Speaker, Sir, according to the 2019 World Malaria Report by the World Health Organization (WHO) in 2018, there were an estimated 228 million cases of Malaria worldwide and 405, 000 Malaria related deaths. Of this, Sub-Saharan Africa accounted for 93 per cent of Malaria cases and 94 per cent of all Malaria deaths in 2018. More than two thirds of the deaths were among children under the age of five.

Mr. Deputy Speaker, Sir, a modelling analysis by the WHO---

The Deputy Speaker (Sen. (Prof.) Kindiki: Order, Sen. Were! You did not seek the discretion of the Speaker to allow you to read your Statement word for word. Is there a reason why?

Sen. Were: Mr. Deputy Speaker, Sir, I have figures that I need to make reference to.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, they are technical issues.

Sen. Were: Yes, there are technical issues in this Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki: Okay, kindly proceed.

Sen. Were: Thank you, Mr. Deputy Speaker, Sir. As I was referring to these figures, a modelling analysis by the WHO on the potential impact of disruptions in Malaria prevention and control brought about by the COVID-19 pandemic has predicted that Malaria deaths in Sub-Saharan Africa may reach 769, 000 this year, twice the number of deaths reported in 2018; a return to Malaria mortality levels last seen 20 years ago.

Mr. Deputy Speaker, Sir, this calls for action, that even as we focus on COVID-19, we need not to lose focus on the efforts we have made to curb Malaria and other public health concerns like HIV/AIDS and TB.

Mr. Deputy Speaker, Sir, at this point, I would like to point out that malaria is killing more people now as a result of floods that we are experiencing now, especially in the former Nyanza and Western provinces.

It is important to note that when Okiya Omtatah lost his daughter, Maryanne Omtatah, due to malaria, she had been in ICU for a week. This goes to say that hospitals are losing focus or they are not putting much emphasis on these illnesses because of the COVID-19 pandemic. We call upon hospitals to remember our historical diseases.

In addition to this, we have had patients being turned away from public hospitals owing to the disruption of normal services.

(Sen. Poghio stood up in his place)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. The applicable rules do not allow you to consult. You stay glued to your seat and when you leave, you leave and go.

Sen. Were: Mr. Deputy Speaker, Sir, the similarity between the symptoms of COVID-19 and malaria has continued to cause confusion amongst health workers, thus leading to misdiagnosis of patients and under treatment for malaria. I draw the attention of health professionals and workers to this issue.

In order to mitigate against this, it is important that the Ministry of Health and respective county governments institute urgent measures to integrate malaria prevention and control interventions in the COVID-19 response, including vector control treatment, clinical and diagnostic services.

We still do not know with certainty---

(Sen. Cheruiyot consulted the Speaker)

The Deputy Speaker (Sen. (Prof.) Kindiki): Who is on a point of order?

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Cheruiyot in order not to maintain the one-and-a-half metre distance when consulting the Speaker? Is he in order?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. I did not see how far the Senator was from the Speaker.

However, I made a directive in the morning that, first, restrain from consulting the Chair just the same way you cannot consult any other Senator. I gave two exceptions; there is an emergency like has been the case for Sen. Malalah a few minutes ago or it is a private matter.

I was in the process of listening to Sen. Cheruiyot to see whether he fell in any of those categories, but I think he has been scuttled by Sen. Khaniri. I think he has retreated. Let us continue. Unless it is important, let us respect our rules.

Sen. Were: Mr. Deputy Speaker, Sir, I still do not know with certainty how long we are going to have the COVID-19 pandemic around us and how far the spread will go. Therefore, let us not lose focus on those illnesses and diseases that I have mentioned.

Fortunately for us, however, up to this point, we have not seen the kind of devastation and death that COVID-19 has brought upon us compared to other developed countries like the US, Italy and Britain. However, what we know for sure is that, unless care is taken to mitigate the adverse impact COVID-19 is likely to have on other essential health services, we are likely to have many more deaths arising from malaria, and other diseases of public health importance such as HIV/AIDS and Tuberculosis.

Mr. Deputy Speaker, Sir, as I conclude, allow me to state that I appreciate the fact that other countries with stronger and more resilient health systems than ours are already battling under the pressure of this new disease. However, while more developed countries in the West may have the luxury of dedicating all their time and resources to COVID-19, the case is not the same for us as the numbers I had indicated earlier show.

Unless we move with speed to innovate and tailor-make our response according to our unique needs and challenges, we face the very real risk of reversing all the gains we have made so far in the prevention and control of malaria and the other diseases that I had earlier on mentioned. This in itself poses an even greater long-term threat to our health system than the current COVID-19 outbreak. As such, urgent and immediate action is required.

I thank you.

EXCLUSION OF HEALTH ADMINISTRATIVE OFFICERS IN
KENYA FROM THE BENEFITS OF COVID-19
MEDICAL EMERGENCY FUND

Sen. Malalah: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 47(1), to make a Statement concerning the exclusion of Health Administrative Officers in Kenya from the benefits of COVID-19 Medical Emergency Fund.

On 28th April 2020, the Salaries and Remuneration Commission (SRC) released a circular via a letter Ref. No.SRC/TS/COG/3/61/48, addressed to Hon. (Amb.) Ukur Yatani, EGH, the Cabinet Secretary, National Treasury, on Covid-19 medical emergency allowance and benefits for frontline healthcare workers in national and county governments.

This was in response to a letter from the Council of Governors (CoG), dated 15th April 2020, requesting for payment of allowances to healthcare workers in the county governments; and a further letter from the Ministry of Public Service and Gender, dated 27th April, 2020, on proposed welfare and insurance package for healthcare workers during the COVID-19 pandemic.

The Salaries and Remuneration Commission informed the Cabinet Secretary in charge of the National Treasury that the SRC had deliberated on the matter during its 117th Special Meeting held on 28th April 2020, in cognizant of the challenges faced by the healthcare workers, and had approved COVID-19 Medical Emergency Allowances and

benefits for the frontline healthcare workers, estimated to cost Kshs.3,013,390,000 for a period of three months with effect from 1st April 2020, subject to availability of funds.

Mr. Deputy Speaker, Sir, when the SRC was making decisions on Covid-19 medical emergency allowance and benefits for frontline healthcare workers in national and county governments, they deliberately and discriminatorily excluded some of the key frontline healthcare workers in national and county governments; one of them being the health administrative officers (Hospital administrators) who are part and parcel of the rapid response teams for COVID-19 in charge of the following functions in all Government hospitals in this Republic.

I will not go into the functions because they are well known; the responsibility of hospital administrators.

In addition, there was a letter written by the Kenya Health Professionals Society (KHPS) to the Chairman, Council of Governors, Public Service Commission and Salaries and Remuneration Commission dated 14th April 2020, in which this cadre was recognized as one of the 17 health professionals who were to be considered when determining benefits to frontline healthcare workers, examples of such allowances include, Special COVID-19 Medical Emergency Allowance for Frontline Healthcare Workers, Health Risk Allowances and Extraneous Allowances.

Given the prevailing circumstances, I want to seek clarification on the following issues:

- (1) The Ministry of Health to give a definite definition of “Healthcare Worker” and further clarify whether or not health administrative officers in this country are considered healthcare workers. If yes, explain why they were discriminated against when considering the other healthcare workers in the Ministry given their roles and responsibilities in a health facility.
- (2) Whether the SRC consulted their own job evaluation reports in making determination on the cadres to benefit from the welfare package as was directed by the President.
- (3) Whether the SRC is aware that Health Administrative Officers (HAOs), Medical Superintendents and Nursing Officers in charge, play administrative roles in the management of health facilities Level 4, 5 and 6. Further, whether the SRC is also aware of the roles and responsibilities of the Hospital Administrators as per their approved Schemes of Service.

(4) Lastly, I want the following clarification from the Salaries and Remuneration Commission (SRC). The SRC should clearly explain the reasons for the omission of the Health Administrative Officers from the list of beneficiaries and inclusion of non-frontline individuals such as officers at the Ministry of Health, that is Afya House, who have never experienced what the frontline officers are going through.

Further, the SRC should state whether there are any plans of correcting this indiscretion with a view to having Health Administrative Officers included in the list of beneficiaries for COVID-19 Medical Emergency Allowances and other benefits for Frontline Healthcare Workers in national and county governments;

Mr. Deputy Speaker, Sir, I, therefore, urge the Senate COVID-19 *Ad Hoc* Committee to delve further into these and more issues about discriminatory payments to Health workers in Kenya through engagements with the relevant institutions and stakeholders and ensure a fair and all-inclusive payment system for the health workers is arrived at and implemented.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Sen. Sakaja, the issues are quite relevant to what you are doing. Can you have some input on is it in your next report?

Sen. Sakaja: Mr. Deputy Speaker, Sir, as always, my distinguished cousin brings serious issues before this House.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which cousin?

(Laughter)

Sen. Sakaja: Mr. Deputy Speaker, Sir, he is the distinguished nephew of Sen. Wetangula---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja. You have taken cue from another Senator, who I will not specify, but he will always find a way of qualifying other Senators.

Sen. Sakaja: Mr. Deputy Speaker, Sir, the Statement by Sen. Malalah---

The Deputy Speaker (Sen. (Prof.) Kindiki): Standing Order No. 96(6) states that--

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(Sen. Sakaja remained standing at his place)

Sen. Sakaja, it does not matter whether you are referring to the Standing Order that I am referring to or not, you should be seated.

Standing Order No. 96(6) states that: -

‘A Senator shall refer to another Senator by the title “Senator... (name of the Senator)”.’

Therefore, you are not allowed to use titles such as cousin, grandfather or best friend.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Mutula Kilonzo Jnr.? You are not the Senator that I did not specify. Are you?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I do not have relatives or extended family members in this House.

(Laughter)

Mr. Deputy Speaker, Sir, I am aware that the Committee on Health has invited the Cabinet Secretary tomorrow afternoon, and I am participating in the meeting. I am aware that the Chairperson sits in the Committee led by---

The Deputy Speaker (Sen. (Prof.) Kindiki): Which Chairperson? Are you talking of the Chairperson of the *Ad-hoc* Committee on COVID-19 Situation in Kenya?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir. The Chairperson of the Committee on Health also sits in the *Ad-hoc* Committee on COVID-19 Situation in Kenya.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay, very good.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, in view of the urgency of this matter and the gravity of it, can the Chairperson of the *Ad-hoc* Committee on COVID-19 Situation in Kenya, Sen. Sakaja, sit in the Committee on Health meeting for us to get the response faster. I am aware of the meeting that they are to have tomorrow afternoon.

The Deputy Speaker (Sen. (Prof.) Kindiki): In that function, he can even delegate it to Sen. (Dr.) Mbiti. We should find ways of making maximum use of our time.

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

Sen. Wetangula: Mr. Deputy Speaker, Sir, if indeed there is a meeting tomorrow where the Cabinet Secretary for the Ministry of Health will be appearing, I beseech you to direct that the weighty issues raised by Sen. Were be addressed there. She talked of the other diseases ravaging Kenyans other than COVID-19, particularly malaria and the side effects of floods that are devastating several parts of the country. Those issues should also be placed before the Committee in order for them to be addressed by the Cabinet Secretary.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is spot on and it is the way to go. It will help us reduce the number of times in which we invite the CS. We will have that. Thank you, Sen. Wetangula, for that input.

Sen. Sakaja: That is in order, Mr. Deputy Speaker, Sir. I thank Sen. Wetangula for pointing that out. For the convenience of the House, I will coordinate with Sen. (Dr.) Mbiti because he is a Member of my Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very good. However, delegation is not negligence. Therefore, the responsibility is on you and you have to make sure that it happens even as you delegate.

Sen. Malalah: Mr. Deputy Speaker, Sir, if you listened to me keenly---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

Sen. Malalah: Mr. Deputy Speaker, Sir, I just wanted to---

The Deputy Speaker (Sen. (Prof.) Kindiki): What did you say? You should instead say, 'when you listen to me' and not 'if you listen to me'.

Sen. Malalah: Mr. Deputy Speaker, Sir, I stand corrected. When you pensively listened to me, I directed my Statement to the SRC. Therefore, this matter does not just affect the Ministry of Health but it also extends to the SRC. I want it addressed by the Ministry of Health and the SRC.

Sen. Linturi: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Linturi?

Sen. Linturi: Mr. Deputy Speaker, Sir, I want to seek your direction. As leaders, we have to ensure that the public adheres to the Ministry of Health guidelines in combating the COVID-19 by the manner in which we wear these masks. You will realize that Sen. Malalah did not cover his mouth or nose when he was speaking and Sen. Wetangula did the same.

I urge you to direct that the Senators cover their nose and mouth even as they engage. That is because we have to make sure that we do not spread this disease if we are to succeed because we do not know who is positive or negative.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us have our masks on as much as possible. I have noted the concern by Sen. Linturi. I do not want to elaborate further but try to have your mask as much as possible. It might not be practical sometimes but that should be the exception and not the rule.

Sen. Wambua: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Wambua?

Sen. Wambua: Mr. Deputy Speaker, Sir, I seek your guidance on the Statement that has been issued by Sen. Malalah. He has talked about SRC. I have also been approached by other administrative workers in Kitui County. If the matter is taken to the SRC, it will become a policy issue yet their complaint was that they have been left out during this time as the other health workers are being given allowances in respect of the fight against COVID-19. Kindly give us guidelines on where that matter will be processed.

The Deputy Speaker (Sen. (Prof.) Kindiki): I listened to Sen. Malalah and he at one point said that this category of administrative officers, who work in health facilities, had been recognized at one point. Therefore, I agree with Sen. Wambua that it should not be that we are reopening the issue of their recognition but Sen. Malalah is rather addressing the issue of them being left out.

Therefore, the Ministry of Health should be the one to answer that unless they throw it back to SRC. It is true that SRC at times requires baseline survey analysis and many others. However, it is up to Sen. Malalah. Nothing prevents the Committee from engaging SRC though it will take a lot of time. What is your view?

Sen. Malalah: Mr. Deputy Speaker, Sir, I think that SRC is mandated to look into issues of of salary benefits. They are the ones who really were the stumbling block in even health workers getting the allowances---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, can the Committee hear from both SRC and the Ministry?

Sen. Sakaja: Mr. Deputy Speaker, Sir, just allow me to inform the House that we had raised this issue in our first progress report. A Committee has been set up by the national Government that is addressing the package of all health workers. Within that Committee, there is a representative of the Public Service Commission (PSC), the Ministry of Health and SRC. That is the Committee we will be dealing with.

As a Committee, in all our reports, we have informed the House that there are five thematic areas we are looking at. These are very wide thematic areas which includes transport, salaries and so on. So, we can still deal with it. You do not need to give one to the Committee on Finance and Budget and so on. We will deal with it conclusively.

There is one Committee of the PSC that the President announced led by Mr. Kirogo from the Ministry of Health and as well as the Cabinet Secretary (CS), Prof. Kobia. That is the team that is right now giving the policy direction on COVID-19 on the extra allowances and the enhanced package to health workers. That is the team we will liaise with the Committee on Health to talk to at this point.

The Deputy Speaker (Sen. (Prof.) Kindiki): It will then be their business now to rope in SRC and whoever else, if they so wish. That is agreeable.

Very well. Let us make progress. Those two are exhausted, we now move to the next one.

Sen. Omanga, proceed.

Sen. Omanga: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What do you mean by no? I see Sen. Omanga is to seek a Statement regarding security of students at the University of Nairobi.

Sen. Mutula Kilonzo Jnr.: On a point of Order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, on those two issues raised, maybe I did not hear you just like Sen. Malalah was saying, but did you give direction---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! I directed the Committee addressing the COVID-19 pandemic to give responses in their next progress report which they will present to the House next week on Tuesday.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, next Tuesday?

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, next Tuesday.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, they can choose to bring the report another day.

The Deputy Speaker (Sen. (Prof.) Kindiki): According to the Motion that was passed by the House, they report weekly. So, that will be on Tuesday, next week.

Sen. Malalah, proceed.

SACKING OF DR. JOEL LUTOMIA AS THE DIRECTOR,
CENTRE FOR VIRUS RESEARCH (CVR), KEMRI

Sen. Malalah: Mr. Deputy Speaker, Sir, we always raise statements and questions in this House and you give directions. I remember I raised a question on the sacking of Dr. Lutomia. However, up to now, no answer has been brought to this House. I would like to encourage the Chairperson, Sen. Sakaja, to kindly, if the Chair gives directions, adhere to the timelines because we need the answers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, proceed.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I would also like to encourage Sen. Malalah to read reports. The issues he raised---

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

Sen. Sakaja: Mr. Deputy Speaker, Sir, allow me to finish, I have not even made the point.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! It is a point of order.

Sen. Wetangula: Mr. Deputy Speaker, Sir, this House does not work on the basis of encouragement.

(Laughter)

This House works on the basis of rules. When the Chair gives an order, we do not need to load it with an encouragement because everybody is obligated to follow the order.

The Deputy Speaker (Sen. (Prof.) Kindiki): All right. I think Sen. Wetangula is correct.

Sen. Sakaja: Mr. Deputy Speaker, Sir, even in the Bible, people are exhorted to follow the laws in as much as the laws are there.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, in the Bible.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I sincerely want to encourage my brother, the Senator for Kakamega County, to read the reports. Today, we are giving the fifth Progress Report. The matter he raised was addressed at a preliminary report and we even note in the report the follow up that we are doing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very good.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I will guide Sen. Malalah outside this House on how these things are done---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

Sen. Sakaja: Mr. Deputy Speaker, Sir, he will be pleased to know that we have dealt with it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! You know the temptation to blow your own trumpet is great.

Sen. Wetangula: He is casting aspersions on---

Sen. Malalah: On a point of Order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Malalah?

Sen. Malalah: Mr. Deputy Speaker, Sir, I hear the Senator for Nairobi City County. The issues he is raising about preliminary observations, he already had it in the Report the day I was asking those questions. Since then, he has not brought any tangible response to what I asked. We want to know why Dr. Lutomia was dismissed from work. What is the Government doing about it and whether they followed the right procedure to dismiss him? We do not want to hear stories, narratives and theories on reports.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah! You should not use exceptional words.

An hon. Senator: Absolutely.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I just want to jog your memory about this issue. I recall that you made direction that on the case of Dr. Lutomia, a specific report would be issued outside the normal report of the Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely.

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir. The encouragement that Sen. Sakaja is giving to Sen. Malalah should encourage them to extract that report

and give him a specific report. In fact, he was supposed to table a specific report on the Floor.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, that is exactly what I said. First, I had said whatever the Committee had done by that time should have been extracted. I also called for further engagement with the responsible authorities and a comprehensive report on that particular issue be produced and tabled here.

Sen. Sakaja, if you are not ready, just admit and we will give you more time to comply.

Sen. Sakaja: Mr. Deputy Speaker, Sir, we shall extract that part and give it as a separate report.

The Deputy Speaker (Sen. (Prof.) Kindiki): Extract it, beef it up and have concrete recommendations. For example, if the law was not followed, what specific measures should be taken? That should be done by Tuesday, next week.

Sen. Sakaja: Mr. Deputy Speaker, Sir, so guided. I assure you it will be done by Tuesday, next week, without fail.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Sen. Omanga, you are not ready, so I defer.

Sen. Omanga: No, Mr. Deputy Speaker, Sir, I am ready.

The Deputy Speaker (Sen. (Prof.) Kindiki): You are saying 'no' and 'yes.'

Sen. Omanga: Mr. Deputy Speaker, Sir, I am ready for the Statement. I thought you were asking me to comment on the other Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay. Proceed.

SECURITY OF STUDENTS AT THE UNIVERSITY OF NAIROBI

Sen. Omanga: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a statement from the Committee on Education regarding the security of students at the University of Nairobi (UoN).

In the Statement, the Committee should -

- (1) Explain the circumstances that led to the brutal murder of Odeng Jaja on the night of Monday, 9th March, 2020 ostensibly as a result of his interest in vying for the position of student leader during the upcoming Student Organisation of Nairobi University (SONU) elections. His murder led to the demonstration that culminated in the torching of one of the halls of residence.
- (2) Outline the measures the Government has put in place to ensure the security of students residing within the facility during eruption of such demonstration.
- (3) State the measures, if any, that the Government will put in place to hold responsible the persons found culpable of the murder of this and several other university students and ensure such occurrences do not repeat.

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

Sen. (Dr.) Langat, you have heard Sen., Omanga. Deal accordingly.

Next Statement is by Sen. (Dr.) Milgo. Is she in the House? She is not present. Her Statement is deferred.

WASTE MANAGEMENT IN BOMET COUNTY

(Statement deferred)

Next Statement is by Sen. Dullo, the Senator for Isiolo County.

IRREGULAR RECRUITMENT BY THE TSC

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.48(1) to seek a Statement from the Committee on Education, regarding the irregular recruitment by the Teachers Service Commission (TSC).

In the Statement, the Committee should -

- (1) Explain the criteria used during the recent promotion by TSC of 1,000 primary school teachers to teach in secondary schools.
- (2) State the reason for leaving out teachers from Isiolo County despite their being qualified and tendering application and instead posting teachers from other counties to Isiolo County.
- (3) Outline the measures that the Ministry will put in place to remedy the situation as well as prevent further occurrences of the anomaly in light of the obligation to provide opportunities to marginalised communities.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Sen. (Dr.) Langat, that is still your docket.

The next Statement is by Sen. (Dr.) Mwaura. Since he is not in the Chamber, it is deferred.

EXPENDITURE BY THE MINISTRY OF HEALTH IN THE FIGHT
AGAINST COVID-19 PANDEMIC

(Statement deferred)

The next Statement is by Sen. Kang'ata from Murang'a. Sen. Kang'ata, have you joined the Minority side? I am used to seeing you on this other side of the House.

Sen. Kang'ata: Mr. Deputy Speaker, Sir, I can move.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kang'ata! Proceed. Maybe it is a temporary move.

Sen. Kang'ata: Mr. Deputy Speaker, Sir, it is a sign of celebration of the great day.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

PROVISION OF TAX WAIVERS TO SMALL-SCALE
TRADERS TO CUSHION THEM AGAINST
THE EFFECTS OF COVID-19 PANDEMIC

Sen. Kang'ata: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Trade, Tourism and Industrialization regarding provision of tax waivers to small-scale traders following the Government tax waivers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is there a reason your mask is not on, Sen. Kang'ata? Hon. Senators, remember when Sen. Linturi brought up this issue, I said as much as possible.

Let me explain myself so that we are not prisoners of our own rules. There have been cases - and that is why I asked Sen. Kang'ata whether there is a reason - where some users of masks are saying that after a while, they run short of breath. Trying to catch breath is a medical issue and we do not want casualties here.

Secondly, in the rules, we have allowed, unless they change later, that we can take water. You cannot take water when your mask is on. I heard that in some corner of Kenya, there were policemen who were arresting women, who were eating, for not wearing a mask. How do you eat with your mask on?

(There was a technical hitch)

Sen. Kang'ata: --- if any, that the county governments are putting in place to lessen the tax burden on micro and small-scale enterprises in their jurisdiction, in the wake of COVID-19 pandemic.

(2) State the measures county governments have put in place to ensure: -

- (a) suspension of payment of single licenses fees for micro, macro and small-scale enterprises;
- (b) reduction of cess for agriculture products; and,
- (c) waiver of market entry fees for traders.

Mr. Deputy Speaker, Sir, essentially, we have seen measures by the national Government cushioning the small-scale person. However, so far, we have not heard anything from the county governments. We know that they continue to charge single business permit and licenses and ask for cess from the poor market women. We need them to mirror what the national Government is doing.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): To which Committee is that Statement addressed? Sen. (Eng.) Mahamud, that is a matter of taxation. Personally, in my office, I have received a lot of requests, which are similar to the subject matter of Sen. Kang'ata's request for Statement. It is on taxation measures by county governments during this period of COVID-19.

It is about the business permits, market entry fees and other small things. It is an important issue and a nationwide challenge. Is it something that you can engage the Council of Governors and see whether traders can have some reprieve?

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, we can take it up.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do I give you two or three weeks?

Sen. (Eng.) Mahamud: Three weeks.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will give you three weeks so that you do a good job, because there is a lot of hue and cry across the country.

Sen. Kang'ata, you will liaise with Sen (Eng.) Mahamud and his Committee to help them understand your mind. For that area, Sen. (Eng.) Mahamud, I direct that a formal report be tabled with concrete recommendations.

Are we done with Statements? What is it, Sen. Were?

Sen. Were: Mr. Deputy Speaker, Sir, would it be in order for me to request you, in the spirit of what has happened with the Statement on Dr. Lutomia to ask the *Ad hoc* Committee on the COVID-19 Situation in Kenya to extract their Report on my issue of prevention, control and treatment of malaria and other illnesses; that it is presented as a separate and specific Report.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us hear the views of the Committee first.

Sen. Sakaja.

Sen. Sakaja: Mr. Deputy Speaker, Sir, we would be glad to do so. However, you directed that since there is a meeting of the Committee on Health with the Cabinet Secretary on other non-COVID-19 issues, the specific matter be raised to the Committee on Health. However, I will also delegate the COVID-19 issues that Sen. Malalah has raised.

The Deputy Speaker (Sen. (Prof.) Kindiki): The suggestion by Sen. Were is that her Statement was on other serious diseases that are facing neglect because of the focus on COVID-19, malaria, which is killing as many people if not more, being one of them. In fact, the Statement is referred to your Committee, but we said that you have a Member of your Committee, namely Sen. (Dr.) Mbiti, who is also the Chairperson of the Committee on Health.

You can delegate and then he reports back to your Committee. Her request is whether you can equally give a specific response, which is not covered in the humongous weekly report on COVID-19. Is that something you can do?

Sen. Sakaja: That is in order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much. Next Tuesday. What is it, Sen. Cheruiyot?

POINT OF ORDER

REACTIONS TO COMMUNICATION ON CHANGES IN MAJORITY LEADERSHIP POSITIONS

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, I have an issue on a point of procedure. Before we took a break for lunch at the end of the morning sitting, the Speaker gave a ruling that there was a matter that was before the House and said that once we resume in the afternoon, it would be the first item to be concluded.

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The Deputy Speaker (Sen. (Prof.) Kindiki): Which matter?

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, it was a matter relating to purported changes to the leadership of this House and a ruling by the Speaker. Will it be in order if I seek your direction on when you are likely to allow time. I remember that he had promised Sen. Linturi and a few other Senators who wanted to react to his Communication that he would give them a chance this afternoon. I do not know whether you will allow that to be done now or later.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja.

Sen. Sakaja: Mr. Deputy Speaker, Sir, this is a House of tradition. This morning, I was perturbed, first, by the language used. The Speaker gave a Communication, which was in effect a ruling, and it is being called in front of you “purported.”

Number two---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Pause there and resume your sit.

Sen. Cheruiyot, did you say ‘purported’ in reference to a Communication from the Chair?

(Sen. Madzayo spoke off record)

Order, Sen. Madzayo!

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, if Sen. Sakaja listened keenly, I said the Speaker was speaking about purported changes to leadership upon which he went on to give a Communication---

The Deputy Speaker (Sen.(Prof.) Kindiki): Order, Sen. Cheruiyot, I beg to understand. So the “purport” is on the changes, but not on the Communication by the Speaker?

Sen. Cheruiyot: My point exactly, Mr. Deputy Speaker, Sir. That is what I was trying to say and what I mean.

Sen. Sakaja: Mr. Deputy Speaker, Sir, you know, the English language came by various means. The whole import of the Speaker’s Communication was effecting changes that he said are effective today. So, if you say “purported” you are actually saying whatever the Speaker said was “purported”.

That notwithstanding, the tradition of this House - there are some Senators who have been here for many years including Sen. Khaniri - the line is getting blurred on the extent to which a Communication by the Speaker can be subject of debate. We need you to rule, once you make Communication or a Ruling from your Chair, is that then a Motion or subject for extensive debate? Should we change the rules now or is it a statement or a ruling that you have made so that we can move on to other things? We need clarity on that.

The Deputy Speaker (Sen. (Prof.) Kindiki): In other words, you are asking for another ruling on that issue of whether a ruling can be commented on.

Sen. Sakaja: Mr. Deputy Speaker, Sir, not commented on, but where we have sustained debate there is a difference. Comments can be made for a few minutes and you close the issue, but on sustained debate questioning the actual Communication made by the Speaker, we need to know that, so that going forward, we will know which of the

other Communications you make will be open for debate or maybe you will change your mind or not.

The Deputy Speaker (Sen.(Prof.) Kindiki): Proceed, Sen. Madzayo.

Sen. Madzayo: Asante Bw. Naibu Spika. Ninavyoelewa kisheria ni kwamba wakati Bw. Spika ameshatoa wasilisho na kuweka sababu zake mbele ya Bunge, huwa ule ni uamuzi wa Spika. Na kama amefanya uamuzi wake, itakuwa si sawa kisheria sisi kama Bunge la Seneti, kuanza kujadili huo uamuzi.

Kisheria, Spika sasa amekuwa *functus officio* kulingana na hilo jambo ambalo ametoa uamuzi wake. Ninashindwa ni kwa sababu gani tunakuja alasiri na kusema kwamba tufungue tena majadiliano kuhusiana na yale aliyoamua Bw. Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Wetangula?

Sen. Wetangula: Mr. Deputy Speaker, Sir, I am just wondering aloud. I was not here during the morning sitting. Did the Speaker make a Communication or a Ruling because the two are not the same?

Hon. Senators: Exactly!

The Deputy Speaker (Sen. (Prof.) Kindiki): What would be the difference before I tell you what it was?

Sen. Wetangula: For a Communication, the Speaker is a conveyor belt, so to speak, conveying a message from elsewhere as is, where is, to the Floor. A Ruling is a reasoned process by the Speaker giving reasons both factual and legal where necessary, on any issue that comes before the Floor. We should be told whether it was a Communication or a Ruling.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. There are two issue here; whether it is a Communication or a Ruling, there are certain Communications that are not debatable because the debate is of no use. The debate regarding those Communications will not change the subject matter of Communication.

If it is a Ruling, of course, it is not debatable. However, given the nature of the Communication that was made by the Speaker, is it useful to debate because it cannot be changed or altered here? It is a Communication that came with finality. It is what it is.

Sen.(Eng.) Mahamud: Mr. Deputy Speaker, Sir, it is true that this is a House of rules, procedure and precedents. The Speaker, after he read the Communication, allowed some interventions. Sen. Cheruiyot is saying that those interventions were ended because time ended.

In fact, he said we would continue. He is asking whether we can continue. That is all. He is not challenging the Speaker's Communication as such. The debate already ensued and thereafter he was trying to give Senators, for example, Sen. Kihika some time. When do we come back to that? That is the question Sen. Cheruiyot asked.

Sen. Linturi: Indeed, Mr. Deputy Speaker, Sir, by the time we adjourned at 12.30 p.m. I was on the Floor and the Speaker had promised that he would give me an opportunity to finish giving my remarks when we resume at 2.30 p.m. So, whether there will be any change or not, at times we give our ideas or speak on a matter for the record; for posterity.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, what is the point?

Sen. Linturi: The point is that since the Speaker made a Communication to this House and gave Senators an opportunity to speak on that Communication, I beg that I be given my time so that at least for the record, I am able to say what I had in mind in the morning.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that all? Are you on another point of order, Sen. Madzayo?

Sen. Madzayo: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen.(Prof.) Kindiki): Let me hear Sen. Kang'ata first. I saw your hand up or was it a mask?

Sen. (Dr.) Langat: I think he was adjusting the mask.

Sen. Kang'ata: Thank you, Mr. Deputy Speaker, Sir. It is true there was a Communication made. For me, I deemed it as being final, but I do not have any problem if my brother could be given an opportunity to ventilate and say whatever he may want to. If there is an opportunity, he can be granted the same.

The Deputy Speaker (Sen.(Prof.) Kindiki): Proceed, Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Thank you, Mr. Deputy Speaker, Sir. Immediately the Communication was made by the Speaker, it became open for debate. It reached the time when---

The Deputy Speaker (Sen.(Prof.) Kindiki): Open for debate? Was it a Motion?

Sen. (Dr.) Langat: It was open for discussion.

The Deputy Speaker (Sen. (Prof.) Kindiki): Discussion? You do not discuss a Communication from the Speaker, but you---

Sen. (Dr.) Langat: It was open for comments.

The Deputy Speaker (Sen. (Prof.) Kindiki): It was not open unless somebody on a point of order makes an observation or comments---

Sen. (Dr.) Langat: Many Senators contributed and there was so much interest---

The Deputy Speaker (Sen. (Prof.) Kindiki): The way you are couching your words is as if it was a Motion for debate, which it is not.

Sen. (Dr.) Langat: May I then say that it attracted several comments.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, comments are allowed at the discretion of the Speaker.

Sen. (Dr.) Langat: Exactly, and there were so much interests including mine which is why I am still around here waiting for the---

The Deputy Speaker (Sen. (Prof.) Kindiki): So, what is the point?

Sen. (Dr.) Langat: As Cheruiyot was asking if we still have---

The Deputy Speaker (Sen. (Prof.) Kindiki): Which Cheruiyot? Is it the Senator for Kericho?

Sen. (Dr.) Langat: Yes, Sen. Cheruiyot. As he has asked, I was also for the same point on when we would be allowed to contribute.

The Deputy Speaker (Sen. (Prof.) Kindiki): There are so many Cheruiyots in town, but there is only one Senator Cheruiyot of the Kenyan Senate.

Sen. (Dr.) Langat: I can say Sen. Aaron Cheruiyot from Kericho County, my former student.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! The last bit is inconsequential here; out there, it could have consequences.

Sen. Murkomen: On a point of Order, Mr. Deputy Speaker, Sir. We may want your direction on the consequentiality of the teacher-student relationship in this House. Last time when I acknowledged you as my great teacher, you were excited and happy and did not question on consequentiality.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): In other words, what is good for the goose is good for the gander.

Sen. Murkomen: I do not want you to close that gate because I have two students in this House - Sen. Ochillo-Ayacko who did exceptionally well in my subject and Sen. Cherargei who also did very well in my four subjects. You also know, Mr. Deputy Speaker, Sir, I did well in your class.

The Deputy Speaker (Sen. (Prof.) Kindiki): Now, now, I do not know if we are on another subject.

What is it Sen. Wetangula?

Sen. Wetangula: Mr. Deputy Speaker, Sir, for the record, I also have a student in this Chamber. The substantive Speaker, Hon. Lusaka, was my distinguished student and he is normally very proud of it.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): We are in a place of teachers and students.

Sen. Mutula Kilonzo Jnr., are you also a teacher or you were taught?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I do not have anybody who taught me here. I was wondering, in view of the communication made by what Sen. Wetangula refers to as a substantial Speaker, are you also in a position to continue with the debate on his behalf now that he is not sitting? Assuming an issue arises about his Communication that he needs to respond to; whether you are in a capacity to respond to it.

The Deputy Speaker (Sen. (Prof.) Kindiki): You are out of order. The Office of the Speaker enjoys perpetual succession, vertically and horizontally. You are out of order.

Sen. Sakaja proceed, then Sen. Kihika.

Sen. Sakaja: Mr. Deputy Speaker, Sir, the issues I raised are clear, and not just for this particular communication. It is good for us to establish moving forward, how we treat what comes from the Chair.

Secondly, Sen. Wetangula was asking whether it was a communication or a ruling. There are some communications that come like Messages from the National Assembly or students in the Gallery. However, what was given in the morning was a considered Communication where the Speaker said he received certain Communication.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja!

Sen. Sakaja: Mr. Deputy Speaker, Sir, just allow me to finish.

The Deputy Speaker (Sen. (Prof.) Kindiki): Unless you are introducing something else. You are now helping me. When I need help, I will ask you for help. Now, I do not need it.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I know you are exceptionally brilliant but you cannot tell what is in my mind.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is not about brilliance. There is a reason why I am saying that. Unless you are making maybe an argument to support or oppose some of the points of order, be guided accordingly.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I am guided. I am asking if the content of what he gave us was that he has seen one, two or three things. Based on what he has considered that he gives a Communication. When you go in to talk about it and start questioning those three things, are we questioning the Communication or is it a ruling?

The Deputy Speaker (Sen. (Prof.) Kindiki): So, what is the point?

Sen. Sakaja: Mr. Deputy Speaker, Sir, I am asking you to give direction on that. It is not just a communication of students in the Gallery. He has considered different elements and made the decision as a ruling.

The Deputy Speaker (Sen. (Prof.) Kindiki): I get it. We should---
Sen. Kihika, you have not spoken.

Sen. Kihika: Mr. Deputy Speaker, Sir, thank you. I also want to support you for allowing a few interventions on the issue.

This is a House of record and clearly, the Speaker stated that after lunch or rather in the afternoon session, the Senator who was on the Floor who is Sen. Linturi and a few others would be able to continue with the few interventions.

So, it would be quite unfortunate if it ends up being that the Speaker was lying or something to that effect.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! That is an unexceptional word.

Sen. Kihika: Mr. Deputy Speaker, Sir, not telling the truth.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is also unexceptional.

Sen. Kihika: Mr. Deputy Speaker, Sir, stretching---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Susan Kihika!

(Sen. (Dr.) Langat spoke off record)

Order, Sen. (Dr.) Langat! Sen. Kihika, can you take your seat for a second? I would like to refer you to our Standing Orders on the use of exceptional words. I think those words are--- I know what you mean. You want to say that the Speaker's word should count. Then say that. Just say that, please. Otherwise, these issues of lying are words you cannot use here.

Sen. Kihika: Mr. Deputy Speaker, Sir, I will agree with you to use the words that you have suggested. I think the definition is objective when you say lying, but I will withdraw it. Since he did say that you understand what I meant, then you get the point.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kihika, you are complicating a very straightforward issue. I am aware, and that is why I am not in a hurry.

I am, of course, about to give directions. However, I am aware about the item in question and the kind of content. That notwithstanding, before I give directions, I will request Sen. Kihika and all the other Senators to respect Standing Order Nos. 96 and 97.

If you use exceptional words, I will ask you to retract. If you do not then we will apply Standing Order No. 116 and 117, period. Otherwise, having said that, I have noted the statements by Sen. Kihika. It is true that the Speaker's words should count. It must count and it ought to count at all times. I have made your case better, Sen. Kihika in the process.

Very well. I have two things quickly. There was a communication a few minutes to the end of the previous sitting today which was issued by the Speaker concerning changes in the leadership of the Majority party. Before this sitting, I went through the HANSARD. It is true as Sen. Kihika says -and Sen. Aaron Cheruiyot - although they did not use the exact words.

It was in the middle of the comments arising after that communication that time elapsed. The Speaker did say that when we resume, on the request of Sen. Linturi, that he would entertain closure of those comments. That is the first point.

The second point is that you cannot question or try to defy, when appropriately discussed, the directives, orders, rulings, and communications of the Chair. That would impute very badly against the dignity of our House. The Speaker is the symbol of our institution.

Thirdly, on the issue raised by Sen. Wetangula on whether this is a communication or a ruling as supported by Sen. Sakaja, what was articulated earlier today was both a Communication and a ruling. It is a communication because it is a message from a political party of this House. A Communication is normally as one of the Senators - I cannot recall which one – said, the Speaker then becomes a conveyer.

He is Sen. Wetangula. I can see him pointing at himself like the lizard that jumped from the high Iroko tree that said that if nobody praises me, I will praise myself. He is Sen. Wetangula. I think you are blowing your trumpet.

As you told us once, President Amin said you should blow your trumpet because it is yours. The trumpet is yours, so who would you expect to blow it?

(Laughter)

Secondly, would you expect it to draw with yours? Is yours for drawing?

A communication is just a message or conveying something but a ruling is a determination on an issue that requires interpretation of facts and law. Therefore, the Speaker did both. First, he communicated a decision of the majority party and his interpretation on what he had received because it has consequences. Therefore, it was both a communication and a ruling.

Fourth and final point, you cannot question or unnecessarily be critical of the decision of the Speaker, just like a decision of a judge. In our tradition as Parliament in the Commonwealth, once a Speaker makes a communication, a Senator or Senators, on a point of order, may make an observation, seek a clarification or further guidance without opening the merits or trying to bastardise or otherwise interfere with that decision. So,

that is alive and that is how I understood what happened earlier today. There were Senators who wanted to make some comments and they had started but they were interrupted.

Since that is our tradition, and given that this is a matter that is serious enough, in favour of the request by Sen. Cheruiyot, I will allow a few Senators who wanted to make observations. However, if you get an opportunity, please make it within the rules. I will be patient because of the gravity of the issues but I will also be firm in case the rules are broken. You know the rules.

What is it again, Sen. Kang'ata? Do you want to comment on what I have said or the communication by the Speaker, hon. Lusaka?

(Sen. Kang'ata spoke off record)

I am informed that Sen. Linturi was on the Floor and was left with two minutes. Please complete, Sen. Linturi.

Sen. Linturi: Mr. Deputy Speaker, Sir, before I was interrupted, I was at a point where I was remembering those good days when we had a Speaker who sat on that Chair when the country was facing serious problems and it was almost on the verge of collapse. Looking at this House, the Members that were in that House then are only three. We have Sen. Khaniri, Sen. Wetangula and Sen. (Eng.) Mahamud.

At that time, immediately after the election of the Speaker, there was a serious argument on whether to swear in the Member of Parliament (MP) for Othaya then, hon. Mwai Kibaki. They had just elected the Speaker, who in my view, was from the minority side that expected that the Speaker would rule in their favour. Solomonic wisdom prevailed that day.

When we are given opportunities to serve, we must balance political and partisan interests, the interests of the country and the interest of an institution.

Sen. Khaniri: On a point of information.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Linturi, would you like to be informed by Sen. Khaniri?

Sen. Linturi: Yes.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Deputy Speaker, Sir, the Senator has just mentioned my name as one of those who were present then. He said that the Speaker then was from the minority but that is not true. The Speaker then was hon. Marende. At that time, we had the Government and the Opposition. Hon. Marende was from the majority side and that is how he won the speakership. So, the Speaker ruled in favour of the Government yet he had been elected by the Opposition. So, there was no minority and majority sides at that time.

Sen. Linturi: Mr. Deputy Speaker, Sir, how I wish my good friend Sen. Khaniri listened.

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought he was listening and that is why he has informed you.

Sen. Linturi: He was in a good position to remind me because those are over 10 years ago but I appreciate the intervention.

Mr. Deputy Speaker, Sir, at that time, because of the nature of our politics then, hon. Kenneth Marende made a ruling that did not go well with the majority side as he has said. At the end of the day, the Parliament was sworn and we had to start on a very hard task of reconciling this nation by coming up with an accord that would unite this country. Sen. Wetangula was in that team.

Why I am reminding the Chair, how I wish the man seated on the Chair was the Chair in the morning is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Linturi! I thought we had an agreement that the Chair will allow comments? You do not even have to paraphrase it. Please abandon it completely and move on with your otherwise good comments. I mean it. Abandon that sentence. I do not want you to go further.

Sen. Linturi, this seat exists in perpetuity. It is not personal and it does not matter this versus that. So, please abandon it. Let us not over-dramatise it.

Sen. Linturi: Mr. Deputy Speaker, Sir, I want to conclude. The reason I gave the basis and made the observations is because the argument then was that numbers never mattered. In any political contest, we have maintained that numbers are critical. So, however much I want to challenge a ruling on the decision, I wanted to go on record that the exercise of power with discretion bestowed upon any state officer, by virtue of the office he or she has occupied, is supposed to be exercised for the good of the majority and the greater public good.

It is painful in an era of accountability and in a situation where as the majority party in this country, a party that we worked hard and campaigned for to bring to power-- - Where I feel completely lost is not that I have personal problems with the leadership that is purported to have been changed. Kenyans must be asking themselves why or how I work too hard to convince this country that politics is about numbers but at the end of the day, after taking over leadership of the country, then you are forced to have a leader who comes from the minority.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Linturi, are you discussing the events in your political party?

Sen. Linturi: No, Mr. Deputy Speaker Sir. What I am trying to explain is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your observations should be around the communication by the Chair, because there is a background to it, but also a thin line between the proceedings of the House *vis-a-vis* political party activities, which the House normally does not interfere with.

Sen. Linturi: Precisely, Mr. Deputy Speaker Sir. If you recall or know, the change of political leadership in a House like this one requires the majority of the numbers of that particular side. When Sen. Wetangula was removed as the Senate Minority Leader, I remember I stood and I am on record saying:

“Sen. Wetangula, if you are the Senate Minority Leader of this House, coming from the Amani National Congress (ANC), and the other party had so many numbers, then you must also thank them for having given you the opportunity.”

It is on record; that that is what I said that at particular time.

The reason why I am raising this issue – however much, we may not be able to change anything – is for purposes of record; that, yes, we may admit that today the change of leadership in this House is that, the Senate Majority Leader is Sen. Poghio, who is a Member of the party that brought me to Parliament for the first time; the Kenya African National Union (KANU), a party that I really liked. But that being the case---

Sen. Ochiilo-Ayako: On a point of order, Mr. Deputy Speaker Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What it is, Sen. Ochiilo-Ayako?

Sen. Linturi: In the absence of---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Linturi. What is it, Sen. Ochiilo-Ayako?

Sen. Ochiilo-Ayako: Thank you, Mr. Deputy Speaker, Sir. I would not want to interrupt my very good friend, Sen. Linturi. We are looking forward to working very well together in our Committee. From what I am gleaning from the information available, there is a dispute in court regarding some of the matters that Sen. Linturi is mentioning.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the evidence?

Sen. Ochiilo-Ayako: Mr. Deputy Speaker, Sir, some of these things are electronic. If you want me to send them to your phone---

The Deputy Speaker (Sen. (Prof.) Kindiki): No. We have the Standing Orders. We have not amended our Standing Orders to allow electronic proof. Not yet.

Sen. Ochiilo-Ayako: Mr. Deputy Speaker, Sir, can I just put it in context?

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes.

Sen. Ochiilo-Ayako: Mr. Deputy Speaker, Sir, given that the ruling that we are talking about here alluded to what was already in court; knowing very well that this forum or Chamber would not be the appropriate place to discuss the details of what is in court, I just wanted your guidance on a point of order.

The Deputy Speaker (Sen. (Prof.) Kindiki): We have already made extensive rulings on *sub judice*. As far as we are concerned, we are not aware of what the other arms of Government are doing. When they make decisions that touch on this arm of Government, they will let us know through appropriate channels. Once they tell us, we will evaluate those decisions in light of our own procedures, because we are an independent arm of the Government. Period.

Sen. Ochiilo-Ayako: I hear you, Mr. Deputy Speaker, Sir. I yield.

The Deputy Speaker (Sen. (Prof.) Kindiki): From where I sit, I am not aware of any Messages on this matter from the Judiciary to Parliament.

Proceed, Sen. Linturi.

Sen. Linturi: There was a lot of interruption, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): I had promised some patience, but you can take a decision of not more than five minutes. Ten minutes is a lot. Maybe five.

Sen. Linturi: As I conclude, we accept that there was a coup. We accept--.

The Deputy Speaker (Sen. (Prof.) Kindiki): What are you accepting?

Sen. Linturi: That the leadership of the House, because if we get---

(Laughter)

There is a list of over 20 Senators saying that they were not part of this resolution. There was an order that was served to the Speaker from the Political Parties Disputes Tribunal (PPDT), not recognizing the coalition agreement between Jubilee and KANU parties.

Mr. Deputy Speaker Sir, probably you are telling us now, to completely forget about systems, the observance of the rule of law and the adherence to the tribunals that have been set in the Constitution to arbitrate when there are disputes within ourselves.

Be it as it may, let us all remember that we may be seated in the House here, but in the history of this country it will be remembered that there was one time where somebody given the responsibility to manage the House sat down and midwived the death of democracy, the death of free observance---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Linturi!

(Laughter)

Sen. Linturi, you must understand the Chair. As the Chair, I can see that when you said what you have just said, there were varying comments depending on the recipient of your information. However, please understand that the Chair can neither cheer nor jeer. Do you get the point? Some of the things that you are saying can be said out there in our party caucuses.

(Sen. Kang'ata spoke off record)

Sen. Kang'ata, I thought that you should listen first. That is what I should think. Natural justice.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. I know that you have brushed aside the last comment by Sen. Linturi. I am not quite certain whether you want that statement on record; that the person who is charged with managing this House---

The Deputy Speaker (Sen. (Prof.) Kindiki): I did not even quite hear him, because I did not want to hear what he was saying.

Sen. Mutula Kilonzo Jnr.: You heard.

The Deputy Speaker (Sen. (Prof.) Kindiki): I did not quite hear the meaning, but I heard him trying to perhaps---

Sen. Mutula Kilonzo Jnr.: Let me just---

The Deputy Speaker (Sen. (Prof.) Kindiki): What did he say?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, he said that the person given the responsibility of managing the business of this House midwived the death of democracy. Who is that person? If that person is in reference to you, it cannot be on record.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Linturi, were you referring to the Speaker?

(Loud consultations)

Sen. Linturi: Mr. Deputy Speaker, Sir, if you never heard, being the person that is so sensitive to comments that we make here, who is always listening to what we are saying and who has been steadfast in correcting us, unless my good friend, Sen. Mutula Kilonzo Jnr., was in another world where he was trying to imagine such statements coming from Sen. Linturi.

If you have not heard, I do not think---. He may have been imagining his own things.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us make progress. I have already made myself clear. Let us make progress.

Sen. Khaniri.

(Sen. Pareno spoke off record).

Sen. Khaniri, a moment. What is it, Sen. Pareno? You are a bit agitated.

Sen. Pareno: Mr. Deputy Speaker, Sir, I would really hate to imagine that what is on the HANSARD is something that we can hide from.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is on the HANSARD?

Sen. Pareno: Exactly what Sen. Mutula Kilonzo told you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which is?

Sen. Pareno: Mr. Deputy Speaker, Sir, he said that the person who is entrusted to manage the business of this House sat in over---. He used the words 'and killed democracy'. He even used the word coup. Should we shy away from what is on record, not ask him to withdraw, and just brush it like that so that it remains on record?

The Deputy Speaker (Sen. (Prof.) Kindiki): I did not quite hear. I was attending to something else within the House. My suspicion is that you were trying to violate Standing Order No. 96(1) but I stopped you early enough. So, I hope what Sen. Mutula Kilonzo Jnr. and Sen. Pareno have said is not the 100 per cent position.

Sen. Linturi: Mr. Deputy Speaker, Sir, I confirm to this House and I am ready to be held responsible. I did not say that the Speaker sat down to kill democracy as Sen. Pareno is trying to insinuate.

The Deputy Speaker (Sen. (Prof.) Kindiki): That clarifies it.

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, not only has he not clarified it---

(Sen. Linturi attempted to leave the Chamber)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Linturi. You cannot leave the Chamber. We have to acquit you.

(Laughter)

Sen. Sakaja: Mr. Deputy Speaker, Sir, not only has he not clarified it because he has said that he did not say it and it is not the case, you have let that same paragraph be

repeated thrice. So, if you consider that matter and the HANSARD is consulted, all other such references must also be---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, I hope you are not saying that the Chair is abetting and aiding a crime?

Sen. Sakaja: Mr. Deputy Speaker, Sir, by implication, you have let it remain in the record of the House. Unless the HANSARD is consulted, it will be bad for you to let that happen to your own Chair because you are the Speaker.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us make progress. We will confirm from the HANSARD. I will make further directions after I confirm.

Sen. Khaniri: Thank you, Mr. Deputy Speaker, Sir. I would like to comment on the ruling of the Speaker.

I begin by congratulating Sen. Poghio on his elevation because, in essence, the ruling was making him the Senate Majority Leader. I congratulate him and the rest of the team that he was elected with and wish him well.

I worked with him as his deputy when he was the Minister in the Ministry of Information and Communication. We worked well and I know his capabilities. He is equal to the new task that has been bestowed unto him.

Mr. Deputy Speaker, Sir, I was not in when the Speaker made the Communication. However, I listened to him on television. I fully agree with you that it was both a Communication and a ruling. He stated that he had received communication from the majority party. He went further to say that he was satisfied that due process was followed. Who are we to doubt him?

He said that the Members who attended the PG were well convened and were 20, which was the requisite number. We cannot question that. We believe that our Speaker is a man of honor and he told us the truth of what he received from the ruling party.

Mr. Deputy Speaker, Sir, I ask my brother, Sen. Murkomen, Senator for Elgeyo-Marakwet, and my good friend and age mate, the Senator for Nakuru, Sen. Susan Kihika,

The Deputy Speaker (Sen. (Prof.) Kindiki): Must you disclose those other details?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I must not but nothing stops me from disclosing.

The Deputy Speaker (Sen. (Prof.) Kindiki): May be, with consent.

Sen. Khaniri: Mr. Deputy Speaker, Sir, we have a mutual consent.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. You are accused of making the matter worse.

Sen. Khaniri: Mr. Deputy Speaker, Sir, she is here and she can confirm.

The Deputy Speaker (Sen. (Prof.) Kindiki): In fact, she is nodding shyly. She is not complaining.

Sen. Khaniri: Mr. Deputy Speaker, Sir, the truth of the matter is that these two hon. Members served diligently. We all know their capabilities. It is clear in my mind

that they were not sacked because they are incapable. It is because of other considerations which I may not know because I do not belong to that coalition. So, I encourage them to accept this.

Sen. Orendo told us once that Governments and revolutions 'eat' their own. I was a victim. I was 'eaten' by my own at one point. So, I understand what it is.

The Deputy Speaker (Sen. (Prof.) Kindiki): How come you are here if you were eaten?

Sen. Khaniri: Mr. Deputy Speaker, Sir, for the record, in 2002, we went all out to support President Kibaki to become the President. I was sacked by the Kenya African National Union (KANU) regime for supporting President Kibaki.

(Sen. Mutula Kilonzo Jnr. consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. This is not a place to market your legal firm. Why are you telling us who your clients are?

Sen. Ochillo-Ayacko: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Khaniri, would you like to be informed by Sen. Ochillo-Ayacko?

Sen. Khaniri: Sure.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. Sen. George Khaniri and I enjoy a history together. We were in the same primary school and we were also victims of the same 'eating'. Fortunately, like Jesus Christ, we have resurrected and here we are. I want to add that to the anecdote of Sen. Khaniri and give Sen. Murkomen hope. You will resurrect someday, my brother.

(Applause)

Sen. Khaniri: Mr. Deputy Speaker, Sir, I was narrating that we supported that regime to come to power in 2002. However, in 2005, we were sacked by the same regime just because we differed in principle. We did not support the Constitution that was being pushed on to Kenyans at that particular time.

I tell Sen. Murkomen and Sen. Kihika that their future is bright. *Msife moyo*. Soldier on and accept. You cannot fight systems. There is only one individual that I know who has done that over the years and has survived. Please do not walk that path.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Khaniri. You started so well except for the last sentence. What do we have to do with systems? What have systems to do with what we are discussing?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I am talking about the party system. The same system that fired them. They cannot fight that.

(Laughter)

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I thank Sen. Khaniri, Sir, George as I call him, for the kind words of encouragement. He was doing so well until he contradicted himself that he resurrected and we will also resurrect the third day like Jesus Christ.

Is he in order to contradict himself by saying we cannot fight anything yet he says he is a testimony that despite all he went through, he is still in this House and he resurrected?

The Deputy Speaker (Sen. (Prof.) Kindiki): In other words, he fought systems and survived.

Sen. Ochillo-Ayacko: Mr. Deputy Speaker, Sir, I want to make brief remarks. First, some of these things should not be taken personally. I know it hurts when positions change. I have been in that kind of situation where you work tirelessly to support a political party but somewhere down the road, you differ in principle and you have to part ways.

When we parted ways with the then the National Rainbow Coalition (NARC), which was the majority party, it was a very painful experience. I want to tell my colleagues and friends who are countenancing this situation to know that it always happens. However, they must disagree in principle. When they do so, they yield to their party to continue advancing the agenda nationally. For instance, if this fight or this difficulty was to go on in perpetuity, Kenyans would bear the greatest suffering because the ruling party would be dysfunctional.

I believe that if they have ambitions to run in future and form another party, this gives them an opportunity to create their own organization where others will disagree with them and may part ways.

When we parted ways with NARC, we went on to form another party called the Orange Democratic Movement (ODM). Some of us are back here courtesy of another party. The rest is history. So, this is not a matter of life and death where they must fight their party in perpetuity or to adopt a scorched-earth policy. They have done a very good job in leading when they had that privilege and they will continue doing a good job by being Members of this House. It is something that may not be either legal or illegal, but it is a political decision that this nation must move forward.

I hope that both sides will find healing in this act and accept the new reality that we, as a nation, must move forward and work for our people without bringing difficulty to the agenda of this House and that of the nation.

Mr. Deputy Speaker, Sir, with those few remarks, let us work with what we have and the leaders that God has given us today.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Minority side should be more patient than the Majority side because that is where the turmoil is taking place.

(Laughter)

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I also rise to make just a few comments on what took place earlier today. Obviously, being cognizant of your direction

and knowing that I am not attacking what has been communicated, it is also important that I state a few facts for the record of this House.

I hope in the future, we will see more of due process in this sort of thing. It happened before on the other side of aisle, but in that scenario and the reason why I bring it up is because the others have mentioned it. It is important that I also make a note of it that when the previous Senate Minority Leader, Sen. Wetangula was removed by the National Super Alliance (NASA) Coalition, the ruling by the Speaker was that, that decision had to be communicated by the Minority Whip. Today, that never happened. So, it seems that the rules of the game change with time or as directions are given from elsewhere.

Mr. Deputy Speaker, Sir, I would like to tell those Senators who have asked us to move on and let the House to continue working not to worry about that. First, I am here as the Senator for Nakuru County and the decision this morning does not change that fact. So, I will continue to work for the people of Nakuru County and to be an active Senator in this House.

At the same time, it is also important to note that as my agemate there---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Which one?

Sen. Kihika: Sen. Khaniri, you should never state the age of a lady because people might find out your age and then be able to determine mine.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): You are protesting after the fact. I gave you an opportunity to protest and you threw it out of the window.

Sen. Kihika: No, I do not mind; he can say it again.

Mr. Deputy Speaker, Sir, as Sen. Khaniri and Sen. Ochillo-Ayacko have stated here, it will continue to happen. At the end of the day, we know it is politics. However, when you have a list here that includes an independent Senator in the House, it is a travesty of justice. We cannot just sit here and pretend it is business as usual and we continue to do so. Yes, it will happen again just like it happened before, but please do not gag us; let us say it as it is.

As we proceed, we also know that there was an order this morning from the Political Parties Dispute Tribunal and we know that there was no reference made of it. So, as we continue to just bend the law, continue with the fraud and continue with everything, then perhaps we should not continue sitting here and pretending that we, as a Parliament, are independent. We are not. This is because we are directed from other chambers or quarters. That is why such a communication does not come from a Whip, but from wherever it came from. Nonetheless, it is okay. That is a story for another day because it will happen to others.

Mr. Deputy Speaker, Sir, we will move on, but we shall continue fighting for our cause. We are sure and it is not a secret that, probably the reason we were replaced in a dictatorial manner and without following the proper procedure is because we are independent minded. We shall continue being independent minded, whatever the cost.

As I sit, I will read a quote from Sen. Ted Kennedy.

Sen. Pareno: On a point of order, Mr. Deputy Speaker, Sir. Is the Senator for Nakuru County in order to tell this House how they were replaced in a dictatorial manner and the Communication was ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Let me cut you short, Senator. She has not said that they were removed by the House in a dictatorial manner, but she talked about their removal elsewhere, which is her opinion. When I sit on the Chair, I protect the House. So, she has not broken any Standing Order.

Proceed, Sen. Kihika. You were quoting Sen. Ted Kennedy.

Sen. Kihika: Mr. Deputy Speaker, Sir. Allow me to continue because the sensitivity on the other side of the aisle is a bit concerning this morning. Let them grow some thick skin because we shall be here. We shall continue living. They are so sensitive; they keep rising.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): It is what Sen. Wetangula says; they are mourning more than the bereaved.

(Laughter)

Sen. Murkomen: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Would you like to be informed by Sen. Murkomen?

Sen. Kihika: Absolutely. He has a wealth of knowledge that I would benefit from.

The Deputy Speaker (Sen. (Prof.) Kindiki): Just say 'yes' or 'no' Senator.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I would like to inform Sen. Kihika and consequently the House that the communication from our party, which is now public because it came to Parliament, was made elsewhere.

It is important for the House to know that the Speaker communicated that 20 Senators allegedly participated in the signing of that ouster document. Out of 20 Senators, one is an independent. When the Speaker retires to give his ruling, we will be keen to listen to it because we do not want to criticize him here. He promised to give a longer ruling in keeping with the Standing Orders, the way he did last time in the situation of Sen. Orengo and Sen. Wetangula.

It will be useful for the House to know in what circumstances does an independent Senator become part and parcel of a signing of an ouster document of Members of a political party. The ruling should be in line with Standing Order 19. If there were only 19 Senators who signed, you will understand. Assuming even that the coalition between Jubilee and KANU is valid, we would then be 38 Members on the Majority side who are in three political parties; that is Jubilee, Party of Development and Reforms (PDR) and KANU. This means that 20 signatures of Members of the coalition must sign to oust anybody. So, I will be interested if your office will give clarification and the circumstance where an independent becomes a Member of a political party.

Mr. Deputy Speaker, Sir, the last thing I would like to inform Sen. Kihika is that, in that ruling of the Speaker, I will be more interested to know in what circumstances the Speaker - and the House - is bound by court orders and not orders of tribunals in matters that have been ruled. I am not talking about the procedure of the House and debate in the House, but how Parliament works. This is because the Speaker communicated a process injunction outside there.

I want to go on record that I was there when Sen. Kihika served the Speaker with a forwarding letter and that communication from the tribunal.

The Speaker should tell us---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Murkomen---

Sen. Murkomen: Just as a conclusion, I am---

The Deputy Speaker (Sen. (Prof.) Kindiki): That is fine. For the record, first and foremost, from where I sit, the ruling has been made. The Speaker said that he will give reasons, which is allowed. The decision is made, but the detailed reasons will be given later. That should be very clear.

Sen. Murkomen: Correct.

The Deputy Speaker (Sen. (Prof.) Kindiki): Secondly, on that issue of service, you may want to---

Sen. Murkomen: It is not service in the technical sense of law.

The Deputy Speaker (Sen. (Prof.) Kindiki): You cannot serve the Speaker, but you serve the Clerk. Service is a difficult area since you serve if you are a process server or an advocate on record and that kind of thing.

Anyway, let us not---

Sen. Murkomen: I am just concluding. I was saying that it is service in the technical sense of the law.

The Deputy Speaker (Sen. (Prof.) Kindiki): All right. Did you bring it---

Sen. Murkomen: When Sen. Kihika submitted her letter---

The Senate Majority Leader (Sen. Poghisio): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Poghisio?

Sen. Murkomen: Let me conclude.

The Deputy Speaker (Sen. (Prof.) Kindiki): We agreed that we will hear you. Just conclude and then we hear---

The Senate Majority Leader (Sen. Poghisio): But I am on a point of order on the same.

The Deputy Speaker (Sen. (Prof.) Kindiki): But he is also on a point of order.

The Senate Majority Leader (Sen. Poghisio): Mr. Deputy Speaker, Sir, he is on a point of information. I think he is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay. Sen. Murkomen, let us bear with Sen. Poghisio.

The Senate Majority Leader (Sen. Poghisio): Mr. Deputy Speaker, Sir, on the limit of information---

(Laughter)

It looks like my predecessor is opening debate rather than just giving information. If they were together with Sen. Kihika, how could he be informing her of things that they did together?

The Deputy Speaker (Sen. (Prof.) Kindiki): He is informing the House. Sen. Poghio, we said at the beginning that we must handle this in a manner that helps us move forward. The point is unnecessary.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I am concluding. Kindly, give me 10 seconds.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Poghio, you should understand that for Sen. Murkomen to vacate that seat, the least we can do is to give him a hearing. So, you cannot complain he is taking too long. In fact, if he talked longest and you did not, and that is what I did with Sen. Kang'ata. If Sen. Kihika talked longest and Sen. Kang'ata did not talk, I would rather live with that than the other way.

Sen. Murkomen: Mr. Deputy Speaker, Sir, let me just conclude. In that information, we would be interested in knowing because I was saying that a letter which was forwarded, forwarding the tribunal's decision on the participation of three Members of the KANU as part of their coalition---

When the Speaker gives his ruling, we would be interested as a House---

The Deputy Speaker (Sen. (Prof.) Kindiki): Reasons for the ruling.

Sen. Murkomen: Once the Speaker gives the detailed ruling, we would be interested to know at what instance a Speaker obeys those kinds of orders and in what instances he rejects them.

Lastly, in the Communication of Sen. Wetangula and Sen. Orengo or Sen. Orengo/Sen. Wetangula, the Speaker rejected the communication that came from the NASA Coalition that was signed by someone else other than the Whip or the Senate Majority Leader.

In that regard, the Speaker was so firm that the Minority side had to go for a meeting and came back within the Standing Orders. We will be happy to see that. We are democrats. As I said before, you were my student and the Lord blessed us to come here. You never know, tomorrow, I might be somewhere else with you.

I thank you, Mr. Deputy Speaker, Sir.

(Sen. Nyamunga spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Nyamunga! I am sure you know what he means. He has been on record many times.

Sen. Murkomen: For the record, I will just say that I was your student.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, I think that is what they wanted to hear. These are some of things that you can overlook since Sen. Murkomen has been consistently on record. It has not been in dispute.

Sen. Kihika, had you---

Sen. Kihika: Mr. Deputy Speaker, Sir, I was concluding. I am glad and have been informed. As I stated earlier that when you have a list of 20 Members and one is an independent Member, then it is problematic. When you also have another list signed by

20 Members and nothing is mentioned about it, then you wonder how is it that our total number is 38. Now we have a list of 40, but no reference is made. However, I look forward, like Sen. Murkomen stated, to the reasoned ruling by the Speaker. I hope it will be here sooner rather than later.

Before I sat, I was about to quote Ted Kennedy. He was a Senator before he passed on---

(Sen. Khaniri consulted with Sen. Madzayo)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Khaniri and Sen. Madzayo!

Kindly, proceed, Sen. Kihika.

Sen. Kihika: Thank you. As I was saying, the reason there was a coup is maybe because we are a little more independent minded than it would be okay in some quarters.

As I sit, I will read this----

Sen. Madzayo: Jambo la nidhamu, Bw. Naibu Spika.

Sen. Kihika: I do not know what is with these people today!

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Madzayo? You have really interrupted, Sen. Kihika.

Sen. Madzayo, I am not trying to gag you, but I will still allow you. At the beginning, I said that let us try and manage this. You can say the same things again. Let us manage ourselves, so that we make progress.

Sen. Madzayo: Bw. Naibu Spika, nimesimama kwa sababu ninataka kumkosoa, Sen. Kihika.

Je, kulikuwa na mapinduzi? Tunaambiwa kuwa kuliwa na *coup*. Tunavyoelewa ni kwamba wakati kuna *coup*, lazima kuwe na mapinduzi au mageuzi ambayo si ya kihalali.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Madzayo, remember we said that we distinguish between party activities and House proceedings.

Sen. Kihika has managed to maneuver the issue of the House carefully up to now. Her views about their party is something that she could have a latitude, of course, within the rules also, to have her own opinion. This is because if there was a coup in her party, this is not the place where we can discuss that.

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I am really trying to finish, but these ‘mourners’ who are mourning more than the bereaved keep interrupting. If there was a coup in our party, they are not members of our party. So, they would not know. I am just responding to the point of order.

As I said, sometimes it is difficult when you are independent minded and see things differently. However, I want to thank the Senators in the Jubilee Party who had given me the privilege to serve them as the Whip in the House. I know that there was a lot of coercion and intimidation, but I understand.

As we were told earlier this morning, it is politics and that is just the way it is. So, with the cause that I have been pursuing, I will continue to pursue it more vigorously. I know one of the issues that they had with me was because I stood up for the people of Kariobangi. I was told that since I am a Whip, I should not speak on evictions in Kariobangi.

Here is the quote from Ted Kennedy as I sit:

“For all those whose cares have been our concern, the work goes on; the cause endures, the hope still lives and the dream shall never die.”

We may be down, but we are not out.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. Assad once said, “Those who live---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Members!

Proceed, Sen. Malalah.

Sen. Malalah: Mr. Deputy Speaker, Sir, it depends with your pronunciation. They have different pronunciations.

Al Bashir Assad once said-

“Those who live in glass houses should not throw stones.”

On this issue of removal of Sen. Murkomen as the Senate Majority Leader and Sen. Kihika as the Majority Whip, I choose to comment in silence because I live in a glass house. However, I want to encourage them. I have been following Sen. Murkomen’s tweets of encouragement and Bible verses every evening. Today, I want to encourage him to read 1st Corinthians 15:58, which says-

“Therefore, my dear brothers and sisters, stand firm. Let nothing move you. Always give yourself fully to the work of the Lord, because you know that your labour in the Lord is not in vain.”

I would like to encourage my brothers because we are young leaders. Today, it is you. Tomorrow, it might be Sen. Malalah being removed as a Deputy Minority Leader. So, I would not want to throw stones, yet I live in a glass house. I want to encourage young leaders to stay firm, grip tight onto the rope of hope and we will succeed.

Secondly, I would like to congratulate the Senate Majority Leader, Sen. Poghio upon his appointment. Also, I would like to congratulate the President for considering having a pact with the KANU party.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is this the place? No, the congratulations part? Is this really the place?

Sen. Malalah: Yes, because the Senate Majority Leader is a member of KANU. Therefore, he has joined the Government. I want to congratulate the President for effecting the coalition between KANU and the Jubilee Government. The fruits of the coalition are seen through Sen. Poghio

I want to congratulate the President because in the past we have observed that governments that have performed are those which considered the opposition and other parties to be part of them. An example was the NARC Government. According to me, this is the best performing Government since we got Independence.

Mr. Deputy Speaker, Sir, I would like to encourage the President to consider opening the Jubilee Government to other parties. We have parties like the Forum for the Restoration of Democracy-Kenya (FORD-Kenya) who should be encouraged to get into Government. We have brilliant minds like Sen. Wetangula who will help this Government execute its mandate. We have parties like the Amani National Congress (ANC), Maendeleo Chap Chap and the Orange Democratic Movement (ODM) which should be given an opportunity to be part of this Government because the key role of Government is to serve its citizenry.

That does not say that we want everybody to be in Government so that we do not have opposition---

The Deputy Speaker (Sen. (Prof.) Kindiki): How relevant is that to the Communication from the Chair? I am listening carefully. Is that all?

Sen. Malalah: You interrupted me, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): I did not interrupt you. I stopped you from drifting away.

Sen. Malalah: Mr. Deputy Speaker, Sir. I was concluding on that matter.

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, I just want to seek direction because it is now past 4.30 p.m. Till what time because we have other items--

The Deputy Speaker (Sen. (Prof.) Kindiki): I believe I will allow one or two Members. I want one more than Sen. Kang'ata.

Sen. Ochillo-Ayacko: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Time is up!

What is it, Sen. Ochillo-Ayacko?

Sen. Ochillo-Ayacko: Mr. Deputy Speaker, Sir, you have said time without end that this is a House of record. Is it in order for Sen. Malalah to say you interrupted him? The Speaker does not interrupt anybody.

The Deputy Speaker (Sen. (Prof.) Kindiki): He is out of order, but I corrected him. I hope he realized.

I did not interrupt you. I called you to order and prevented you from drifting away. Summarise and finish.

Sen. Malalah: As I summarise, I just want to correct this notion that when a party like KANU joins Government that does not mean that they relinquish their oversight mandate.

The Constitution is very clear that we have separation of powers between different arms of Government. The Executive will execute its mandate as the Executive. As Legislators, we are mandated to oversight the Executive as a whole, but not as the Majority and Minority side.

Mr. Deputy Speaker, Sir, I would like to encourage, Sen. Poghisi to know that he is not only a representative of the Executive, but he is here to ensure that he oversees the Executive so that it performs its mandate as enshrined in the Constitution.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Langat.

Sen. Madzayo, I hope you had your time and you spoke in eloquent Kiswahili. Let us make it three minutes for the remaining speakers.

Sen. (Dr.) Langat: Thank you very much, Mr. Deputy Speaker, Sir. I would like to add my voice on this one because I am a Member of the Jubilee party.

Just as the ruling had been made and an extensive one will be made later, there are some issues which I would have mentioned according to the Standing Orders, but because of time I will not.

Standing Order No. 19 (5) states-

“A Senator elected under paragraph (1) may be removed by a majority of the votes of all the Senators belonging to the Majority Party.”

I would have added that one because one of the Members who was mentioned to have given his or her signature and attended the meeting, as Sen. Murkomen said, is an independent candidate.

Those are the areas that might finally make the Communication appear as if it is weak. The society is watching us. We are seeing the same things circulated in the social media. I would like to encourage this House, through your position, Mr. Deputy Speaker, Sir, that before any ruling is made, extensive and exhaustive research on the same matter is done.

I want to tell Sen. Kihika and Sen. Murkomen that life has not come to an end. They have received encouragement from other Senators on the same. All things happen for good, anyway.

I was really surprised by the Senator for West Pokot because he has taken the position hurriedly. He has done according to Matthew 11:12 which says-

“And from the days of John the Baptist until now the kingdom of heaven suffereth violence, and the violent take it by force.”

I am somehow imagining that he is almost taking it by force. Before he adjusts fully, let us wait for the ruling from the other side.

The Senate Majority Leader (Sen. Poghisio): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Poghisio? You have been accused of taking the position by force.

The Senate Majority Leader (Sen. Poghisio): Magnanimity is required in the House. For Sen. (Dr.) Langat to purport that I have taken the seat by force or using his quote from the Bible, can he use the Bible properly? The Bible has a lot of things, but that is not one of the things that applies.

The Deputy Speaker (Sen. (Prof.) Kindiki): I think that was his interpretation of the Bible as it applies to your situation. Let us leave it there.

Sen. (Dr.) Langat: I will make comments as we progress.

Mr. Deputy Speaker, Sir, as I was listening, I would like to encourage Sen. Malalah for being able to see some changes in Jubilee. However, he did not comment the same when his party was removing Sen. Wetangula in a very painful process. I think he should remove the log in his eye so that he can see the spec in other people's eyes.

The Deputy Speaker (Sen. (Prof.) Kindiki): You have to conclude now. Are you done?

Sen. (Dr.) Langat: Being a Member of the Jubilee Party, we have not exhausted the matter. We shall continue fighting for the same until the right channel is followed and all the means are exhausted democratically.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely, nothing stops your party from pursuing whatever remedies.

Sen. Mutula Kilonzo Jnr., had you spoken, or you were about to? Do you want to say a word or two?

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. Sen. Malalah has spoken.

First, I want to say that Sen. Poghiso served as a Minister under ODM-Kenya (ODM-K). I personally detest the word “minority” because I do not think anybody should be referred to as minority.

For those who have been removed, I have said here before that we are serving temporary interests of political parties. They are not hereditary and they can be taken away anytime. For the Members who have extended the olive branch to the new leadership, we should know that we still must survive. Counties are counting on us to continue doing their business.

When you moved an amendment of the Political Parties Act, I had an issue with the amendment which caused the breaking away of the so many political parties. I had a proposal for the amendment and you stood on a point of order and told me to amend it later. You can see that I had a point there. The amendments were done in a hurry.

When we were debating the Election Laws (Amendment) Bill, you were here as the Senate Majority Leader and we spent a lot of time here. I tried to filibuster until midnight, but I was told so many things.

As leaders, we should remember that we can be here or the other side at any given time. Therefore, humility should count for something. I am asking Sen. Poghiso and his team to be humble. If they want to take away his seat, he should ask them to take it away as long as they do not take away the seat which he was elected for.

We should also not have feeling for the particular seats that we are offered by the political parties. We should be magnanimous if they are there. We must move on if they are not there because life moves on and the sun will still set.

The Deputy Speaker (Sen. (Prof.) Kindiki): Can we hear from Sen. Madzayo? I will move swiftly. Sen. Were, do you also want to say something? Let us be brief.

Sen. Madzayo: Ahsante, Bw. Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): I hope that we will exhaust this matter and put it behind us now because it has taken all this time.

Sen. Madzayo: Bw. Spika, nataka kumpatia kongole ndugu yangu, Sen. Poghiso, kwa kuchaguliwa kama kiongozi wa walio wengi Seneti.

Wahenga walisema ya kwamba, maji yakimwagika, hayazoleki. Kwa hivyo, nataka kumpatia nguvu dadangu Sen. Kihika na ndugu yangu, Sen. Murkomen na kuwaomba ya kwamba wakubali yale ambayo yametendeka. Wasitapetape hapa na pale. Wao ni Maseneta wa Elgeyo Marakwet na Nakuru. Kwa hivyo, wafanye kazi na juhudi zao zitaonekana na wale ambao waliowapigia kura.

Kuna msomi mmoja aliyeishi miaka mingi iliyopita aliyekuwa anaitwa Machiavelli. Alisema ya kwamba, 'usijifanye mwerevu kuliko bosu wako'. Leo, nikiwa mwanachama wa Ford Kenya, siwezi kuwa mwerevu zaidi ya ndugu yangu Sen. Wetangula. Hii ni kwa sababu ataniambia eti atanichapa kiboko na yuko na huo uwezo wa kunichapa. Kwa hivyo, tunajifunza mengi kwa wale wahenga. Vile vile, bosu wako ni bosu wako hata kama haukubaliani naye kwa sababu yuko na mbinu, njia na akili na hio ndio sababu ni bosu wako.

Kwa hivyo, ningependa kuwatia moyo ndugu zangu na kuwaambia ya kwamba sisi sote tuko hapa kwa sababu ya vyama vyetu. Mimi niko ODM. Nikitaka kuketi vizuri kwa hii chama, ni lazima nimheshimu Baba, Raila Amolo Odinga. Bila hiyo, siwezi kuwa kwa katika Bunge la Seneti. Kama huwezi kuheshimu kiongozi wa chama chako, basi huna haki ya kuketi katika Bunge la Seneti ama Bunge la Kitaifa. Hii ni kwa sababu huwezi kupewa tiketi bila ruhusa ya chama chako. Sisi sote tuko hapa kwa sababu ya chama zetu. Wakati ikiisha na chama yako iseme ya kwamba usichukue hiyo kiti---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Madzayo, you seem to be giving civic education on political parties' discipline. It has nothing to do with the Communication of the Speaker, for which I allowed observations. If you want to educate the public on how to be loyal to their parties, you know that there is an organization called Centre for Multiparty Democracy (CMD) that helps parties.

Sen. Madzayo: Asante, Bw. Naibu Spika. Langu ni kuwatia moyo na kuwaambia ya kwamba maji yamemwagika hayazoleki. Tukubaliane na tuendele na maisha.

The Deputy Speaker (Sen. (Prof.) Kindiki): In fact, CMD is chaired by your colleague, Sen. Halake. You can have programmes when the Senate is not sitting, but thank you. I like your eloquence in Swahili and those were wise words.

We will hear from Sen. Were. The last two will be Sen. Kang'ata and Sen. Poghisiso.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that Sen. M. Kajwang'?

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, for avoidance of doubt, I want to make you aware that I am present and that I have been raising my hand for you---

The Deputy Speaker (Sen. (Prof.) Kindiki): I have just seen it. Previously, I was just seeing the top of your head.

(Laughter)

Sen. Were: Thank you, Mr. Deputy Speaker, Sir, for allowing me to comment on the Communication from the Speaker. I first want to congratulate Sen. Poghisiso of KANU and Sen. Farhiya for getting into leadership.

It is always good to remember something called process. This House should not forget that we are here because of a process. As the Speaker consider his detailed ruling, he should factor in the issue of process for us to set a good precedence for future engagements in this country.

I also want to encourage my colleagues, Sen. Kihika and Sen. Murkomen that it is not the end of the world. I have been there, and I am stronger now than I was before. All is not lost.

Sen. Nyamunga: Thank you, Mr. Deputy Speaker, Sir. I also rise to make a comment on the issue at hand. The Senate is a House of honour and it should be seen as a moderating House. Our manner of handling issues is very important.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, approach the Chair.

Sen. Nyamunga: Mr. Deputy Speaker, Sir, some of these things are not permanent. Being in this House is just a privilege. One can be elected or nominated to be here, as some of us, and our agenda should be to deliver on the mandate given to us. Some of the leadership positions given to Members from time to time is just an addition to the actual mandate. Some of us have been in the opposition for a very long time and we have learnt a lot of things. We have learnt to let go and live to fight another day.

Mr. Deputy Speaker, Sir, we should treat some of these things with a lot of caution because we are an example to people out there, as an “Upper” House, a more sober House and a House that should be able to see things in a more moderate and sober manner.

I congratulate Sen. Poghiso for the opportunity that has been given to him. May I add my voice to say that it is important to honour some of the leaders you have around you because it is important. Without recognition of the higher leadership like the presidency, you cannot do a lot, these are very important seats that we must---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Restrict yourself---

Sen. Nyamunga: Mr. Deputy Speaker, Sir, I stand guided.

The Deputy Speaker (Sen. (Prof.) Kindiki): As you have seen, I have tried to make sure that we stay away from extraneous issues. It is good for us.

Sen. Nyamunga: Mr. Deputy Speaker, Sir, we are given this House which is a House of honour and how we conduct ourselves should also be of honour.

I congratulate Sen. Poghiso and the rest of the leaders. Let everybody here know that it is not a matter of life and death. These opportunities come and go even at whatever level. It should not be like it must be there and you must serve in that capacity. No, somebody else can also serve in those positions. That is not acceptable.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. I think I am done on this side.

Any other person from the Minority Side? Sen. Ochillo-Ayacko, had you spoken?
No.

Sen. Ochillo-Ayacko: Yes, Mr. Deputy Speaker, Sir. Except I did not congratulate Sen. Poghiso and Sen. Kang’ata.

(Laughter)

I congratulate them and I am sorry for not having done so. Let us continue in the same spirit.

The Deputy Speaker (Sen. (Prof.) Kindiki): All right. Sen. M. Kajwang’, proceed.

Sen. M. Kajwang’: Thank you, Mr. Deputy Speaker, Sir.

For avoidance of doubt, I still subscribe to the Minority side. It is just the sitting arrangement that placed me on this side.

The Deputy Speaker (Sen. (Prof.) Kindiki): No, these are interesting times because I first saw Sen. Kang'ata in that corner and now I see Sen. M. Kajwang in the other corner. Thank you for the clarification.

Sen. M. Kajwang: Thank you, Mr. Deputy Speaker, Sir. Mine is very brief because earlier on, Sen. Linturi said the remarks we are making are for posterity and not to challenge or colour the ruling of the Chair which has been done in finality, having considered all the factors that were presented to him.

I wish to congratulate Sen. Poghisio for the responsibility that he has been granted. We share some common stories about Uganda which might be unparliamentary, if I was to talk about them at this point.

I encourage Sen. Poghisio that you are dealing with a team that is divided. Your first mandate is to unite your team so that, at the end of the day, the strength of its unity combined with the Minority side can result in a stronger Senate that can continue to draw respect from the public the way it has done since its formation in the Constitution of Kenya 2010.

Mr. Deputy Speaker, Sir, also allow me to congratulate Sen. Murkomen. Many people have taken it for granted that Sen. Murkomen where he reached, having been the Senate Majority Leader, was not a mean feat. At 41 or 42 years of age, he broke the glass ceiling.

We must accept that he aspired and managed to succeed to get to a very difficult job at a difficult time when we were resisting and had refused to come to this House. He could have had several challenges, but he has done his bit.

I thank him for the part that he has played. We shall continue to play football together. I believe that at his age, he still has a lot to offer this country.

Hon. Jeremy Corbyn now sits in the backbench. He has been the leader of the Labour Party for so long, but someone else has taken over. Hon. Theresa May, having been Prime Minister, now sits in the backbench.

I have had the privilege of leading the Committee on County Public Accounts and Investments (CPAIC) in this House for the last three sessions. I am now in the backbench, congratulating and cheering on the team that has taken up that task.

Mr. Deputy Speaker, Sir, I challenge the leaders of this House – Sen. Poghisio, Sen. Orendo and the rest of us in House leadership – this House faces challenges which, if you get into a post-COVID-19 discussion, the consensus is that the bureaucracy of politics and Government in this country is too expensive. People are looking for low hanging fruits that can be plucked off.

I can tell you with the drama that has been coming out of the Senate, there are many people in this country who think that the Senate is not serving any useful purpose. When it comes to cutting down the fat that is the bureaucracy of politics and Government, it might be the Senate.

Let the leadership of this House be relevant in the constitutional discussions that are going on. Let us be relevant in oversight and monitoring of whatever is going on in counties.

Having been the Chairperson of CPAIC, I can tell you that the post-mortem approach will not help this House. It is for the leadership to come up with a proper framework to engage Senators in monitoring and evaluation.

More importantly, let us review our Standing Orders. Everyone seems to have a different interpretation of the Standing Orders and that is a matter that is being disputed in CPAIC and the leadership of the Majority side of the House. We have a golden opportunity after eight years, to review our Standing Orders to make them fit for purpose. We do not have to copy whatever is happening in the National Assembly.

Mr. Deputy Speaker, Sir, I believe the leadership is up to that task. As followers, we shall be there to encourage, remind and whip them whenever the occasion requires.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Very inspiring remarks from Sen. M. Kajwang’.

Sen. Wambua, you have not been around. We have spent the whole afternoon on this matter, but I will grant you one minute because you are a late comer. You must have gone for tea or lunch.

Sen. Wambua: Mr. Deputy Speaker, Sir, kindly make it three minutes.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed.

Sen. Wambua: Thank you. Mr. Deputy Speaker, Sir.

I also take this opportunity to, first of all, congratulate Sen. Poghio on his elevation to the position of Senate Majority Leader. It will be remembered on a light note that I referred to Sen. Poghio as Wiper Party Chairman and now on loan to the KANU. I congratulate him for this new position that he has got. I also congratulate Sen. Kang’ata on getting the Senate Majority Whip.

Mr. Deputy Speaker, Sir, at the end of the day, we are the Senate of the Republic of Kenya. We are currently facing three serious enemies. We have COVID-19, floods and locusts. These enemies do not know the differences we have politically. They do not care whether we belong to Jubilee, Wiper, the ODM or whichever political formation. The first challenge which is a serious one to the new Majority Leadership is to try as much as possible to put this House back to order. Together, we confront these three enemies all of which affect our counties and the people we represent in this Senate.

I also---

Sen. Madzayo: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Madzayo?

Sen. Madzayo: Mr. Deputy Speaker, Sir. If you notice, Sen. Were is not wearing her mask properly. Her nose is open.

Secondly, the Deputy Minority Leader, my young brother, Sen. Malalah, is sitting in a place that is not marked that you can sit. That is, where you are not supposed to sit. They are discussing or consulting, which is good thing to do, but they are not in order. Are they in order to sit like that?

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Madzayo. They are not in order.

Sen. Malalah, not only are you not supposed to sit in a seat that is not designated; but also you should not leave your designated seat. Next time, I will make very drastic order because I have seen we have started taking these things for granted. All right?

Sen. Malalah: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): We might have to fumigate you and take you out for a while.

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. I stand guided although I was consulting with---

The Deputy Speaker (Sen. (Prof.) Kindiki): There are no consultations during this time.

Sen. Malalah: Mr. Deputy Speaker, Sir, I was consulting with Sen. Were on Party issues. We are Members of ANC---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! That makes it worse. This is not the place to do political party caucus meetings.

Sen. Malalah: Mr. Deputy Speaker, Sir, I have also consulted you and the Clerk.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Resume your sit, Sen. Malalah. You are making fun of a very serious issue and we are at the forefront of preaching to Kenyans on why they should take these things seriously.

Sen. Were, be warned accordingly. What is it, Sen. Poghisio?

The Senate Majority Leader (Sen. Poghisio): Mr. Deputy Speaker, Sir, this is a matter of procedure and you may have to make this clear from where you sit. When people refer to the person in the Chair as 'you' or 'you' did this or that, there must be a separation of who the Senator for Tharaka-Nithi is when he is in the Chair and who he is not. Could you make that clear?

The Deputy Speaker (Sen. (Prof.) Kindiki): Has there been a reference in that relation? As Sen. Poghisio said, when you read the list of Senators attending today's Sitting, did you see the name of the Senator of Tharaka-Nithi?

(Laughter)

Sen. Malalah: Mr. Deputy Speaker, Sir, I stand corrected. I will continuously address you as the Chair.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely.

Sen. Malalah: Mr. Deputy Speaker, Sir, for purposes of clarity, I also want to seek advice that during this season of COVID-19, how then as a leader would I consult the membership of my Coalition?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah!

Sen. Malalah: It is very important because---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah!

Sen. Malalah: Mr. Deputy Speaker, Sir, there are certain matters that are emerging on the Floor of the House, and I may need consultation---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order! For the avoidance of doubt, Senators, during this extraordinary season, Senators must retain the seats designated for them until the end of that Sitting.

Secondly, movement within the Chamber is not allowed. Thirdly, while approaching the Chair, unless under the direction of the Chair, the one-and-a-half-meter distance should be maintained, but also, if it is urgent or private.

(Sen. Malalah spoke off record)

That is the matter of approach. I am talking about approaching the Chair and not Sen. Were.

Sen. Malalah, it is only that, maybe, I am in a different disposition. I should have done something greater, but let us finish this discussion, so that we move on with the matters that are ahead of us.

Had we exhausted? Sen. Wambua, please, finish.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I also want to take the opportunity to congratulate the outgoing leadership, Sen. Murkomen, and my best friend, Sen. Kihika, for the time they have put in as the Senate Majority Leader and the Senate Majority Chief Whip respectively.

This is not the end of the world but the beginning of a new era, and together we pull as we serve this country to a better destination.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done; good summary. I think now we are done with the Minority side. On the Majority side, I see Sen. Sakaja, and then we will hear Sen. Kang'ata and Sen. Poghisio will close for us.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. Allow me to first congratulate the new leadership from the Majority side, starting with the new Senate Majority Leader, Sen. Poghisio, the Majority Chief Whip, Sen. Kang'ata, and Sen. Farhiya.

Sen. Farhiya's elevation to that point is a thing of joy. Number one, in the leadership, now we have minorities represented. Number two, as a first time Senator, the appointment came to her surprise when we elected her yesterday. We are confident that this team is up to the task and it will not let us down.

Allow me to also thank Sen. Murkomen, the former Senate Majority Leader, and Sen. Kihika, for the leadership they have shown us, as the Majority side. They have been diligent and played their role very well for the most part. Even where we might have disagreed many times on issues, as a Chairman of a Committee, I must thank them because they had confidence in me to perform certain duties, and others not. It is the leadership journey they have to go through.

Sen. Murkomen has distinguished himself as a very vocal champion for devolution and this House. Sen. Kihika has also distinguished herself as a very thorough Whip. I would like to encourage the incoming leadership not to think it is business as usual. You also need to distinguish yourself and cut a niche for yourself.

Mr. Deputy Speaker, Sir, they need to up the tempo and also still oversight the Government. I need to make it clear that whatever happened was a decision by Members of Jubilee Party and, indeed, we were 20 Members. It was a decision made and everybody was invited for the meeting.

I started my political career at 19 years at the University of Nairobi and at the same time, during President Kibaki's campaigns. I am very young in this House, but in my few years in politics since I was 19 to now 35 years old, I have never imagined. If today Kalonzo Musyoka calls me, I will go and listen. If the ANC leader calls me, out of respect and humility, I will go and meet him. It is unconscionable for anyone to be invited by the President of the Republic and not attend.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja!

Sen. Sakaja: Mr. Deputy Speaker, Sir, I have said that, but I will leave it at that and not go into the details.

Something I must impress upon Members of the Majority side. When we say oversight, I have been a chairman of a party. I do not care about those who question my authority, but you can oversight and question the Government respectfully. You can question issues but not personality of your party leader or anybody. It is out of turn. I want to encourage Sen. Poghiso not to give people the impression that there will be no oversight from the Senate. We must oversight Government and stand on our conscience.

Mr. Deputy Speaker, Sir, I am on record voting against a report, where I was the only Jubilee Senator who voted against it because I felt out of my conscience - everybody tried to fail it from the County Public Accounts and Investments Committee(CPAIC) - it would not be right for me to go with the Majority side, which is allowed. You are elected and have a conscience. I have 2.3 million voters. Sen. Poghiso, you have voters and we have a future in this country.

Let us be able and convince the Executive that oversight by the Senate will be done by both the Majority and the Minority side. Supporting Government does not mean keeping quiet when something is not going well. We shall say the truth but in a humble, respectful and a way that is forthright.

Our colleagues want to go to court and it is within their right. I am reminded of a phrase by Suetonius to Julius Caesar on 10th January, 49 BC, when Julius Caesar had gone against the Senate and led his army across the River Rubicon – where they come out and say; “Crossing the Rubicon”. It reached a point and Julius said ‘*Alea iacta est,*’ “the die is cast”. These positions are not owned by us. It is not about the legality or illegality, it is just about how you relate in your party. You can go round but if you have lost the faith of your party and you are not in such terms---

Let us continue to work as the Senate. I want to encourage Sen. Kihika and Sen. Murkomen that their future is bright. Sen. Murkomen has reached a high place politically by being the Senate Majority Leader; a seat that has only been held by you, Mr. Deputy Speaker. It is a high position and he needs to redefine himself or configure himself in a way that you do not burn bridges at this age.

The President is the President and the Deputy President is the Deputy President. If the Deputy President calls me, I will go quickly.

In fact, there is a Kiswahili saying that “*Mtu hakatai wito bali hukataa aitiwalo.*”

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): They have understood.

Sen. Sakaja: You know my Kiswahili is ‘Nairobi Kiswahili.’

It might be exciting right now to make noise, insult or sound radical and use tribal terms against the President. However, we have a long journey. The politics of the future is not that kind of politics. There is no need to burn bridges. We want to work together and will continue doing so.

With those many remarks, I hope that the Senate Majority Leader has heard. Sen. Mutula Kilonzo Jnr. asked what will happen if they fail. Yes, if they fail as well, *wembe ni ule ule*; we will go on.

The Deputy Speaker (Sen. (Prof.) Kindiki): Finally, let us hear from the two.

Sen. Kang'ata.

Sen. Kang'ata: Thank you, Mr. Deputy Speaker, Sir, for affording me the opportunity to make my observations on this issue. I will speak on only two issues. Number one is to congratulate my two predecessors.

Secondly, I will also address some of the issues raised by---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You have only one predecessor. The other one is the predecessor of Sen. Poghisio.

Sen. Kang'ata: I apologize, Mr. Deputy Speaker, Sir.

On the second issue, I will respond to some of the issues that my colleagues have raised. First, is on the service that has been rendered by my two colleagues. Sen. Kihika, the Senator of Nakuru has served this House very well. She is very well educated and has always been in the House pushing the Government agenda.

I have also deputized her for the last three or so years and can vouch that she has a very good future, politically. She is also very competent. I have learnt a lot from the way she has been carrying herself in this House. I will endeavour to do my best to see whether I can match her. I am not so sure, because her shoes are quite big. I want to congratulate her.

I also congratulate my former classmate, Sen. Murkomen. He has been a very good Senate Majority Leader. It is true he achieved that position by sheer hard work. I have no doubt he will continue serving this House in any other position that he may get.

Some issues have been raised by previous speakers. First is the issue concerning a purported court order---

The Deputy Speaker (Sen. (Prof.) Kindiki): About?

Sen. Kang'ata: That court order is said to have been served on the Office of the Speaker, purportedly injunctioning the so-called coalition between KANU and Jubilee Party. When I looked at that document, first, this House was not party to those proceedings. There was no name of the Senate. The Speaker is not party to those proceedings. I am not so sure how that Order could bind this House.

The Deputy Speaker (Sen. (Prof.) Kindiki): You know, Sen. Kang'ata, I offered very good guidance---

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, the problems in Jubilee Party are problems to all of us. Is it in order for Sen. Kang'ata, who is a distinguished lawyer, to bring out those issues in the manner because it is not part of the Communication? Some of us do not know what he is talking about and he will put you, the Deputy Speaker, in a very compromising position to either have to address him, because you are the one who is purported to have been served.

Could you, please, direct him? Otherwise, the information should come to us so that we can also help if there is a problem in the service of the order, but it is not part of the Communication.

Sen. Wambua: Mr. Deputy Speaker, Sir, I am just wondering because Sen. Kang'ata is making reference to court documents. We have not seen them and they have not been served to the House. You made a ruling that we do not go to the merits or demerits of the process whose outcome is the appointment of Sen. Poghismo as Senate Majority Leader and Sen. Kang'ata as Majority Chief Whip. Why are we going there?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kang'ata and your colleague, Sen. Poghismo, the sentiments I made at the beginning were to the two of you who are the biggest beneficiaries. You expect the aggrieved party, which you are not to be the one voicing issues--- As I said, you have to be careful because this seat is not personal to hon. Lusaka as Speaker and whoever sits here on his behalf; it is an institutional seat. The ruling and determination has been made.

Secondly, I said that you can make observations concerning the Communication without challenging it. I would even have expected that from Sen. Kihika. Your predecessor has done much better than you are now doing.

Which court order are you talking about? The Speaker did not mention a court order? Why are you introducing extraneous issues?

Sen. Kang'ata: Mr. Deputy Speaker, Sir, I apologize for that.

The Deputy Speaker (Sen. (Prof.) Kindiki): I also made very clear remarks and said that the way we operate as Parliament, we are not guided or directed by other arms of Government, that is, the Executive or the Judiciary.

If there is a decision from another arm of Government that is conveyed to us, there are procedures and Standing Orders to be followed. You are not in court. You cannot come here and arguing in favour of the Judiciary. If the Judiciary wants to talk to Parliament, there are ways of doing so, and they have not talked to us.

I thank you.

(Laughter)

Sen. Kang'ata: Thank you, Mr. Deputy Speaker, Sir. I inform the House that the letter I presented---

The Deputy Speaker (Sen. (Prof.) Kindiki): There are no letters. Please, just comment. If I were you, I would not have spoken today. I would have said, "thank you, I will do my job well" and sat down.

Sen. Kang'ata: I agree, Mr. Deputy Speaker, Sir. It is only that I thought it may be good that some of the issue that have been raised---

The Deputy Speaker (Sen. (Prof.) Kindiki): Which issues? There is no dispute.

Sen. Kang'ata: Thank you. I will do my best to continue with the business of the House and the good spirit that has been cultivated by our predecessors.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Proceed, Sen. Poghismo.

The Senate Majority Leader (Sen. Poghismo): Thank you, very much Mr. Deputy Speaker, Sir. It is very difficult speaking here with the mask on and everything, but I will do my best to be clear.

I take this opportunity to thank the Members of the Majority side for having the confidence to vote for me and my team to be in the leadership of this House with Sen. Kang'ata, Sen. Dullo and Sen. Farhiya.

We have a new team. I congratulate them and also thank the leadership of the Jubilee Party. For the record, we had the meeting. It was attended by the Members who came. I do not want to respond to things that were said. When my predecessor, Sen. Murkomen, the Whip and the other team were elected to the leadership of the Senate, KANU was at that meeting and voted, and so did the other Members who were mentioned. When it is now time for KANU to serve in this position, these matters are raised as though there is a new process. It is the same process.

I just want to make it clear that we have a situation where some people have expressed some things. I was just trying to make it---

The Deputy Speaker (Sen. (Prof.) Kindiki): But the Chair has not put you on the spot to respond. That would have been the case if the Chair thought that, perhaps, issues are arising that require further reflection. Anyway, it is the freedom of speech.

The Senate Majority Leader (Sen. Poghio): Mr. Deputy Speaker, Sir, if information goes out, it looks like it is the truth. If the contrary information is not given, sometimes people take that to mean it is the truth. For those who are listening who do not know what we are doing, they think that the truth has been said. We would like to use the opportunity as well to respond to the people who are in the general public, who think there was no quorum; that there were fewer people, and those who were outside the meeting were more than those inside. This is very contradictory. If the nation hears that, they might think it is true, like they said, that it is a coup.

The truth is that there were certain lists and we do not know where those signatures came from. When you say that you have more people and signatures, the process was there for the first lot. We can ask ourselves the same questions. We can ask: how many people and signatures were there?

Mr. Deputy Speaker, Sir, we just want to put it on record that we are duly elected by a sitting and a meeting. His Excellency the President, who is the party leader, chaired the meeting. For that reason, if anybody wants to know the details, they have already been given to the Chair. Follow from that. The ruling from the Chair makes us the leaders at this point.

Mr. Deputy Speaker, Sir, may I now just say thank you to the people who served before us, including my predecessor, Sen. Murkomen. I come from the same region as him, and he represents a neighbouring county. I thank him for what he has done as the Senate Majority Leader.

It is not only that. When there was tragedy between the Pokot and the Marakwet, Sen. Murkomen spoke for both communities, and he was very eloquent. We had a tragedy and, as you know, the Pokot and Marakwet are just divided by a small stream. That tragedy for which we have not had an opportunity to recover from yet, Sen. Murkomen who was the Senate Majority Leader then, used his position very well to help our people. I would like to congratulate him.

I also congratulate Sen. Susan Kihika for being a steady Whip. I know that being a Whip, many times, you have to respect everybody. We have never had a situation where she disrespected anyone. I congratulate both of them.

Mr. Deputy Speaker, Sir, we will borrow from a lot of their experience. We will obviously reach out to them and learn something because we are now new in this team. There is no animosity on our side. Where the animosity is, I have no idea. It is only very possible that we are politicians and may have problems as individuals. However, that is not to say that the ruling side cannot sit and vote together. We think that we can.

My task, therefore, is to try and join my team; to bring out the team back, so that we can, together, work for the Government agenda and business.

I conclude by saying this. We are living in difficult times. We meet only one day in a week and until this pandemic goes away, we will use the opportunities left in between to build our team back and make sure that we restore these things. Some of these circumstances, of course, are beyond us, but where we can, we will, therefore, want to restore.

Mr. Deputy Speaker, Sir, I know that the other team members will have an opportunity to speak. I accept the position and assure you that I have the experience. I will do my best to use that experience, having ran a political party and been a Minister in Government.

Also note that when I was younger, and I know that some of the sentiments expressed, I also had to go through some of these political situations. I had to lose my seat at some point because of political machinations. However, I am just saying that when I was younger, I was---

The Deputy Speaker (Sen. (Prof.) Kindiki: To use the words of Sen. (Dr.) Ochillo-Ayacko, you were 'eaten.' Was it Sen. (Dr.) Ochillo-Ayacko or Sen. Khaniri?

Sen. (Dr.) Ochillo-Ayacko, did I misquote you?

Sen. (Dr.) Ochillo-Ayacko: No, Mr. Deputy Speaker, Sir. The Senate Majority Leader was 'eaten' and had to lose his seat. So, he is a person of even temperament. He has suffered from both sides and has been rewarded for that.

(Laughter)

The Senate Majority Leader (Sen. Poghiso): Mr. Deputy Speaker, Sir, I do understand what is happening. I encourage my friends; my predecessor and the team, to take heart. Please, let us get back together. We can always learn a thing or two from each other.

With those very few remarks, knowing that time is spent, I am here now. I can assure the Members on the other side of the bench and the leadership on the other side that we will work together. We are still going to oversight counties and the Government. We are not running away from our responsibilities. We are just here to run the business, but will not go along with everything even if it is unpalatable. We will oversight Government and that is our responsibility, and I do agree with my young colleague, Sen. Sakaja.

Thank you for all those who prayed and helped us in any way, and have been wishing us well. We will bring the team together, God willing.

Thank you very much, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki: Very well. What is it, Sen. M. Kajwang’?

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, we have the misfortune that the HANSARD does not capture body language. Would I be in order to summarize the body language of the incoming Whip and the incoming Senate Majority Leader?

Sen. Irungu Kang’ata has been uncharacteristically timid today and Sen. Poghiso has been uncharacteristically defiant.

The Deputy Speaker (Sen. (Prof.) Kindiki: Order!

Next Order.

(Laughter)

BILLS

First Reading

THE REPRESENTATION OF SPECIAL INTEREST
GROUPS LAWS (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILLS NO. 52 OF 2019)

*(Order for First Reading read - Read the First Time and
Ordered to be referred to the relevant Senate Committee)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order.

Second Reading

THE PANDEMIC RESPONSE AND MANAGEMENT BILL
(SENATE BILLS NO. 6 OF 2020)

(Sen. Kasanga on 12.5.2020 – Morning Sitting)

*(Resumption of debate interrupted
on 12.5.2020 – Morning Sitting)*

The Deputy Speaker (Sen. (Prof.) Kindiki): I think the question was proposed.

Sen. Sakaja: Mr. Deputy Speaker, Sir, it was not proposed.

The Deputy Speaker (Sen. (Prof.) Kindiki: It was proposed and it is time for debate. The question was not put, but proposed.

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki: What is it, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, if I recall, just when you left the Chair for the Speaker, Hon. Lusaka, I seconded, but immediately he went to Communication from the Chair. The question was not proposed.

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought so as much. There is confirmation from the HANSARD that the question was proposed. So, we go by the HANSARD.

The first bite on the cherry goes to the Senator for Makueni County.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, thank you. First, allow me to congratulate the *Ad hoc* Committee on the COVID-19 Situation in Kenya, led by Sen. Sakaja and deputized by Sen. (Arch.) Kasanga. If there is a Committee that is working, it is this one, and we appreciate them.

Secondly, it is a little disconcerting that many days after the COVID-19 was announced as a pandemic in the world and in Kenya, we are still on this Bill. Going by the processes in Parliament, there is a---

(Sen. Kwamboka consulted with Sen. Madzayo)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kwamboka and Sen. Madzayo! I know that the rules are new, but let us keep reminding ourselves.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it is disconcerting that many days down the line, we are still debating a Bill to provide a framework on COVID-19. As we do so, regulations are flying left, right and centre from every place. In fact, I was even more disconcerted that the regulations that were supposed to support COVID-19 were not part and parcel of the mandate of Sen. Sakaja's Committee. As a result, we have not managed, as a House and as Parliament, to have an input on the regulations about COVID-19 that are now into effect.

Mr. Deputy Speaker, Sir, you mentioned that somebody was arrested for not wearing a mask while eating. I have a case in Makueni where somebody was arrested while herding cattle without a mask. Those are the sort of difficulties we have. People have paid fines for not wearing masks. We have also not defined what a proper mask is.

In this Senate, Mr. Deputy Speaker, Sir, you have evidence that we have various forms of masks, like the one worn by Sen. Kwamboka, Sen. Pareno and I. Everybody is wearing any sort of mask.

It is even worse out there in the villages. People are wearing all sorts of things and they are fined for not wearing masks. The masks are not cheap, but nobody bothered to regulate that. The other day, I saw a supermarket selling masks at Kshs650. For masks that some of us are wearing, we bought them at Kshs4,500. The Government should regulate the prices. The Pandemic Response and Management Bill by Sen. Sakaja's Committee was supposed to ensure order during this emergency.

I have got some advice for them because of the problems we have had with the National Assembly. In Clause 19, they have proposed a Fund. When this Bill goes to the National Assembly, the usual things will happen. They are going to call this a money Bill, because of the word "fund" as crafted in proposed Clause 19. It will result in

problems of Article 114 on a money Bill. If they agree, I propose that they make reference to the creation of a fund---

The Deputy Speaker (Sen. (Prof.) Kindiki): Who is 'them'?

Sen. Mutula Kilonzo Jnr.: Members of the Committee. They should make reference of a fund under the Public Finance Management (PFM) Act and the Constitution without necessarily making prescriptive declarations or proposals in this Bill.

The reason is as follows: We already have a COVID-19 Fund that is not under the National Drought Management Authority (NDMA) or the National Disaster Management Unit (NDMU). It is a Fund where the Government has created regulation for managing it. Therefore, before we get a ruling from the High Court as to what constitutes a money Bill, we can find an avenue for this Bill to get consensus in the National Assembly.

Mr. Deputy Speaker, Sir, I want to thank Sen. Sakaja. We rarely appreciate our colleagues sometimes when they do extraordinary things. I am aware that he attempted in some form to get a committee of the National Assembly running, which will be a mirror committee of the Senate, in which case, it will be easy to have this Bill agreed in a committee before it gets to the Floor.

It is unfortunate that as we have a national pandemic, as leaders of this country, we still cannot sit down to agree on things that are common to all of us. COVID-19 pandemic has come to reveal the nature and feebleness of the leadership since Independence. The Intensive Care Unit (ICU) beds are less than 200 in the whole country, but one bed costs Kshs500,000. Ventilators are not available.

In this Bill, the Committee has proposed how to manage a pandemic. As you are aware, since you have lectured Law classes, the Public Health Act is a 1930 Act. So, some of the references included in the regulations that have been published by various Cabinet Secretaries refer to things that are old and archaic. It is unbelievable that we have not changed this law many years after Independence.

One of the proposals is fumigation where there is COVID-19 case in a certain estate or house. It is an anathema to suggest that Kenyans should fumigate their homes because that is the work of the Government. I have seen governors, including the Governor of Kirinyaga, fumigating their cities. It should not be the work of ordinary Kenyans to do fumigation. An example is the plight of those people who were flown from China recently. These are some of things we are talking about.

There were issues about management of resources, and I hope Sen. Sakaja and Members of his Committee will help us on that. It is a contradiction to set up a Committee on COVID-19 under the Cabinet Secretary in charge of Health, but the funding is being run by somebody else. That is an avenue for corruption and pilferage of resources, hence the sort of problems we have about the management of the Fund.

Mr. Deputy Speaker, Sir, Kenyans are suffering at home and have problems. People have been retrenched while others have taken salary cuts. Now that we have a new Senate Majority Leader in the name of Sen. Samuel Poghio, could he please use his skills? I know that he is the Chairperson of the Christian Parliamentary Caucus. Could he use his persuasion to find an entry point for some of the things we are doing for

purposes of helping this country, like this Bill and the proposals that have been made, so that we have unanimity?

Mr. Deputy Speaker, Sir, it will be nice for the new Senate Majority Leader to be present when this Bill will be assented to. You and Sen. Murkomen never managed that. We pray that the prayers that Sen. Poghio says can be heard.

Disaster management is a concurrent function. Sen. Sakaja and I had proposed a Bill that ideally would have settled the COVID-19 pandemic because in real sense, we do not need a separate Bill on COVID-19. What if it becomes COVID-20 but we have one on COVID-19? Do we do another Bill? What if when we have another pandemic---

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., would you like to be informed by Sen. Sakaja?

Sen. Mutula Kilonzo Jnr.: Without a doubt.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Sakaja.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I would have been surprised if Sen. Mutula Kilonzo Jnr. chose not to take information. The concern he is raising came up before we drafted the Bill. That is why we did not call it a Corona Bill. It is defined in the Bill what constitutes a global pandemic and the protocol. For example, if we have COVID-25, the same Bill will apply, no matter the pandemic.

The Deputy Speaker (Sen. (Prof.) Kindiki): Even for other non-virus pandemics.

Sen. Sakaja: So long as it is a pandemic as defined by the World Health Organisation (WHO) and communicated to the President following the advice of the National Security Council. It does not matter whatever pandemic it is.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker Sir. That was my concern, but of more concern is that in the Bill, they have proposed a timeline and a sunset clause of two months after it is declared a pandemic. That in itself suggests that we have taken advice from doctors that a pandemic can only be two months. This particular pandemic could possibly last longer than six months. Therefore, I would love to see that considered.

Somebody asked: "Why is the Public Health Act not part and parcel of the Health Act of 2017?" In future---

*(Sen. Sakaja and Sen. Kasanga consulted
in close proximity)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! The Chairperson and Vice-Chairperson of the Senate *Ad Hoc* Committee on the COVID-19 Situation in Kenya are violating COVID-19 rules! Order, Sen. Sakaja and your deputy!

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker Sir. I was making reference to the fact that there is a problem about having a Health Act, a Public Health Act, and a Pandemic Response and Management Bill. In future, this Committee must propose that we amalgamate these issues, because they all sit under the same Ministry. They are executed by the same Ministry, and that is the reason I have proposed that even

in the creation of the fund, there is no reason to offend those rules because the Ministry has a fund. If we raise money for purposes of COVID-19, all we need to do is find a framework under the Public Finance Management (PFM) Act that can handle this.

Mr. Deputy Speaker Sir, would it not be nice to have a sovereign fund to cushion Kenyans, like the one they have in the Nordic countries, as opposed to what appears as *ad hoc* tax reliefs, which are not helping? There was an issue in the Bill about employers possibly giving their workers unpaid leave. People have lost jobs. I remember calling Sen. Sakaja about owners of hotels. They have been forced to pay extra Value Added Tax (VAT) under the new laws, yet they are suffering more than everybody else. All hotels in the country have closed.

Mr. Deputy Speaker, Sir, in terms of public health, availability of resources like water and rebates on electricity, can we not have this as part of economic and social rights under Article 43 of the Constitution? These rights are fundamental. We do not need to make provisions for things like this in a Pandemic and Response Management Bill. It becomes part and parcel of us.

Mr. Deputy Speaker, Sir, for purposes of Nairobi City County, because this City and its population has the largest slums possibly in Southern Sahara--- Even in the testing that they were doing, can we find a method where the people who are living in informal settlements in Nairobi can get testing or medical care in their respective areas for purposes of this pandemic and many others? We should have a hospital that can deal with these issues next to Kibra. It is not my wish that we continue having unstructured informal settlements, but since it appears that it is not something that we have managed to tackle, we can deal with it for now.

Mr. Deputy Speaker, Sir, although this Bill also attempts to deal with workers, unless I did not read it properly, I am not certain whether it has tackled frontline workers. We have seen the question raised by Sen. Malalah about frontline health workers and the Salaries and Remuneration Commission (SRC) issuing what would be unlawful and unconstitutional directives in the middle of a pandemic.

We have also seen the national Government, through national Government officials, violating the COVID-19 rules when they demolished houses in Kariobangi. What is good for the goose must be good for the gander. If a Kenyan is found on a *boda boda* and is fined Ksh20,000 for not having a mask, a national Government official should face a court of law for violating the same rules that they have, in terms of the demolitions that were in Kariobangi. Certain directives issued by the Chief Justice must find their way here.

Mr. Deputy Speaker, Sir, more importantly is that we will find from this pandemic, this Bill and the proposals made by Sen. Sakaja, the extent to which this Committee that is formed under the Pandemic Response Management Bill--- I have not seen the overarching principles that are anchored into practices that have been done here and are ongoing all over the world in this Bill.

We must invest in research. Preventive healthcare is the answer to these pandemics. The people who are working in the Kenya Medical Research Institute (KEMRI)--- Maybe you do not know, but if there is one entity that is completely unstructured and there is pilferage and wastage of resources, it is KEMRI.

In future, the country must invest in training and capacitating students from universities deliberately by training them all over the world to continue doing research. Our universities should get special resources through this pandemic, so that we can continue researching on these infectious diseases and many more to come.

The people of Wuhan, where they thought this disease was over, have now five new infections. Chances are that we will live with COVID-19 until the end of this year. Therefore, I hope that the reliefs and things that this Committee has proposed in this Bill, which are very noble - except the ones of retrenching workers and them going on unpaid leave---

Kenyans must feel that the Government takes care and is feeling them through the resources that they are collecting. That money cannot be wasted. Therefore, penalties for people who pilfer money when people are suffering should be more.

Mr. Deputy Speaker, Sir, we should not forget the police as frontline workers, because they are doing the same thing that the doctors are doing, but differently. Recognition and those allowances that you provide for purposes for medical care and people who are helping Kenyans must be given to them. We must congratulate our doctors. These allowances must be given to the police who are working overtime to ensure that Kenyans are at home before 7.00 p.m.

Thank you, Mr. Deputy Speaker Sir. I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Mutula Kilonzo Jr. Sen. Ochillo-Ayako.

Sen. Ochillo-Ayako: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to make a few remarks regarding this Bill. I want to start by congratulating the team that came up with this Bill. I congratulate them because there is a Bill that is forming part of the business of this House and is geared towards offering a solution to this problem for as long as other pandemics might visit the universe and our very lovely nation.

I also want to thank them for the indefatigable manner in which they have carried out the affairs of the *Ad hoc* Committee. Very detailed, readable and informative reports have been coming.

Mr. Deputy Speaker Sir, in general, this is a good Bill. It has good intentions and most of its content is agreeable. The Bill establishes a system through which a pandemic is declared. I think that is absolutely necessary, because if there is no defined system through which we can declare a pandemic, then it is left to the innovation or absence of it, of those who are seized of authority to do as they please.

The Bill establishes funds that will be applied to handle this matter. It also does quite a number of things that are important towards running a process that is as difficult as this one. There are a few things that I want to point out; one, the Bill does not appreciate the fact that when we have an emergency and difficulties of this nature, it is important to have institutions of vigilance operational. The Bill gives responsibility to the presidency to initiate the process. However, the role of the counter-check institutions, for example, Parliament and the Judiciary is not clearly anchored in the Bill.

It is important to observe that an analysis of the usage of power world indicate that the exercise of unfettered power is enjoyable. People who are given unfettered power and uncontrolled authority have the temptation to apply it to the widest possible

interpretation. That happens in all emergencies and situations as difficult as this one. It is important to clearly define the input of the Senate and the National Assembly when it comes to the declaration of an emergency.

If you keenly look at what is happening in the United States of America (USA), the leader of the Republican Party, who is also the President, has had the temptation of thinking of postponing the election under the pretext of such a pandemic. Without a strong Congress, Senate and Judiciary in the USA, that temptation would have gained prominence and come to pass. This Bill needs to give authority to Parliament and the Judiciary to be functional during such periods.

If you look at the Bill in terms of the calendar of Parliament, it leaves it to the discretion of the Speaker. I have no problem with this. However, at such times, you may have good Speakers who are as pro-democracy as you are and will defend democracy. However, in some unforeseeable future, we may have a Speaker or head of Parliament who has a sweet heart relationship with the Executive. Parliament may be switched off.

For example, in my county, we have a county assembly which was switched off through Short Message Service (SMS) and could not function because those who are responsible for switching it off disappeared and Members of County Assembly (MCAs) of Migori could not trace their leadership to find out formally and officially how they would respond to COVID-19.

This Bill does not cushion and guide the Office of the Speaker. Therefore, it is possible that in future when we are not here, we may have a head of Parliament who is in bed with the Executive and we end up with that difficulty. We can also have one who is directly intimidated and told that the power is absolutely his or hers and so he or she can switch off the National Assembly or the Senate which are militant and should not find out how money is used. That kind of situation should be avoided in this piece of legislation.

Mr. Deputy Speaker, Sir, there are propositions like the one that has been made by my brother, Sen. Mutula Kilonzo Jnr. That the aspect that makes us fall into the trap of a money Bill should be excluded from this piece of legislation. I do not buy that. I believe that the correct position is what is in court. The Senate has authority to initiate legislation without fear that some other person with a different interpretation or agenda may clip that legislation. So, we should always define or panel-beat our Bills in such a manner that they do not hit headwinds in the other House. I am of the view that we should not get into that trap.

Our responsibility is clear. Let us put everything in the Bill and send it to the other House. If they want to take responsibility for aborting this piece of legislation or pocket veto, let it be their burden. We cannot take a piece of legislation that is disabled because we are apprehensive of the intention of that House.

So, I propose to the *Ad Hoc* Committee to ensure that this legislation is comprehensive. It should not worry about the intention of the National Assembly. I believe that there are good men and women in that House who will be inspired by the content of this Bill. When it comes to their turn to look at, they will do so positively.

Mr. Deputy Speaker, Sir, there are also aspects in this Bill that talk about the relationship between tenants, landlords and other contractual relationships. If you look at what is being proposed in those clauses in the Bill, there are areas that do not provide a

solution. There are clauses that obligate landlords to discuss with their tenants how to deal with the economic hardships that arise from this situation. They do not provide a solution as to what happens when there is a disagreement. So, those clauses could be used to create unending disputes. In such situations, disputes are not necessary.

The way to go is to ensure that since it is the Government that is obligated to cushion the vulnerable members of society, that obligation of cushioning tenants and assisting other people should squarely fall on the resources that are available to the public.

Most landlords and investors have other financial obligations, including to employees. This piece of legislation indicates that they must pay them and not deal with them adversely. The same Bill says that you should not be hard on those who owe it to you. This contradicts that the situation is untenable and may create unending conflict. So, this obligation should be transferred to where it belongs which is the Government. If it is fiscal relief, the Government should offer it. If it is direct payment to vulnerable people, the Government should offer it.

We should not discriminate against people who from perception are well endowed to reward people who, from perception, are doing badly. Let us be fair to everybody. We should not punish people who seem to have more resources and reward those who do not have. This COVID-19 affects everybody. Let us be generous.

Mr. Deputy Speaker, Sir, lastly, if you look at the proposed Bill, you will find that there is little role given to counties, their executives and assemblies. These are constitutional institutions and public entities that are available to the nation to help fight and handle this pandemic. So, the Bill must be recrafted or enriched in such a manner that it gives specific positive roles to county governments. County governments are governments that are engaging, hiring and resourcing the first responders, particularly in areas of health, both public and curative health. If their role is not defined in this kind of legislation, then it is like having very important players in a football match, but you do not want to field them and instead, you limit yourself to a certain number of available players and that will not allow you to realize your full potential.

It is important for this piece of legislation to give specific roles and utilize the presence of county governments and county assemblies. You get reports from county assemblies of people who are having tea that is valued at Kshs4 million and having airtime when others are being asked to buy masks. You see, you are having tea, you do not even have Coronavirus, but another person is being asked to buy masks. So, the county governments are also having public money.

If the assemblies are not brought on board, I can assure you that the county governments will misuse the funds and by the time we discover, it will be very difficult; it will be another story that Sen. Kajwang' ably mentioned that if you are dealing with audit as a postmortem, you are just chasing things that are not there. You cannot easily restore lost property from the public.

It is important to make both the county assemblies and the county executive function so that although pandemics like COVID-19 will be ravaging the nation, we have all our available institutions working together towards defeating this very dangerous ghost.

With those few remarks, I want to once more thank the team for the good job that they have done. I hope that this Bill passes as amended so that we do what we are mandated to do as a House.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Kang'ata, from the Majority side, you know that you are seated in the opposite side with Sen. M. Kajwang' but I am assuming that Sen. M. Kajwang' was seated next to Sen. Ochillo-Ayacko in ordinary circumstances.

Sen. Kang'ata: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. Let me first congratulate the Committee, they have done a good job. They are ably chaired by my brother, Sen. Sakaja, and my sister, Sen. Kasanga. Thank you for the good work that you have done to generate a Bill within that short time. That was good and to also note that the Bill is quite important in this fight.

The biggest strength of this Bill is the fact that it does not only address the problem that we are having, but all other future potential pandemics; that is good.

Also, it raises good points on how to cushion Kenyans in a more sustainable manner in terms of the economic problems that they will face out of this pandemic and the social issues that will come up. On that score, I want to say, congratulations.

In my view, however, there are areas of the Bill that can be improved on, such as Part VI on Miscellaneous Provisions. There is also the proposed clauses 35 and 36 concerning penalty for obstruction; the idea that one should allow public health officers to access one's home. Well, the reason why the Committee should reconsider those sections is because they are provided for in some separate laws, in particular, the Public Health Act. Therefore, I do not know whether this is a form of making so many laws on an issue that is already handled by the Public Health Act.

The other issue is the proposed clauses 29 and 30. Proposed Clause 29 is about Tenancy Agreements and proposed Clause 30 is about the Labor Relations.

The issue concerning Clause 30, if you allow me, I can just read not only for those who are here, but also those watching us at home. Proposed Clause 30 states-

“Where a pandemic adversely affects the ability of an employer to pay salaries and wages-

(a) notwithstanding the provisions of the Employment Act, an employer shall not terminate a contract of service or dismiss an employee; and

(b) an employer shall not coerce an employee to take a salary cut.”

Also, it proceeds to say at Clause 30(2) that-

“Despite subsection (1), where an employer is unable to meet his obligations to pay salaries or wages, the employer shall permit an employee to take leave of absence without pay for the duration of the pandemic.”

Various problems arise out of this section the way it is crafted. The so-called unpaid leave; the word used here is about permit, meaning, to be initiated by the employee. If the employee does not initiate that then it means there is no leave. On one hand, you have told an employer that you cannot terminate or dismiss an employee. The employer has to await the employee to initiate the process of taking what we call an unpaid leave.

It is okay, of course, we must support our employees, we must ensure that their rights are protected. I also agree that the relationship between an employee and employer is always skewed in favor of the employer. The employee usually does not have a very strong bargaining power and also there are so many non-unionized workers who may, therefore, not be able to negotiate better kinds of arrangements.

On the other hand, we must also appreciate that employers are also suffering under the current situation. Therefore, if you make it very difficult for the employer, maybe, not to come up with remedial measures, you are going to render this country very uncompetitive in terms of investment. No investor will want to invest in a situation where they cannot take any remedial measures whenever there is a pandemic.

You must also understand that we need to lure investors to this country, create an enabling environment for businesses to thrive and for me, I am not sure that this section, the way it is crafted in terms of making very difficult for the employer to take any action in instances of pandemic, is the correct way to go. In my view, we need to recast that section so that business owners can at least make some remedial measures whenever we have such kind of a problem.

The proposed Clause 29 is on Tenancy Agreements. Again, I have an issue with this area; reason being that I agree with the philosophy underpinning this proposal; the importance of supporting tenants, it makes sense. So many families are unable to pay for their rent; so many workers have been dismissed. Therefore, I urge all landlords to support and come up with measures to ensure that we do not throw out tenants.

On the other hand, also, I am very aware of very poor landlords, who have taken loans and do not have any other form of income apart from those investments that they have done by establishing rental units. Therefore, we must come up with a balance that takes into account the interests of the poor tenant and also of the struggling landlords as opposed to a situation where we seem as if we are treating landlords as people who do not deserve any formal protection.

In my own view, the way Clause 29 is crafted, I am not so sure it takes all the interests of the parties. Remember, when you talk of investments in rental houses, there is a huge value chain behind a landlord. We have banks, which more often than not finance these kinds of investments. Those banks have employees.

The money that the banks have used to loan the landlords also comes from depositors. Therefore, you must be a little bit nuanced when you are making laws that may upset the relationship between a tenant and a landlord. This is because there is a huge value chain, as may be disrupted by such kind of laws.

Another area that I have an issue with and I would ask my colleagues to improve on is Part V, the idea of establishment of a Pandemic Response Fund. My brother, who has just spoken has said a very good point. I really support that point, that as a House, we must continue making laws and coming up with legislative proposals. We should not be gagged. We must ensure that as a House, we make our laws and take them to the National Assembly. Those other issues will be discussed in a Mediation Committee or in the worst case scenario, if we are able to convince our colleagues, anyone can go to court and raise any issue concerning constitutionality.

However, on the other hand, in my humble opinion, I think there is reason as to why we must also take into account express provisions of the law. I am not so sure; I am not yet convinced as to whether we can be able to frame our law in this manner. I have seen---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kang'ata, I will give you three more minutes to allow Sen. M. Kajwang' to make some remarks. Upon the request of the sponsors, we need to expedite this process. Remember they are talking about a pandemic. This legislation needs to be in place as soon as possible. It is a kind request, if you could try and conclude in three minutes or so.

Sen. Kang'ata: Mr. Deputy Speaker, Sir, it is my last point. Therefore, for me, I would urge the Committee to redo Part V. Why? Number one, we already have an existing fund. So, it is even better, we do away with Part V and then we hinge this law into that existing fund that is already there. That way, you achieve two things; number one, potential criticism that this is a Money Bill, which will make us talk, discuss and fight with our brothers and sisters in the other House.

Secondly, because there is already an existing fund, we shall only be making law to hasten and to guide it further to do a better job. For me, that way, you both achieve what you want. You have made a law and your law is not open to criticism of going beyond our jurisdiction.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. M. Kajwang'. The Senate Majority Leader, wherever he is, should come back to the Chamber.

Kindly proceed Sen. M. Kajwang'. Take as short time as possible, but please do not hold back the kind of recommendations we are hearing. They are very good.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill. I rise to congratulate the Committee. It is doing a good job in helping us to understand this pandemic that we are currently going through; the COVID-19.

Indeed, you are swimming in waters that people have not swam in before. There is no single country in the globe that has a solution or a formula to COVID-19. Every other time, Heads of States are asked when they are re-opening their economies and when they are reducing and removing the lockdowns and the curfews, but nobody has an answer.

I do not envy this Committee. This is because we are asking them to provide answers to questions that nobody else has. I think that should encourage them to be ingenious and to come up with things that have not been tested before. This Pandemic Response and Management Bill that they brought to this House is one such step.

Allow me also to join the families and thousands of Kenyans who have been affected by this disease. As of today, the Government of Kenya has undertaken about 33,000 tests. Out of those tests, we have 715 confirmed cases and 36 deaths. My condolences go out to the families that have lost loved ones and to the families that have been affected in very many ways. There is no single family in this country or in this globe that has not been affected by COVID-19.

We are all in this together. However, those in a more painful position are those who have lost loved ones, or those who have had to see their loved ones struggling in hospital beds.

Yesterday, I had an opportunity to take my father to hospital for some routine check-up. The situation in this country is dire. Public hospitals are not providing care to patients anymore. Private hospitals are not providing care. People are shying away from hospitals.

Earlier on, Sen. Were was asking about the usual diseases that come with the rains, Malaria, TB, HIV/AIDS scourge and all those others. We have a bigger crisis that has been begotten by this COVID-19. We do not know and we hope that no other Kenyan is going to lose a life and that the number will remain at 36.

We know that floods as well as Malaria have killed hundreds. We hope that we shall get a quick resolution to this matter. The resolution does not mean the end of COVID-19. The HIV/AIDS pandemic has been with us for more than 30 years and we have just found ways of managing it.

I want to look at certain aspects of the Bill which I believe, perhaps need some considerations. I generally agree with the intention of the Bill to provide a framework for dealing with situations such as this.

We must start from definitions. How do we define a pandemic? Let us not think that COVID-19 is the only pandemic that we have. HIV/AIDS is a global pandemic; it is not an endemic. Differentiation between pandemic and endemic is that a pandemic is an endemic with a passport; it is an endemic that can travel. HIV/AIDS pandemic has travelled. It does not only affect us, the people of Migori and Homa Bay counties, but it affects the entire Africa and other parts of the world.

When we do this Bill, have we asked ourselves how then it would apply to the HIV/AIDS situation because it is not just about COVID-19. Probably, tomorrow, we shall have another SARS-like pandemic, but we have that which has been with us for the last 30 years. Will this Bill deal with it? If it could, because my county is one of the most affected when it comes to HIV/AIDS pandemic, the number of deaths we have seen cannot be compared with COVID-19 deaths. If then we are going to have a special fund that will be setup to deal with the HIV/AIDS pandemic, I fully support. This is because for far too long the Government has ignored the plight of people bordering Lake Victoria who have borne the greatest brunt of HIV/AIDS disease.

The definition of a pandemic as stated in that Bill, it might need to get some greater rigour so that we can ring-fence certain situations and events that this Bill would apply to.

Clauses 13 and 18 of this Bill propose some reporting arrangement to Parliament and to county assemblies. However, what I am foreseeing is clashes of jurisdictions. The national Government shall report biweekly to Parliament. The county pandemic response team will also be responding biweekly to the county assemblies. The reason for that biweekly reporting is for Parliament or county assemblies to give advice and to propose alternatives. What if you end up with conflicting pieces of advice coming from the two levels of government?

As I said, a pandemic is a disease with a passport. It is not a localised thing. We might need to think of a national framework for reporting and coordination, whereas at the counties we have a framework for execution and implementation. If decision making is going to be at both levels, we are going to have some conflicts.

Thirdly, the Pandemic Response Fund has been proposed. Personally, I have a problem with it for two reasons. The first one is that it will be construed to be a money Bill, which by definition is any legislation that imposes a charge on the Consolidated Fund. I think that has been the definition that we have lived with ever since matters went to court and a determination made on that matter.

I still believe that already the Constitution itself establishes a Contingency Fund. Money can be withdrawn from the Contingency Fund to take care of situations that are foreseen. Why can we not cause allocations made from the contingency funds other than setting up another fund? Already, every county government has an emergency fund and the PFM Act has clearly described the management of that fund. Why do we want to create another fund? We need to be careful around that.

If we are going to navigate the landmines that exist between this House and the other House, the landmines are usually booby traps around Money Bills. You might, upon reflection, find a way of drawing these monies from the Contingency Fund or the emergency fund or making reference to the PFM Act. The PFM Act has very clear provisions for establishment of funds at county and national Government levels and it is clear that those funds must be authorized by the relevant assemblies, be it Parliament or the county assemblies.

This Bill is also fairly prescriptive in certain financial arrangements. The Bill should allow the Cabinet Secretary to come up with regulations that will then prescribe instances and the manner in which arrangements made between landlords and tenants and employers and employees can be executed. I visited a hotel, which was previously very vibrant, and the manager told me that staff were sent on paid leave for one month at the end of March. At the end of the month of April, the one month paid leave was converted to one month unpaid leave. At the end of the month of May, the employees will be going back to work because they are on leave even though it is unpaid. That means that the employer will have no choice, but to terminate the employment because they do not have money. No one is visiting those institutions.

This morning, at a restaurant, the manager asked me to explain to him the reason why the Government is shutting down restaurants in Kisumu, Nakuru and Eldoret yet movement is allowed in those areas. He told me that all the other business are going on during the day and he wondered where those people are expected to eat and sleep. Nigeria took a fairly different approach in terms of enforcement though I do not want to say that there is one best way of doing it. In Nigeria, they locked down the States that had COVID-19 cases and the citizens in those States were asked to wear masks. Movement was allowed in the other states that did not have COVID-19 cases. As we move to the second month of lockdown and enforcement of orders, we might start thinking of a phased relaxation of some of these things because the implication of COVID-19 on the economy is going to be extremely severe.

The Deputy Speaker (Sen. (Prof.) Kindiki): In light of time, you have about two to three minutes.

Sen. M. Kajwang: Thank you, Mr. Deputy Speaker, Sir. My other concern with this Bill is that it proposes that the fund shall be used to provide economic remedies to those affected. A pandemic is a disused passport. Resolving the economic impact of a pandemic requires the entire budget of a country and it cannot be done in one year, but over a couple of years. I propose that this fund should not be called the pandemic fund. Instead, it should be said that a fund shall be set up in accordance with the PFM Act, but let the objectives of the fund not be economic because the economic impact shall be settled from a monetary, fiscal and central perspective.

Finally, the post-COVID-19 Kenya needs a conversation that is far away from, who is not the Senate Majority Leader, who is going to the Prime Minister or President or which positions are going to be created. We must now have a conversation on how to cut down on the bureaucracy of Government, politics and the waste and corruption in this country. The reality is that we must amend the Division of Revenue Act whether we like it or not. The Kenya Revenue Authority (KRA) will not be able to collect more than Kshs1.4 trillion. There is a Kshs1 trillion expense that this Government incurs every year that cannot be changed. This country is terribly broke and we are in a situation similar to where the bread winner of a family has lost their job. We must make expensive and painful adjustments to be able to move forward.

I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. I see no further requests. I now call upon the Mover to reply. Mover, you have approximately four minutes.

Sen. Kasanga: Thank you, Mr. Deputy Speaker, Sir. Allow me to appreciate all the Senators who have contributed to this Bill. I also wish to remind them that we are still taking in submissions in the course of this week.

I beg to reply.

The Deputy Speaker (Sen. (Prof.) Kindiki): What else do you beg to do other than to reply in the context of the numbers in the House or do you want me to ring the bell?

Sen. Kasanga: Mr. Deputy Speaker, Sir, you can defer the Division to another suitable day.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that your application?

Sen. Kasanga: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chair directs that the Division be done on another day.

Sen. Kasanga: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered.

Sen. Kasanga: Thank you, Mr. Deputy Speaker, Sir.

(Putting of the Question on the Bill deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us move on to the next Order.

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I think we can skip Orders No.10, 11 and 12.

COMMITTEE OF THE WHOLE

CONSIDERATION OF THE NATIONAL ASSEMBLY
AMENDMENTS TO THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILLS NO.3 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

CONSIDERATION OF THE NATIONAL ASSEMBLY
AMENDMENTS TO THE EARLY CHILDHOOD EDUCATION BILL
(SENATE BILLS NO.26 OF 2018)

(Committee of the Whole deferred)

Let us move on to the next Order.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson, do you have that Report now?

Sen. Sakaja: Yes, Mr. Deputy Speaker, Sir. I can begin to move it for the remainder of the time.

The Deputy Speaker (Sen. (Prof.) Kindiki): Did you move it?

Sen. Sakaja: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): You can move it in the next two minutes and then continue next time.

Sen. Sakaja: Yes, Mr. Deputy Speaker, Sir, because the Report has already been tabled.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed!

MOTION

ADOPTION OF THE FOURTH AND FIFTH PROGRESS
REPORTS OF THE *AD HOC* COMMITTEE
ON THE COVID-19 SITUATION IN KENYA

Sen. Sakaja: Mr. Deputy Speaker, Sir, I beg to move the following Motion-

THAT, the House adopts the Fourth and Fifth Progress Reports of the *Ad Hoc* Committee on COVID-19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 5th May, 2020 and on Tuesday, 12th May, 2020 respectively.

Mr. Deputy Speaker, Sir, we presented the Fifth Report today and had presented the Fourth Report last week. These are two Reports and I will just touch on a few things. By the time we were concluding the Fourth Report, we had held 37 sittings and gone into another thematic area. The Fourth Report was just a background of where we had reached; it was an update.

The Fifth Report is really the one on the second thematic area on economic and finance issues. There are some milestones that we have been able to achieve in the Third and Fourth Reports, based on the interactions we have had with different agencies.

One example is with the National Transport and Safety Authority (NTSA). Truck drivers had raised some concerns. Based on our interactions, we made sure that their issues are resolved, especially on the issues of licensing. They are unable to physically go to the offices to get these licenses.

In addition to that, the Ministry of Health and the Ministry of Interior and Coordination of National Government stopped detaining persons who had been caught flouting the rules. They were detaining them in quarantine facilities and we said it is improper. There is no provision in the law where you quarantine somebody for going against the Public Health Act or Regulations. The Inspector-General (IG) was asked to create a place where law enforcement can be done properly.

Mr. Deputy Speaker, Sir, we had noticed that there was criminalisation of quarantine. When you associate quarantine facilities with people who have broken the law, then Kenyans who would ideally even take themselves to quarantine facilities or self-quarantine for suspecting their status, would not want to go there. This criminalisation is what was also building to the stigmatisation. That is another milestone that we achieved by that time.

Additionally, we met the National Council for Administration of Justice (NCAJ). Through our interactions, they have started *e-filing*, as well as digitisation of the courts, and now the court sessions are being held virtually. On top of that, we connected them with one of the transport providers, SWVL, who have been providing free transportation for our frontline medical workers.

Following meetings with the Cabinet Secretary responsible for Trade and Transportation---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

Hon. Senators, when we resume next, Sen. Sakaja, the Mover of this Motion, will have an additional 57 minutes.

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The House, therefore, stands adjourned until Tuesday, 19th May, 2020, at 10.00 a.m.

The Senate rose at 6.30 p.m.